

(2005) 07 GAU CK 0003
In the Gauhati High Court

Thingbaijam Madan Mohan Singh

APPELLANT

Vs

Union of India and Ors.

RESPONDENT

Date of Decision : 22-07-2005

Acts Referred:

Citation : (2005) 07 GAU CK 0003

Hon'ble Judges : M.B.K.Singh, J and T.Nanda Kumar Singh, J

Bench : Division Bench

Advocate : R.K.Lalit, Babulindro, H.N.K.Singh, Advocates appearing for Parties

Judgement

1. This appeal is directed against the judgment and order passed by the learned Single Judge on 27.11.2000 in Civil Rule No. 664 of 1998 dismissing the case as having on merit. The said Civil Rule was filed by the present appellant.

2. Heard Mr. H.NK Singh, learned Senior counsel assisted by Mr. Babulindro, learned advocate appearing on behalf of the appellant and Mr. R.K. Lalit, learned counsel appearing on behalf of the respondent. In the said C.R.No.664/98, the petitioner/appellant, who had served more than 24 years in Sainik School, Imphal, challenged the order dated 26.5.1997 issued by the Principal of the School, by which his service was terminated by invoking the provisions of Rule 7.06 of Sainik School Society Rules and Regulations and also the order dated 19.5.1998 passed by the appellate authority confirming the said dismissal order and the dismissing the appeal filed against it. The said two orders were challenged mainly on the ground that the services of the petitioner/appellant had been done away with without any inquiry and without affording any opportunity of hearing and as such, they were not sustainable in the eye of law. The learned Single Judge, after referring to the circumstance leading to the termination of the petitioner's service recited in AnnexureD/6 of the CounterAffidavit, which were not controverted by the petitioner, and having regards to the provisions of rule 7.06 of Sainik School Society Rules and Regulations in the light of the submissions of the parties through their respective counsel, dismissed the case holding that there was no merit in it. In the opinion of the learned Single Judge,

the impugned termination order had been passed in compliance with the provisions of Rules 7.06 for sufficient reasons and after obtaining permission of the Chairman of the Local Board of Administration. The learned Single Judge took into account the annexed instances of giving warnings to the petitioners for dereliction of duties, disobedience and indiscipline for 61 times and recordings of reasons in the Annexures D/6 which were not controverted by the petitioner. Further, in the opinion of the learned Single Judge, enough reasons had been recorded before the said termination and the said reasons had been furnished to the petitioner.

3. The said Rule 7.06 is in the Chapter VII of the Sainik School Society Rules and Regulations under the heading 'Terms and Conditions of Service' and under subheading General Conditions. Rule 7.06 is as follows:

7.06. The Principal may also terminate the services of any permanent member of staff, on grounds of retrenchment, violation of conduct rules, or unsatisfactory performance of duties in spite of repeated warnings for improvement, by giving him three month's notice in writing or pay in lieu. This extreme step of termination of service/dismissal will be taken for good and sufficient reason to be recorded in writing, in case one of the minor penalties provided in the Rules; are considered to be inadequate to meet the ends of justice. He will, however, obtain prior approval of the Chairman, Local Board of Administration before ordering any such termination and the latter shall have the power to amend, revoke or confirm the action proposed by the Principal after going through the merits of each case. The affected member of staff will have the right to appeal to the Chairman, Board of Governors, who may dispose of it himself or direct a nominee of his to dispose of it.

In the said Chapter VII, Rule 7.09 also empowers the Principal as the appointing authority to dismiss any member of staff from service without notice. The said Rule 7.09 is also as follows:

7.09 The Principal as the appointing authority may dismiss any member of staff from service, without notice or compensation, on proven grounds of misconduct which is considered so grave as to render his continuance in service, seriously detrimental to the interest of the school. However, in the case of permanent staff, he shall get prior approval of the Chairman, L.B.A., before taking action under this rule and submit the full facts of the case to him for consideration and decision. Dismissal of any school employee under this Rule shall be proposed by the Principal in exceptional and rare circumstances to the Chairman, L.B.A., who will consider the details of such a case and order in writing confirming, revoking or amending the action proposed by the Principal against the erring employee. The affected member of staff shall have the right to appeal to the Chairman, Board of Governors, who may dispose of it himself or direct a nominee of his to dispose of it.

4. Chapter X of Sainik School Society Rules and Regulations deals with Discipline.

As per Rule 10.01, penalties, which are given in ascending order of severity, may for good and sufficient reasons to be recorded in writing after carrying out such inquiries as deemed fit according to the circumstances of each case be imposed by the Principal on any member of the staff. Separate procedures are provided for awarding minor penalties and major penalties. It is to be noted that as per Rule 10.07, a major penalty of compulsory retirement, removal from service or dismissal from service can be made only after an inquiry held as fair as possible in the manner provided in the Rule.

5. On careful perusal of the above said provisions, we find that apart from the provisions in the said Chapter X relating to Discipline, in Chapter VII relating to Terms and Conditions of Service, as per provision of Rule 7.06, the Principal has the power to terminate the service of any permanent member of staff on the ground of violation of conduct rules or unsatisfactory performance of duties inspite of repeated warnings for improvement by giving him three month's notice in writing or pay in lieu. Other conditions require to be fulfilled before ordering any such termination are clearly mentioned in the said Rule 7.06. Though nothing is mentioned about holding of any formal inquiry before ordering any such termination, there are conditions required to be fulfilled before ordering any such termination and they are presumably provided to keep the balance between the interest of the concerned member of staff and the interest of the public in the functioning of the concerned Sainik School properly and thereby no injustice is caused to all the concerned. There is no sufficient basis for concluding that for exercising the power given by this Rule 7.06, the Principal will have to proceed as per provisions of Rules in Chapter X already mentioned above. In our opinion, the said rule 7.06 is complete in respect of the manner in which and the purpose for which the said power of termination is to be exercised. Having regards to the relevant uncontroverted facts disclosed by the documents before the court, the learned Single Judge decided to the effect that the impugned termination dated 26.5.1997 had been passed in due compliance of the said Rule 7.06.

6. The said termination of the petitioner from service cannot be said as one made without any notice to him about his violation of conduct rules or unsatisfactory performance of duties. The respondent stated instances of giving warnings and show cause notices number 61 in all given to the petitioner about his violation of conduct rules or unsatisfactory performance of duties in Annexure D/6 of the Counteraffidavit. The said instances were not controverted by the petitioner before the learned Single Judge as mentioned in the impugned judgment and order. Denial now made by the appellant/petitioner in this appeal is of no consequence and is not entertainable. In the absence of any denial from the side of the petitioner, the learned Single Judge proceeded on the assumption that the petitioner had already been given due notices numbering 61 in all about his violation of conduct rules or unsatisfactory performance of duties during the period from 20.11.1973 to 3.4.1997 and that the petitioner had already been given opportunity of explaining his conducts. It was on failure of the petitioner/

appellant to improve himself to the satisfaction of the concerned authorities, the impugned judgment and order was passed after fulfilling the conditions given in the said rule 7.06. In the facts and circumstances, none of the decisions cited by the appellant is of any help to his case. We cannot accept the submission of the learned counsel of the appellant that the said termination order dated 26.5.1997 have been passed in violation of the principle of natural justice.

7. It is well settled that the doctrine of natural justice is not only to serve justice but also to prevent miscarriage of justice. Straightjacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstance of each case. In *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Panth & ors.*, AIR 2001 SC 24, the Hon"ble Supreme Court held at para. 2 as follows:

¶2. While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made to define the doctrine in a specific manner or method. Straightjacket formula cannot be made applicable but compliance of the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of noncompliance of the doctrine, the law courts inflicted upon the concerned person and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action.?

8. In the facts and circumstance of unsatisfactory performance of duties on the part of the petitioner/appellant inspite of repeated warnings for improvement, there had not been any lack of fairness on the part of the concerned authority in passing the impugned judgment and order after due compliance of the provisions of the said rule 7.06. We are of the view that there had not been any miscarriage of justice and that the concerned authority had acted fairly. In view of the facts and circumstance that the petitioner/appellant had been duly informed about his unsatisfactory performance of duties by issuing warnings numbering about 61 in all during the period of about 24 years of his service and that he had been given opportunities to show cause, there was no need of recording the reasons for termination of services in the termination order itself issued under the said rule 7.06. There are records showing that there was good and sufficient reasons for invoking the said rule 7.06 as seen from Annexures D/11 and D/12 of the counteraffidavit filed with reference to the said Civil Rule. As per records, prior approval of the Chairman, Local Board of Administration had also been taken before ordering the said termination. Further, it is ascertained that the process for the said termination had been initiated before the petitioner/appellant made his prayer for voluntary retirement and as such we do not find any infirmity in not considering the said prayer for voluntary retirement before issuance of the termination order.

8. In the result, we do not find sufficient grounds warranting interference with the impugned judgment and order. Accordingly, this writ appeal is dismissed as one having no merit.