
(1996) 05 GAU CK 0026
In the Gauhati High Court
Case No : C.R. No. 983 of 1992

Syed Wazihuddin Ahmed

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 10-05-1996

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1997) 1 LLJ 226

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : A. Das Gupta and T. Sen, for the Appellant; A.H. Saikia, for the Respondent

Final Decision : Allowed

Judgement

D.N. Baruah, J.—In this application under Article 226 of the Constitution the petitioner has challenged an-nexure-XI order passed by the Secretary to the Government of Assam, Labour Department, Dispur, Guwahati (respondent No. 2) and also the Annexure-XIV Judgment and Order dated February 24, 1992 passed in Case No. 118 ATA/91 by Assam Administrative Tribunal affirming the reduction of rank issued by the 2nd respondent.

2. The case of the petitioner is that the petitioner was a holder of Diploma in Civil Engineering from the Assam Engineering Institute, Guwahati. In terms of an advertisement issued by the Assam Public Service Commission he applied for the post of Principal. The petitioner was appointed to the post of Principal at Industrial Training Institute, Guwahati in the scale of pay as per Annexure-I. Thereafter, he was transferred and posted as Principal at Industrial Training Institute, Nowgong and he joined the said post on October 21, 1964 vide annexure-III. By annexure-VI the petitioner was asked to show cause why disciplinary action should not be taken against him under Rule 7 of the Assam Services (Discipline and Appeal) Rules, 1964 on the charges of allegations as mentioned in the said annexure-VI show cause notice. The petitioner submitted

reply to the show cause notice vide annexure-VII denying the allegations. Thereafter an enquiry was held and the Enquiry Officer submitted his report. The Disciplinary authority(respondent No.2) concurring with the finding of the enquiry report awarded punishment of the reduction of rank from the post of Principal to the next lower post by order dated January 28, 1979 and pursuant to the said order the petitioner was demoted to the post of Mill Wright Foreman vide annexure-XII. The petitioner preferred an appeal before the appellate authority and the appellate authority dismissed the appeal by annexure-XIII. Thereafter the petitioner approached the Assam Administrative Tribunal, Gauhati by filing an appeal (Case No. 118 ATA/91 (8ATA/81) vide annexure-XIV. But the said appeal was filed after the expiry of period of limitation and the appeal was rejected on the ground of limitation. Being aggrieved, the petitioner approached this Court under Article 226 of the Constitution by filing Civil Rule No. 220/82. This Court by judgment and order dated June 26, 1989 allowed the writ petition by condoning the delay and directed the Tribunal to take up the matter on merit and the Tribunal after hearing the parties dismissed the appeal by judgment and order dated September 24, 1992. Hence the present petition.

3. I have heard Mr. A. Das Gupta, learned counsel for the petitioner and Mr. A.H. Saikia, learned Senior Government Advocate, Assam for the respondents.

4. Mr. Das Gupta submits that the petitioner was initially appointed as Principal of the Industrial Training Institute and thereafter he worked in that capacity at the Industrial Training Institute at Gauhati and Nowgong for a period of 10 years. But the disciplinary authority demoted the petitioner to the rank of Mill Wright Foreman. Mr. Das Gupta submits that the petitioner cannot be reduced to the next lower rank where he was initially appointed.

Mr. Saikia does not dispute the contention. However, he submits that the said reduction in rank was only for a period of five years.

5. Mr. Das Gupta placed reliance on the case of P.V. Srinivasa Sastry and Ors. v. Comptroller and Auditor General and Ors., reported in 1993 LLJ 824 In the said case Apex Court in para-8 of the judgment held thus :

"8. The expression "reduction in rank" in Article 311(2) has an obvious reference to different grades in service. Whenever there is a reduction in rank it implies reversion from a higher post to a lower post. Reversion from a higher post to a lower post may be under exigencies of situation or by way of punishment. The expression "reduction in rank", "occurring in Article 311(2) covers only such reservations which are by way of punishment." The expression "reduction in rank", within the meaning of Article 311(2) as expression itself suggests, means reduction from a higher to a lower rank or post. But the question is whether in this process an officer can be reduced from a higher rank or a post to a rank to which he never belonged and to a post which he never held? If the power to reduce an officer by way of punishment to a rank which was never held by such officer is conceded, then a person directly appointed as Upper Division Clerk-

cannot only be reverted to the post of Lower Division Clerk, but even to the post of a peon; an Engineer to the post of a Fitter, a Headmaster of a School to the post of an Accountant or Clerk in the said School, As such even while imposing the punishment of reduction in rank, the order must have nexus with the post held by the delinquent officer concerned, from which he had been promoted to the post from which he is being reverted. If such an officer had not held that post or was not member of that cadre then he cannot be reverted to a lower cadre to which he did not belong or to a lower rank which he did not hold at any stage."

6. Mr. Das Gupta also has relied upon a decision of the Division Bench of this Court in the case of Shri Swendra Nath Kalita v. Assam Co-operative Apex Bank Ltd and Ors., reported in 1989(1)GLJ 54. In para-21 of the said judgment this Court following the decision of the Apex Court in Naydar Singh held that reduction of the petitioner to the rank of peon which was not in line of promotion or was a feeder service, was arbitrary, illegal and violative of principle of natural justice.

7. There is no dispute that the post of Mill Wright Foreman is a lower post than the Principal and the petitioner was never a member in the said cadre at any time. Therefore, his reduction to the rank of Mill Wright Foreman is illegal, arbitrary and violative of the principles of natural justice. In this view of the matter I agree with the submission made by Mr. Das Gupta that the Tribunal did not consider this aspect of the matter and the order passed by the Tribunal upholding the order passed by the respondent No.2 reducing the rank of the petitioner from the post of Principal to the post of Mill Wright Foreman is illegal and liable to be set aside and it is accordingly set aside.

8. In the result the writ petition is allowed. The petitioner shall be deemed to be in service as Principal of the Industrial Training Institute from the date of reduction and he shall be allowed all benefits as admissible.