

(2014) 10 MEG CK 0001
In the Meghalaya High Court
Case No : WA No. 71 of 2014

The Union of India

APPELLANT

Vs

Govind Singh Bathyal

RESPONDENT

Date of Decision : 22-10-2014

Acts Referred:

Assam Rifles Act, 2006 — Section 11, 11(2)

Citation : (2015) LabIC 8

Hon'ble Judges : Uma Nath Singh, Acting C.J.; Sudip Ranjan Sen, J

Bench : Division Bench

Judgement

Uma Nath Singh, Actg. C.J.

1. We have heard learned counsel for the parties and perused the averments in writ appeal.

2. This writ appeal has been filed against judgment dated 23-5-2014, passed by learned Single Judge of this Court in WP(C) No. 195/2013, whereby the writ petition was allowed having been found to be squarely covered by the decision of the Gauhati High Court dated 29-8-2011, passed in WA. No. (SH) 33/2011, which attained finality in view of dismissal of the Special Leave Petition filed against judgment. That apart, the said judgment was complied with, and the petitioner, Govind Singh Bathyal, was reinstated in service. Moreover, while passing the impugned judgment, the learned Single Judge has also given liberty to the appellants herein to start the proceedings afresh, if necessary.

3. Learned counsel for the appellants notwithstanding the compliance of the aforesaid judgment passed on similar facts and circumstances by the Gauhati High Court contends that the offence in the instant case was committed prior to enforcement of the new Act called "the Assam Rifles Act, 2006 (for short the Act of 2006)". Therefore, as provided under the earlier Act, a Commandant of the organization was competent to pass the dismissal order. It is also the submission of learned counsel for the appellants that this point was raised before learned

Single Judge, but it did not find favour with the Court.

4. On the other hand, learned counsel for the respondent/writ appellant submitted that in the Gauhati High Court's judgment also, the offence was committed prior to enforcement of the Act 2006, which though is of 2006, was notified after 3 years in 2009, whereas, the impugned offence is of the year 2007. In the instant case, the authority has taken into consideration the offences committed prior to the new Act and thereafter, say, the enforcement thereof, for, the first offence was committed in 2005, the second in 2006, the third in 2008, and the fourth in 2009.

5. On due consideration of rival submissions, we do not find any merit in the writ appeal for the reason that under Section 11 of the Act of 2006, the power of dismissal, removal or reduction in rank have been given to Director General, Additional Director General or any Inspector General, and is also entrusted to the Deputy Inspector General in respect of personnel working under his command other than an officer or subordinate officer of such rank or the ranks as maybe prescribed. Thus, the Commandant has not been given any power of dismissal, removal or reduction in rank. Section 11 of the Act is reproduced as:

"11: Dismissal, removal or reduction by Director-General and by other officers:-
(1) The Director-General, Additional Director-General or any Inspector-General may dismiss or remove from service or reduce to a lower grade or rank of the ranks any person subject to this Act other than an officer.

(2) An officer not below the rank of Deputy Inspector-General may dismiss or remove from the service any person under his command other than an officer or a subordinate officer of such rank or the ranks as may be prescribed.

(3) Any such officer as is mentioned in sub-section (2) may reduce to a lower grade or rank or the ranks any person under the command except an officer or a subordinate officer.

(4) The exercise of any power under this section shall be subject to the provisions of this Act and the rules and regulations".

6. The judgment passed by the Gauhati High Court on 29-08-2011 in WA No. (SH) 33/2011, which has been affirmed by Hon"ble the Apex Court by dismissing the special leave petition filed against the said judgment, is reproduced hereunder:

"29.08.2011

(T.N.K. Singh, J)

Heard Mr. S.C. Shyam, learned counsel for the appellants-respondents in the writ petition.

This appeal is directed against the judgment and order of the learned Single Judge dated 20.07.2011 allowing Writ Petition (C) No. (SH) 148 of 2010 filed by

the respondent-writ petitioner, assailing the order dated 09.02.2010 issued by the Commanding Officer for dismissing the writ petitioner from service for the simple reason that under section 11(2) of the Assam Rifles Act, 2006 the Deputy Inspector General is the competent authority for dismissing Rifleman (General Duty).

The only ground for filing the present writ appeal is that if the relief sought for by the respondent-writ petitioner in WP(C) No. (SH) 148/2010 is allowed on the ground that the Commandant is not the competent authority for dismissing Rifleman, a flood gate will be opened inasmuch as many Riflemen had been dismissed from service by the Commandant. We have also perused Section 11(2) of the Assam Rifles Act, 2006 and it is clear that the Deputy Inspector General is the competent authority for dismissing the Riflemen (General Duty).

Such being the situation, we are of firm view that dismissal order dated 09.02.2010 issued by the Commandant is illegal inasmuch as he is not competent authority for issuing dismissal order of the Riflemen (General Duty), and the Deputy Inspector general is competent authority.

It is fairly well settled that door of justice cannot be closed to the citizens only on the ground that relief sought for, if granted will open the flood gate. Regarding this point, reference may be made to the decisions of the Apex Court in (1) Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, (2) Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, and (3) Coal India Ltd. and Others Vs. Saroj Kumar Mishra, .

For the foregoing reasons we are in complete agreement with the judgment and order of the learned Single Judge dated 20.07.2011 allowing WP(C) No. (SH) 148 of 2010 for setting aside the dismissal order dated 09.02.2010 issued by the incompetent authority i.e. Commandant.

Accordingly, this writ appeal is devoid of merit and dismissed.

Mr. Shyam, learned CGC appearing for the appellants prays for extending time for compliance with the directions mentioned in the impugned judgment and order dated 20.07.2011. Taking into consideration of the prayer and also the peculiar circumstances of this case, further two months" time is granted for complying direction of this court (learned Single Judge) in the judgment and order dated 20.07.2011 from today".

7. In another case with similar facts, i.e. WA. No. 51/2013 (Union of India vrs. Sanjay Bhattacharjee), a Division Bench of this Court has dismissed the appeal filed by the Union of India, and the same has also been complied with. It is also noticeable that in the Gauhati case, the offence was committed in 2007 prior to coming into force of the Act of 2006 in 2009, whereas, in the instant case, five offences were committed prior to the date of enforcement of the new Act and one thereafter. The details are given as herein below:

8. Therefore, the case of the respondent/writ appellant appears to be on a better

footing. Moreover, the new enactment 2006 appears to be more tilted in favour of the employee because the power of dismissal and removal has now been entrusted to higher officers of the organization and not to the Commandant. In that view of the matter, we do not find any merit in the writ appeal filed by the Union of India. That apart, learned Single Judge has already granted liberty to the organization to start fresh proceedings from the stage it became vitiated. In the premises discussed herein above, we dismiss this writ appeal being devoid of merits.