
(2007) 09 GAU CK 0027
In the Gauhati High Court

Tara Nath Mahanta

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 409, 420, 465, 471

Citation : (2007) 4 GLT 635 : (2007) 4 GLT 634

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Judgement

B.K. Sharma, J.—Heard Mr. P. Mahanta, learned Counsel for the petitioner as well as Mr. U.K. Goswami, learned Standing Counsel, Education Department. Also heard Mr. G.N. Sahewalla, learned Sr. counsel assisted by Ms. M. Jain, learned Counsel representing the respondent No. 5.0 In spite of service of notice there is no representation on behalf of the respondents No. 3 and 4.

2. The petitioner is aggrieved by Annexures-M and N letters dated 06.06.06 and 17.06.06 by which he has been placed under suspension. Annexure-M letter was issued by the Director of Higher Education, Assam directing the Principal/Secretary of the college in which the petitioner has been serving as Lecturer in the department of Philosophy to place the petitioner under suspension and to initiate departmental proceeding. By the said letter, further direction was issued to place the matter before the Governing Body of the college for the purpose of adopting specific resolution for taking further necessary action.

3. Pursuant to the aforesaid letter dated 06.06.06 (Annexure-M), the Principal/Secretary of the college, namely Biswanath College, placed the petitioner under suspension, without, however, any resolution to that effect adopted by the Governing Body of the college and prior approval of the same by the Director of Higher Education, Assam.

4. Mr. Mahanta, learned Counsel for the petitioner submits that such action on the part of the Director of Higher Education imposing suspension of the petitioner

is contrary to the provision of Rule 18 of the Assam Non-Government College Management Rules, 2001. Rule 18 of the said rules is quoted below:

18. Governing Body to obtain prior approval of the Director in certain matters:

The minutes of the proceedings of the Governing Body meeting shall be sent to the Director and the concerned affiliating University. No final decision regarding appointment, promotion, suspension, termination, removal or dismissal of teaching or non-teaching staff including that of the Principal or any construction works involving Rs. 50,000/- (Fifty thousand) or more shall be undertaken by the Governing Body without the prior approval of the Director:

Provided that so far as Non-Government Colleges are concerned, the Governing Bodies are not required to send the proceedings of the meeting to the Director but it will be open for the Director to call for the proceedings, if any complaint is received against the Governing Body and any direction given by the Director on it shall be final and binding on the Governing Body of the College.

5. The petitioner was initially working as Lecturer in the department of Philosophy in Murkong Selek College. He was so appointed in the year 1993. By Annexure-A representation dated 18.04.2000, he made request to the Director of Higher Education, Assam to take necessary action in the matter relating to the threat meted out to him. In response to the same, the Secretary, Assam Higher Secondary Education Council requested the jurisdictional Deputy Commissioner to extend all necessary help to the Principal of the college so that the public examinations could be held in congenial atmosphere.

6. Above representation of the petitioner was followed by Annexure-B representation dated 16.05.2000 by which the petitioner made a request for his transfer from Murkong Selek College to any other college along with the post. His representation was forwarded by the Principal-cum Secretary of the college. The petitioner also made a representation to the Principal-cum-Secretary of the college for his transfer to any other college along with the post. Such representation was made on 24.07.2000 (Annexure-B 2) The Principal-cum-Secretary of the college by his letter, dated 11.09.2000 forwarded the representation to the Director of Higher Education, Assam. It was indicated that there was threat to the life of the petitioner.

7. While according to the petitioner the Governing Body of the college took resolution in its meeting held on 13.08.2000 for transferring the petitioner from the college to any other college along with the post, it is the case of the respondents No. 2 and 5 that there was no such resolution for transfer of the petitioner along with the post. According to them, the petitioner has manipulated the actual resolution by way of incorporating the word "along with the post".

8. By Annexure-E order dated 10.10.2000, the Director of Higher Education, Assam approved the transfer of the petitioner from his earlier college to the present college, namely Biswanath College along with the post. Pursuant thereto,

the petitioner was released from his former college by order dated 23.10.2000. According to the respondent No. 5 in this order the word "enable him to join in his new assignment at Biswanath College, Chariali along with the post vide govt. letter No. G(B)/AC/6 96/103 dated 10.10.2000" was not in the order dated 23.10.2000, but was subsequently inserted by the petitioner and thus, there was manipulation in the order.

9. The petitioner has denied the aforesaid contentions of the respondents No. 2 and 5. According to him it is the respondent No. 5 who has manipulated the documents so as to favour the appointment of one Smt. Barnali Borah in the college showing her appointment to be against the post earlier held by the petitioner, although such post was not available in the college in view of transfer of the petitioner to the present college along with the post. In support of such contention of the petitioner Mr. Mahanta, learned Counsel for the petitioner submits that immediately after transfer of the petitioner from his former college to the present college, he continued to receive salary in the new college. According to him had it been the case of manipulation, there would not have been any post to accommodate the petitioner in the new college and that the salary would have drawn in the former college.

10. From the materials on record, it appears that although the petitioner joined the college way back in the year 2000, some queries were made on the basis of news paper reporting regarding his transfer from the former college. At one stage, it was the stand of the Governing Body of Biswanath College that the petitioner came to the present college with manipulation of documents. However, subsequently, the college authority constituted three member enquiry committee to enquire into the matter. Upon such enquiry, said committee enquired the matter and submitted its report by its letter dated 23.11.05. As per the said report, the petitioner did not submit any forged documents and the documents submitted by him were found to be satisfactory. The enquiry committee was constituted pursuant to the show cause notice issued to the petitioner and his reply thereof.

11. When the matter rested thus, the Governing Body of the present college wanted to know from the Director Higher Education, Assam as to whether criminal proceeding initiated against the petitioner could be dropped in view of the above findings of the enquiry committee. It will be pertinent to mention here that an FIR was lodged by the college authority against the petitioner alleging falsification of the documents. On the basis of the FIR lodged by the college authority, the police registered Biswanath RS. Case No. 137/05 corresponding GR Case No. 331/2005 u/s 465/471/420/409 IPC. In the said case the petitioner has been granted bail by his Court.

12. When the college authority sought for clarification of the Director of Higher Education as to whether the aforesaid criminal case could be dropped in view of the aforesaid finding of the enquiry committee, the Director of Higher Education, Assam issued the impugned Annexure-M letter dated 06.06.06 directing the

Principal/Secretary of Biswanath College to place the petitioner under suspension and to initiate departmental proceeding against him. Pursuant to thereto, the Principal-cum-Secretary of the college issued the impugned Annexure-N letter dated 17.06.06 placing the petitioner under suspension.

13. The respondents No. 2 and 5 have filed individual affidavits. The respondent No. 5 in his affidavit has denied release of the petitioner from the earlier college along with the post. According to him the stipulation relating to transfer of the petitioner along with the post has been manipulated.

14. The respondent No. 2 in his affidavit has stated that from the materials on record there are two release orders and the same have been annexed to the counter affidavit as Annexures-A1 and A2. While Annexure A1 speaks of release of the petitioner from the college, Annexure-A2 speaks of his release from the college along with the post, although the letters are of same date, i.e. 23.10.2000. As regards the approval accorded by the Director of Higher Education towards transfer of the petitioner from the earlier college to the new college along with the post, the stand of the respondent No. 2 is that the file in which the order of approval was issued is not traceable in the office. The Director of Higher Education has not dealt with the plea of the petitioner that there was violation of Rule 18 of the Rules toward placing the petitioner under suspension. However, he has annexed the copy of the order dated 26.06.06 (Annexure-A5) by which he had accorded approval of the resolution No. 1 dated 22.06.06 purportedly adopted by the Governing Body of the college to place the petitioner under suspension.

15. While Mr. Mahanta, learned Counsel for the petitioner submits that the order of suspension is nonest in the eye of law in view of violation of the Rules, Mr. U.K. Goswami, learned S.C., Education Department as well as Mr. G.N. Sahewalla, learned Sr. counsel for the respondent No. 5, submit that since the petitioner is involved in wrongful activities to the extent of manipulation of records, it is a fit case for placing the petitioner under suspension and to initiate departmental proceeding against him.

16. Mr. Mahanta has placed reliance on the decision of this Court dated 18.08.06 passed in W.P. (C) No. 585/06 by which the order of suspension in respect of Head of the Department of Political Science of the particular college passed on 31.12.05 has been interfered with for non-compliance of the provision of the above quoted rules. As in the instant case, it was found that before placing the petitioner under suspension by the college authority, no prior approval of the Director of Higher Education was obtained.

17. As per requirement of the rules, the Governing Body of the college if takes a resolution towards placing any incumbent under suspension, same does not become effective automatically unless the same is approved by the Director of Higher Education, Assam. Thus, the decision regarding placing any incumbent of the college is to be taken by the Governing Body of the college first.

18. In the instant case, although initially Governing Body of the College was of the view that the petitioner was guilty of manipulation of the records, but upon enquiry pursuant to the show cause notice issued to the petitioner, it was found that there was no such manipulation. Thus, naturally there was no question of taking any resolution by the Governing Body to place the petitioner under suspension. However, the Director of Higher Education, Assam imposed suspension on the petitioner and directed the Governing Body of the college to place the petitioner under suspension. Pursuant thereto he was placed under suspension by Annexure-N letter dated 17.06.2006, without, however any resolution of the Governing Body of the college.

19. The suspension of the petitioner is founded on illegality. The Governing Body of the college first placed the petitioner under suspension pursuant to the order of the Director of Higher Education and thereafter as per his direction adopted resolution on 22.06.06 and the same was approved by the Director by his order dated 26.06.06. However by the time, the approval of the resolution came into being, the petitioner was already placed under suspension by the impugned letter dated 17.06.06 issued by the Principal-cum-Secretary of the college.

20. From the above narration of facts, it will be seen that Annexure-N letter dated 17.06.06 by which the petitioner was placed under suspension was not backed by any sanction of law. Same was issued in complete violation of Rule 18 of the Rules. Even otherwise also, same having been issued as per dictation of the Director of Higher Education, Assam is not sustainable.

21. Formation of opinion regarding placing an incumbent under suspension, lies with the Governing Body of the college. The Director of Higher Education is only the authority to approve the same after taking into account the materials on record. However, in the instant case, no such resolution was adopted by the Governing Body of the college and consequently there was no question of seeking any prior approval of the Director of Higher Education. The Principal-cum-Secretary of the college simply placed the petitioner under suspension as per the desire of the Director of Higher Education. If the action of the authorities was illegal at the very inception, no amount of later ratification later on can make the same legal and valid.

22. As regards the respective merits of the case of the authorities, no opinion is expressed. Certain serious allegations have been levelled against the Principal-cum-Secretary of the former college of the petitioner. Such allegations have been made by the petitioner in his affidavit in reply. As per the allegation, the Principal-cum-Secretary of the said college has manipulated the records pertaining to resignation tendered by one Abraham, Head of the Department, English from the said college. According to the petitioner, although Mr. Abraham resigned from the college by his letter dated 31.07.99, the Principal-cum-Secretary of the college continued to receive his salary and eventually showed the resignation of Mr. Abraham from the college by his letter dated 30.11.99. On a bare perusal of both the letters dated 31.07.99 and 30.11.99, it is apparent that the hand writings are

of different persons, although same are stated to be of Mr. Abraham, Head of the Department, English resigning from the post.

23. The Director of Higher Education, Assam in his affidavit in opposition has categorically stated in paragraph-7 that there is no provision for transfer of a Lecturer of a deficit college to another deficit college. However, the petitioner in his reply affidavit has given example of as many as 9 Lecturers who have been transferred from one college to another along with the post. Out of 9 Lecturers, Smt. Sudha Sarma, Lecturer of English was transferred from Digboi Mahila Mahabidyalaya to Tyagbir Hembaruah College, which according to the petitioner was done under the authority and signature of the present Director of Higher Education who has sworn affidavit making the statement that there is no provision in the Rules for transfer of college Lecturers from one deficit college to another deficit college. If the statement is correct, then the stand of the Director in his affidavit is contradictory.

24. Mr. Mahanta, learned Counsel for the petitioner has also drawn my attention to Annexure-I document (Photocopy) annexed to the affidavit in opposition filed by the respondent No. 5. The said document is a photo copy of the purported resolution of the Government Body of the earlier college held on 13.08.2000. In paragraph-3 of the affidavit/it has been stated that the meeting was presided over by Shri Debaram Pegu, but the minutes of the meeting was presided over by one Debaram Doley.

25. On the basis of the materials on record and the allegations and counter allegations made by the parties, it is difficult for the writ court to arrive at a definite finding.

In view of the above, I dispose of the writ petition setting aside and quashing Annexure-M and N letters dated 06.06.06 and 17.06.06 and so also the subsequent order dated 26.06.06 passed by the Director of Higher Education approving the resolution dated 26.06.06 towards placing the petitioner under suspension. Consequently, the resolution dated 22.06.06 of the Governing Body of the college also stands set aside and quashed.

26. The petitioner shall be reinstated in service with immediate effect. Such reinstatement in service shall in no way prejudice the departmental proceeding sought to be initiated against the petitioner. In view of serious allegation made against the petitioner as well as by the petitioner against the erstwhile college authority of Murkungelek College, it will be appropriate for the authority to make necessary enquiry relating to entire affair to find out the truth. The Govt. in the Education Department may also take note of the fact that the Director of Higher Education has sworn an affidavit stating that there is no provision relating to transfer of lecturers of the deficit college to another deficit college, but as alleged, such transfer has been resorted to by the same very Director of Higher Education.

27. The writ petition is allowed to the extent indicated above, leaving the parties

to bearing their own costs.