

(2010) 05 GAU CK 0035
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 801 of 2008

Thounaojam Ningol Moirang-Themongbi Ibeyaima Devi APPELLANT
Vs
State of Manipur & Anr. RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

Penal Code, 1860 — Section 420
Penal Code, 1860 (IPC) — Section 420

Citation : (2010) 5 GLT 221

Hon'ble Judges : Asok Potsangbam, J

Bench : Single Bench

Advocate : Advocate appeared for the Petitioner: Mr.I.Lalitkumar Singh, Senior Advocate, Advocate appeared for the Respondents: Mr.S.Nepoleon Singh, Government Advocate, Advocates appearing for Parties

Judgement

Asok Potsangbam, J.—Heard Mr. I. Lalitkumar Singh, learned senior counsel appearing on behalf of the petitioner and Mr. S. Napoleon Singh, learned Government Advocate, Manipur, appearing on behalf of the Staterespondents.

2. A direction is sought for in this writ petition for allowing the writ petitioner to draw her pay and allowances, in full, on regular basis and to enable the petitioner to get her full salary, a writ of Certiorari is also sought for quashing the impugned order dated 10.8.2007 under No. B197(P)/IND/85 (AnnexureA/3) by which the petitioner had been placed under suspension. This case has peculiar facts which may be summarized as below:

3. On the recommendation of a ClassIII DPC, the petitioner was appointed along with others as Supervisor/SubInspector of Cooperative Society in the Directorate of Commerce and Industries, Government of Manipur. Thereafter, the service of the petitioner was placed under suspension by an order dated 10.8.2007 issued by the Director of Commerce and Industries, Government of Manipur, allegedly on the ground that the petitioner had been detained in police custody for more than 48 hours, in connection with FIR Case No. 36 (4) of 2007 under Section

420/34IPC. Representations which have been submitted to the Directorate of Commerce and Industries, Government of Manipur, as well as to the Commissioner/Secretary to the Government of Manipur, Commerce and Industries Department, failed to revoke the suspension order of the petitioner. The aforesaid FIR was registered on the basis of a complaint lodged against the petitioner and the subject matter of the FIR relates to a system called "Marup" where individuals are to subscribe among themselves some amount of money either bi weekly or monthly and amount so collected from the members are to be kept in the custody of the organizer of the "Marup". For every weekly or month, the amount so collected from the members of the "Marup" is either given to the winner in a lot or is to be given a member whose turn comes according to seriatim. This is all by consent among the members and such practice is widely prevalent in the State of Manipur and more particularly among the employees in the Government Department. There was no written rule or regulation regulating the activities of such "Marup". Prima facie, all that which is discernible from the document available on record, the dispute appears to be civil in nature.

4. Mr. I. Lalitkumar, the learned senior counsel appearing for the petitioner has drawn my attention to the order dated 05.02.2008 (Annexure A/7) which was issued by the Directorate of Commerce and Industries, Government of Manipur, wherein the petitioner is shown along with other eight persons as one of the employees assigned with the work of baseline survey and diagnostic study under Integrated Handloom Development scheme. By another order dated 22.2.2008 (AnnexureA/8), the service of the petitioner was utilized by the Government in connection with the work of conducting baseline survey of weavers and compilation of workfethe area shown against their names.

5. The Government has filed an affidavit wherein a plea was taken that the order issued by the Directorate of Commerce and Industries, Manipur, giving assignment to certain employees including the petitioner had already been cancelled by an order dated 5th December, 2008 (AnnexureR/5 to the affidavitinOpposition). This contention is not acceptable to the Court for the simple reason that what was sought to be cancelled by AnnexureR/5 to the affidavitinopposition is the order mentioned to AnnexureA/7 to the writ petition, i.e. order dated 5.2.2008 and that too the assignment was only for a period of three (3) months. There is no meaning in cancelling the aforesaid order as the assignment given therein was for only three months which was already completed before the issuance of the cancellation order dated 05.12.2008. Subsequently, the petitioner was again assigned with the work of conducting baseline survey of Weavers and compilation vide order dated 22.2.2008 (AnnexureA/8) and this order has not been cancelled by any subsequent order issued by the Director of Commerce and Industries and order dated 05.02.2008, cannot, under any circumstance, be construed as one referable to the order dated 22.02.2008.

6. Mr. Lalitkumar, learned senior counsel appearing on behalf of the petitioner

has produced another order dated 13.01.2010 issued by the Director of Commerce and Industries, Government of Manipur, wherein the name of the petitioner is shown at serial No. 26, with the assignment to assist the CDEs listed below in the order. A copy of the order is also furnished to Mr. S. Nepoleon Singh, learned Government Advocate who is not in a position to dispute the same. The only explanation given by Mr. Nepoleon, not based in their affidavit, is that by virtue of the interim order passed by this Court on 16.10.2008, the petitioner had been allowed to continue. But this argument is contrary to records inasmuch as AnnexureA/7 and AnnexureA/8 wherein assignments were given to the petitioner, were issued by the Directorate of Commerce and Industries on 05.02.2008 and 22.02.2008 respectively whereas the interim order was passed on 16.10.2008, i.e. after about 8 months from the date of issuance of Annexure A/7 and A/8.

7. The only grievance of the petitioner focussed in the writ petition, is that in view of the nonrevocation of the suspension order, the petitioner is given only the subsistence allowances and not the full pay and allowances to which she is entitled to as a regular Government employee. In the affidavit of the respondents, nothing is indicated about the progress of the investigation with regard to FIR Case No. 36 (4)/2007 under Section 420/34 of the IPC. It is not in the interest of justice either to allow a person to remain under suspension or to utilize her service fully with lesser pay and allowances simply on the ground that the suspension order has not been revoked. I find considerable force in the argument advanced by learned senior counsel for the petitioner. The impugned suspension order dated 10.8.2008 (AnnexureA/3) is liable to be quashed and as such the same is quashed. It is made clear that difference of pay given to the petitioner due to suspension shall be paid to her within three (3) months from the date of receipt of a certified copy of this order.

8. With the above observations and directions, this writ petition stands disposed of.

9. No order as to costs.