

(1997) 04 GAU CK 0015

In the Gauhati High Court

Case No : Writ Appeal Nos. 262 And 405 of 1996

State of Assam : Gauhati High Court

APPELLANT

Vs

Haladhar Kalfta

RESPONDENT

Date of Decision : 09-04-1997

Acts Referred:

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 15, 15
Limitation Act, 1963 — Section 5, 5

Citation : (1997) 2 GLJ 80 : (1997) 2 GLT 346

Hon'ble Judges : N.Chowdhury, J and V.Dutta Gyani, J

Bench : Division Bench

**Advocate : B.M.Mahanta, B.P.Bora, A.M.Bujar Barua, D.P.Chaliha, Advocates
appearing for Parties**

Judgement

V. Dutta Gyani, C.J. (Acting)

1. This writ appeal at the instance of the of Assam is connected with the Writ Appeal No.405 of 1996 preferred by the Gauhati High Court. Both these appeals arising out of judgment dated 30.1.96 passed by aleamed Single Judge of this Court in Civil Rule No. 1699 of 1994 thereby making the following directions:

"I direct the respondent Government (Judicial Secretary, Govt of Assam) to issue the notification giving effect to the judgment and order dated 30.3.92 passed by the Governor of Assam (Annexure E to the writ petition) This shall be done within 4 (four) weeks from the receipt of this order."

2. Few basic facts so far as they are necessary for disposal of this appeals may now be noted. The writ petitioner respondent Shri Haladhar Kalita was appointed as Judicial Magistrate and at the relevant time posted at Tinsukia. A disciplinary enquiry was instituted against him on as many as 7 charges. The Enquiry Officer submitted his report holding him guilty of all the charges except Charge No.4. The High Court accepted the findings of the Enquiry Officer and issued a show cause notice to the delinquent officer who submitted his reply to the show cause

notice which was considered by the High Court and finally on such consideration, the High Court recommended his removal from service. Thereafter, by Order dated 22.3.91 passed by the Governor of the State, he was removed from service.

3. The said Judicial Officer preferred an appeal under Rule 15 of the Assam Services (Disciplinary and Appeal) Rules, 1964 before the Governor, who allowed the appeal and modified the punishment from removal from service to that of withholding of promotion for a period of 2 (two) years coupled with a direction to reinstate the writ petitioner appellant in service. This order was the subject matter of challenge in Civil Rule No. 1185 of 1990 and the High Court held that such an appeal cannot be legally disposed of without consultation and recommendation of the High Court. In the meantime, the State of Assam preferred an appeal before the Supreme Court against the judgment of the High Court in Civil Rule No. 1185 of 1990. However, a petition was filed by the Judicial Officer seeking a direction to supply him a copy of the order dated 30.3.92 which was directed to be supplied by order dated 27.9.93 in the writ petition filed by the Judicial Officer. It was followed by a misc case and a modification was made in the said order dated 30.3.92. Aggrieved by the same, the Judicial Officer again filed yet another writ petition being Civil Rule No. 1699 of 1994 complaining non implementation of the Governor's order dated 13.3.92 to reinstate him in service. The learned Single Judge by the order dated 30.1.96 made the direction as quoted above. It is against this judgment that both the State as well as the High Court has preferred these two appeals.

4. Learned Advocate General appearing for the appellant State at the very outset pointed out that the appeal preferred by the State is barred by time although it was admitted by order dated 19.6.96 considering the fact that another Writ Appeal (No.406 of 1996) is also pending, which is in time, we find no reason not to condone the delay caused in filing of the appeal by the State. It stands condoned.

For such matters, Rules framed by this Court came up for consideration before a Division Bench in Gauhati High Court vs. State of Assam (Civil Rule No.1185 of 1990) decided on 1.4.1992 reported in (1992) 1 GLR 450 (1992 (1) GLJ 389). This Court while disposing the said writ petition held as follows :

"30. In the result, we dispose of the writ petition as follows:

(1) We declare that Rules 13 to 16 of the Assam Service (Discipline and Appeal) Rules, 1964 in so far as they apply to the members of the Assam Judicial Service governed by the Assam Judicial Service Rules, 1967 shall be read down as meaning that the Governor as appellate authority shall dispose of the appeal only after obtaining the recommendation of the High Court and acting on such recommendation. The Governor/Government cannot dispose of the appeal on their own without conforming to the recommendation which may be made by the High Court in regard to the disposal of the appeal.

(2) Since the disposal of the appeal in this case and. Annexure XI judgment and order dated 2.6.90 purportedly delivered by the "Minister of Law and the Annexure XII notification dated 2.6.90 issued by the Government allowing the appeal and revoking the order of dismissal of the third respondent and reinstating him in service with full pay and allowances from the date of suspension till the date of reinstatement treating the intervening period as on duty for all purposes are contrary to the law above declared, the disposal of the appeal, the judgment and order and the notification are quashed as unconstitutional and violative of Article 235 of the Constitution and the principles of independence of the Judiciary which is the basic structure of the Constitution.

(3) Respondents 1 and 2 are directed to ensure that the appeal is dealt with in accordance with the principle referred to in clause (1) above.

(4) Respondents 1 and 2 are directed to take up the aspects dealt with in paragraph 27 to 29 and deal with the same in accordance with law and in the light of the observation contained in this judgment."

5. This judgment was challenged in SLP before the Apex Court, but it met with dismissal. The Supreme Court in one of its recent pronouncement, as reported in T. Lakshmi Narasimha Chari vs. The High Court of Andhra Pradesh, reported in AIR 1996 SC 2067, dealing with the Rules framed by the High Court of Andhra Pradesh, particularly Rule 21 (2) visavis Article 235 of the Constitution has held as follows :

"16. In our opinion Rule 21 (2) can be interpreted in conformity with Article 235 without the requirement of reading any limitation therein as indicated by the High Court. The second part of Article 235 enables the framing of such a rule to confer a right of appeal. Such a provision for appeal must be construed to mean that the appeal to the Governor against the order of the High Court's order by the Governor, but in keeping with the requirement of Article 235 that the power of control over persons belonging to the judicial service of a State vests in the High Court, and that the appeal must be decided by the Governor only in accordance with the opinion of the High Court. In otherwords, such an appeal has to be forwarded by the Governor to the High Court for its opinion, which would enable . the High Court to reconsider its earlier decision and give its opinion to the Governor, in accordance with which the Governor must decide the appeal. In short, the remedy of such an appeal provided by the Rules which have been framed in consultation with the High Court is in the nature of a provision for reconsideration or review by the High Court of its earlier decision. The High Court on reconsideration of the matter has to give its opinion to the Governor and the Governor must invariably act in accordance with the opinion so given by the High Court. This procedure requires reconsideration by the High Court of its earlier decision of that appeal. There is thus no erosion in the control vested in the High Court over persons belonging to the judicial service of a State; and the requirement of an appeal i.e. reconsideration of the earlier decision is also satisfied. In this process, any comments by the Governor on the merits of the

case would also receive consideration of the High Court before it forms the final opinion and forwards its recommendation to the Governor for decision of the appeal in accordance with that opinion. This is the scheme and requirement of Article 235. We are informed that similar provision exists for appeal in the case of persons belonging to the judicial service in some other States and rule worked in the manner indicated. Such a construction of the rule gives effect to the provision for appeal consistent with the right of appeal available under the second part of Article 235 and is consistent with the vesting of control in the High Court over the subordinate judiciary."

6. Following the same, the direction, as made by the learned Single Judge cannot be allowed to stand. It is liable to be quashed and accordingly quashed. To that extent, both these appeals deserves to be allowed, they are allowed accordingly with no cost.

7. The respondent State is directed to approach the High Court for its opinion on the appeal preferred by the Judicial Officer so as enable the High Court to reconsider its earlier decision and give its opinion to the Governor, who on receipt of the opinion decide the appeal in accordance with law.