

**(2019) 12 MAN CK 0003**  
**In the Manipur High Court**  
**Case No : Writ Appeal No. 35 Of 2019**

|                              |    |            |
|------------------------------|----|------------|
| State Of Manipur And Others  | Vs | APPELLANT  |
| A. Birendra Singh And Others |    | RESPONDENT |

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**Date of Decision :** 05-12-2019

**Acts Referred:**

Central Civil Services (Conduct) Rules, 1964 — Rule 3(i), 3(ii)  
Central Civil Services (Pension) Rules, 1972 — Rule 9  
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 9, 20, 20(1)  
M.P Civil services (CCA) Rules, 1966 — Rule 20

**Citation :** (2019) 12 MAN CK 0003

**Hon'ble Judges :** Ramalingam Sudhakar, CJ;M.V. Muralidaran, J

**Bench :** Division Bench

**Advocate :** N.Kumarjit, Th.Khagemba

**Final Decision :** Disposed Of

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## Judgement

Ramalingam Sudhakar, CJ

[1] The State has filed this appeal challenging the order of the learned Single Judge dated 25.10.2018 passed in W.P(C) No.144 of 2018.

[2] Heard Mr. N.Kumarjit, learned Advocate General assisted by Mr. P.Tamphamani, junior counsel for the appellants and Mr. Th.Khagemba, learned counsel for the principal respondent/writ petitioner.

[3] THE FACTS IN BRIEF.

The respondent/writ petitioner was appointed as Lecturer in English at Oriental College, Imphal vide order dated 02.12.1972. The said Oriental College was taken over by the State Government in the year 1979, as a result, the respondent/writ petitioner became a Government employee. In the year 1988, the respondent/writ petitioner was upgraded as a Selection Grade Lecturer. He was thereafter appointed on deputation as the Director, North East Zone Cultural

Centre, Dimapur, a society registered under the Societies Registration Act for a period of three years. On 05.04.1999, the Government of Manipur released him from State Government so as to enable him to join his duty to the Centre, namely, North East Zone Cultural Centre. While discharging his duty in the Centre, he caused withdrawal of Rs. 1(one) crore deposited from M/s Peerless Corporation, Calcutta and had it invested in M/s Leafin India Ltd. Dimapur.

[4] While the respondent/writ petitioner was on deputation, the Principal Secretary (Higher Secondary), Government of Manipur issued a memorandum dated 03.01.2002 initiating departmental enquiry against the respondent/writ petitioner on the allegation of financial mis-management or irregularities. The memorandum was issued under rule 3(i) and (ii) of the CCS (Conduct) Rules, 1964. The specific allegation against the respondent/writ petitioner was that while functioning as the Director of the aforesaid Centre from 19.04.1999 to 18.04.2002, the respondent/writ petitioner prematurely withdrawn the corpus fund and invested in M/s Peerless Corporation, Calcutta , withdrew the same and again invested in M/s Leafin India Ltd. Dimapur and thereby committed misconduct. Besides, he is accused of total negligence and dereliction of duty. Since the deputation was to expire on 18.04.2002, the Deputy Secretary (Higher Education), Government of Manipur vide its letter dated 15.06.2002 requested the Addl.Secretary (Art & Culture), Government of Nagaland to release the services of the respondent/writ petitioner so as to enable him to join his parent department. The respondent/writ petitioner, in his first statement of defence on 25.01.2003, denied the charges levelled against him. Thereafter, a departmental enquiry was proceeded. The respondent/writ petitioner appointed a counsel to appear in the enquiry and the enquiry was conducted in accordance with the rules and procedures and on 04.6.2007, after conclusion of the enquiry, the respondent/writ petitioner was awarded major penalty of withholding his pension and retiral benefits and recovery of the pecuniary loss to the Government under Rule 9 of the MCS(Pension) Rules, 1971 and the CCS(CCA) Rules, 1965.

[5] Aggrieved by the order of punishment imposed in the order of the Government dated 04.6.2007, Annexure-A/10, page-146, the respondent/writ petitioner submitted a review petition on 18.6.2008, Annexure-A/13, which was dismissed on 14.12.2017 , Annexure-A/16. Thereafter, a writ petition was filed being W.P(C) No.144 of 2018 challenging the order of punishment imposed dated 04.6.2007 and the order dated 14.12.2017 dismissing the review petition.

In the writ petition, subsequently, the respondent/writ petitioner took a legal plea that initiation of the departmental enquiry is contrary to Rule 20 of the CCS(CCA), 1965 and on that aspect of the matter, the learned Single Judge, on a reading of the specific provision of the CCS(CCA), 1965, held in para No.7 and 8 as follows:-

"[7] Rule 20 of the CCS (CCA) Rules, 1965 provides the procedure to be followed for purpose of initiating disciplinary proceeding against the officers lent to a department or a State Government or other authorities. Rule 20(1) reads as

under:

"(1) Where the services of a Government servant are lent by one department to another department or to a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred as "the borrowing authority"), the borrowing authority shall have the power of the Appointing Authority for the purpose of placing such Government servant under suspension and of the Disciplinary Authority for the purpose of conducting disciplinary proceeding against him:

Provided that the borrowing authority shall forthwith inform the authority which lent the services of the Government servant (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of suspension of such Government servant or the commencement of the disciplinary proceeding, as the case may be."

On perusal of this rule, it is absolutely clear that the wordings of this rule are clear, plain and unambiguous and require no interpretation at all. It provides that when the services of an officer are lent to a department or a State Government or any other authority, it is the borrowing authority which shall have the power to suspend and initiate disciplinary proceedings against him/her. It is nowhere stated in this rule that in addition to the power being conferred upon the borrowing authority, the lending authority shall continue to enjoy the same power. Immediately after such an officer being suspended or a disciplinary proceeding being initiated against him, the circumstances leading thereto shall be informed to the lending authority and moreover, if any of the penalties specified in clauses (i) to (iv) is to be imposed, it may do so under sub-rule (2) after consultation with the lending authority.

[8] In the present case, it is not in dispute that the petitioner was initially appointed as a Lecturer in English at the Oriental College, Imphal vide an order dated 02.12.1972 and later, he became an employee of the State Government after the Oriental College was taken over by the State Government in the year 1979. In the year 1988 he was upgraded as the Selection Grade Lecturer and while he was serving in that capacity, he was appointed as the Director of the Centre vide Notification dated 17-03-1999 issued by the Chief Secretary, Nagaland for a period three years which was followed by an order dated 05-04-1999 issued by the Under Secretary (Higher Education), Government of Manipur releasing from his parent department. A copy of the said Notification is not placed on record and therefore, it is not clear to this court as to when the period of three years would have expired. But on perusal of the letter dated 15-06-2002 of the Deputy Secretary (Hr. Edn), Government of Manipur addressed to the Addl. Secretary (Art & Culture), Government of Nagaland, it is seen that the period of deputation expired on 18-04-2002. The fact that the memorandum dated 03-01-2002 was issued by the State of Manipur shows that it was issued while the petitioner was on deputation. In other words, the memorandum dated 03-1-2002 was issued prior to the expiry of the period of

the petitioner's deputation. As per the provisions of Rule 20 (1) mentioned above, it is the Centre which had the power to initiate disciplinary proceeding against the petitioner because he was on deputation but contrary to the said rule, the State of Manipur had issued the said memorandum dated 03-01-2002. The only justification made by the State of Manipur in its affidavit, was that although the memorandum dated 03-01-2002 was issued before the expiry of the period of deputation, the disciplinary proceeding was in fact made effective after the petitioner was returned to the parent department. Moreover, relying upon the P.S. Gopinathan Vs. State of Kerala & ors case (supra), it has further been submitted by the learned Government Advocate that since the petitioner having participated in the disciplinary proceedings without any demur, he had waived his right by acquiescence and therefore, he was estopped from contending that the initiation of disciplinary proceeding by the State of Manipur was illegal. The facts of that case are slightly different from that of the present case. In the present case, it is specifically provided in Rule 20(1) that it is the borrowing authority which is empowered to initiate disciplinary proceeding and not the lending authority. The State of Manipur is governed by rule of law and when the rule specifically provides the manner of exercising its power, it ought to do so in that manner only. The issuance of the memorandum dated 03-01-2002 by the State of Manipur itself is contrary to the said rule and therefore, the subsequent actions taken by it including the orders dated 04-06-2007 and 14-12-2017, are bad in law and not sustainable. In other words, the power exercised by the State of Manipur was without jurisdiction with the result that the action taken by it was void ab initio. The law laid down by the Hon'ble Supreme Court in State of Orissa Vs. Mamata Mohanty (supra) and relied upon by the counsel appearing for the petitioner will have an application. The conduct of the petitioner or for that matter, his participation in the disciplinary proceeding cannot be said to have validated the action of the State of Manipur. Moreover, the learned counsel appearing for the petitioner has relied upon the order dated 29-09-2014 passed by the High Court of Madhya Pradesh in B.L. Satyarthi Vs. State of Madhya Pradesh & anr, WA No.1058 of 2009 wherein Rule 20 of the M.P Civil services (CCA) Rules, 1966 is involved and is *parie materia* with Rule 20 of the CCS (CCA) Rules, 1965. The Hon'ble High Court held that when an employee is sent on deputation, a temporary contract is brought into force between the borrowing department and the employee concerned and as long as its contract of employment subsists, the borrowing department can invoke the provisions of Rule 20 but once the employee is repatriated back to the parent department, the contract of employment temporarily created during the period of deputation ceases and if that be the position, the borrowing department does not have any authority to take action against the employee concerned. This order of the High Court Madhya Pradesh is not binding on this court except the persuasive value. But since the observation made by it as aforesaid appears to be the correct one, this court endorses it."

[6] Resultantly, the impugned proceeding, under challenge, namely, punishment

imposed by the authority as well as the order dismissing the review petition, was set aside but considering the nature of allegations in the present case, the learned Single Judge observed in para No.9 of the impugned order that the proceeding against the respondent/writ petitioner can proceed afresh because the amount involved was substantial. The operative portion of the order which is relevant for the present appeal is extracted as follows:-

"[9] One ancillary issue which needs to be considered by this Court at this juncture is as to whether the State of Manipur shall be given a liberty to proceed with a fresh disciplinary proceeding, since the earlier one has been held to be void ab initio. The learned counsel appearing for the petitioner, relying upon the decision rendered by the Hon'ble Supreme Court in Punjab National Bank & ors. Vs. Kunj Behari Mishra & anr (supra), has submitted that after a lapse more than sixteen years, there will be no point of conducting an enquiry and therefore, the petitioner be permitted to lead a peaceful life by granting pension and pensionary benefits within a reasonable time. It is no doubt true that the Hon'ble Supreme Court had observed that it would not be in the interest of justice that at that stage, the case should be remanded to the disciplinary authority for the start of another innings and accordingly, it directed the appellants therein to release the retirement benefits but it may be noted that the Hon'ble Supreme Court had not laid down the law that in all such cases where there is a long delay in conducting the disciplinary enquiry, a denovo enquiry cannot be held by the State Government. It depends on the facts of each case. In the said case, the amount involved was hardly two lakhs while in the present case, the amount involved is more than a crore which can be said to be a huge amount for such a Centre and moreover, it is public money. It may set a bad precedent, if the State of Manipur is precluded from initiating a disciplinary proceeding afresh in accordance with law. It is for the State Government, and not for this court, to take a decision according to its wisdom whether it shall initiate a fresh enquiry or not in the facts and circumstances of the present case.

[10] In this case, as has been stated hereinabove, two issues felt for consideration by this court but since the main issue relating to the validity and correctness of the disciplinary proceeding itself having been decided by this court in favour of the petitioner, this court is of the view that there is no need of going in the second issue which can be considered in an appropriate case in future and in other words, the second issue is kept open.

[11] In view of the above and for the reasons stated hereinabove, the instant writ petition is allowed and consequently, the orders dated 04.06.2007 issued by the Commissioner (Hr. Edn), Government of Manipur and dated 14.12.2017 issued by the Commissioner (Higher & Tech. Education), Government of Manipur are quashed and set aside. There shall be no order as to costs. However, given the facts and circumstances of the case, the respondents are given liberty to proceed with a fresh disciplinary enquiry, if they so desire, against the petitioner in accordance with law."

[7] Against this order, the State has filed this appeal. It is primarily pleaded by the learned Advocate General that there was undue delay in filing the writ petition and the Court should not have ignored. Secondly, Rule 20 of the CCS(CCA) Rules, 1965 was validly invoked by the Department. On the issue of delay, there appears to be justification on the part of the respondent/writ petitioner because soon after the punishment order was imposed on 04.6.2007, he filed a review petition on 18.6.2008 which was disposed after long delay by the Secretary, Higher & Technical, Education Department on 14. 12.2017 for which there is no reply by the State appellant. Since the dismissal of the review petition was issued only on 14.12.2017, the respondent/writ petitioner was justified in filing the writ petition in the year 2018. On the plea of delay cannot be attributed to the respondent/writ petitioner. Be that as it may, the respondent/writ petitioner has been allowed to retire on 30.09.2005, Annexure-A/6.

[8] Keeping the above in mind, we proceed to consider the plea whether the learned Single Judge was justified in interpreting Rule 20 of the CCS(CCA) Rules, 1965. Rule 20 (1) of the CCS (CCA) Rules, 1965 which has been extracted in para No.7 of the order of the learned Single Judge, provides that the borrowing authority shall have the power to suspend and initiate disciplinary proceeding against an employee so long as he is under the control of the borrowing authority. The inference is that the State Government which has lent the service of the respondent/writ petitioner would have any power to initiate disciplinary proceeding till the deputation continues. In the present case, the memorandum was issued on 03.01.2002 when the respondent/writ petitioner was still on deputation and it would expire only on 18.4.2002. Therefore the State of Manipur did not have the authority to issue the memorandum of charge against the respondent/writ petitioner. This interpretation is on the basis of the rules/provisions and cannot be faulted with.

[9] Be that as it may, as has been rightly observed by the learned Single, liberty is given to the State to proceed against the respondent/writ petitioner afresh in view of the nature of delinquency charge. against the direction of the Single Judge in para No.9, 10 and 11 that fresh enquiry should be conducted against the respondent/writ petitioner, the respondent/writ petitioner has not chosen to file appeal and he has accepted the order. Mr.Th.Khagemba, learned counsel for the respondent/writ petitioner fairly states that the respondent/writ petitioner has no reservation to participate in the enquiry as directed by the learned Single Judge in para No.9, 10 and 11 except that , he pleaded that considering the age of the respondent/writ petitioner , the enquiry should be completed at an early date and he is willing to participate without any demur of any kind.

[10] In view of the above, we find no reason to interfere with the order of the learned Single Judge except giving liberty to the appellant State to proceed in terms of the para No.9,10, and 11 of the order of the learned Single Judge without undue delay preferably within a period of three months considering the peculiar facts and circumstances of the case.

[11] With the above, the writ appeal stands closed.