
(2008) 03 GAU CK 0053
In the Gauhati High Court

Usha Ranjan Deb Barma

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 457

Citation : (2008) 2 GLT 465

Hon'ble Judges : Mutum B.K. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mutum B.K. Singh, J.—This writ petition has been filed for quashing the order dated 8th August, 1997 passed by the appellate authority imposing a penalty of withholding of petitioner's promotion to next higher post for a period of one year w.e.f. 08.08.1997 coupled with a prayer for giving a direction to allow him to join as Upper Division Clerk w.e.f. 19.11.1991.

2. That, necessary facts may be put as follows:

The petitioner, a Lower Division Clerk of Education Department, was placed under suspension in contemplation of a disciplinary proceeding against him vide order dated 26th August, 1991. While he was under suspension, 20(twenty) Lower Division Clerks/Store-keepers of the Education Department including the petitioner were promoted to higher posts on ad-hoc basis for a period of six months vide order dated 19.11.1991. But the said order of promotion in respect of the petitioner has been kept in abeyance by a subsequent order dated 27th November, 1991. The suspension order was revoked on 6th June, 1994. However, a disciplinary proceeding against the petitioner and one Ranga Nath Mukherjee, Assistant Headmaster of Ampinagar H.S. School, South Tripura on three article of charges was pending. After completion of the inquiry, the Inquiry Officer submitted his findings holding that both the delinquents were guilty in respect of Charge Nos. 1 and 2. The relevant charges will be reproduced at the

appropriate stage. On receipt of the inquiry report, the Disciplinary Authority (respondent No. 4), after examining the explanations submitted by the petitioner to the proposed penalty, passed an order on 03.09.1996, imposing a penalty that the period of suspension of the petitioner shall not be treated as a period spent on duty and his financial benefit was limited to the subsistence allowance already drawn and the said period shall not be counted upon towards pension and other pecuniary benefits. The petitioner, being aggrieved, preferred two Departmental Appeals, one for setting aside the order dated 03.09.1996 and another for allowing him to join the post of Upper Division Clerk w.e.f. 19.11.1991. Both the appeals were disposed of by a common order dated 08.08.1997, by which the order dated 03.09.1996 has been altered to the imposition of a minor penalty of withholding of promotion of the petitioner for one year with effect from the date of passing the order. The petitioner still being dissatisfied with the said order, filed a Review petition on 27th October, 1997 but was not successful.

3. That, the respondents contested the petition by filing affidavit-in-opposition alleging, inter alia, that the writ petition is not maintainable, there was no procedural lapses in the inquiry, the petitioner participated in the proceeding all along and the findings of the Inquiry Officer has not been challenged, the impugned order was passed after considering the inquiry report as well as the entire material evidences on record and after giving reasonable opportunity of being heard to the petitioner. The Appellate Authority has every power of imposing a penalty under the law.

4. Heard Mr. A.L. Saha, learned Counsel appearing for the petitioner and Mr. S. Chakraborty, learned Addl. Govt. Advocate appearing for the State-respondents.

5. That, at the very outset it may be pointed out that the findings of the inquiry officer as well as the review order dated 13.02.1998 passed by the appellate authority are not under challenge in this writ petition. The petitioner's learned Counsel, however, contended that the penalty of withholding of promotion of the petitioner to higher post was passed without giving chance of hearing to the petitioner, the appellate authority had no jurisdiction for passing such order in the absence of any prayer or appeal from the side of the Disciplinary Authority and that, the imposition of penalty is unwarranted and unfair as the petitioner has been acquitted by a Criminal Court on the same charges. The learned Counsel appearing for the respondents, per contra, argued that the impugned order was passed after giving all reasonable opportunity of hearing to the petitioner and that the petitioner was never prosecuted and acquitted by any Criminal Court on the same charges.

6. That, upon hearing the submission for the both sides, the points for determination involved in this petition are that (1) whether the impugned order was passed behind the back and knowledge and without giving reasonable opportunity of being heard to the petitioner; (2) whether the appellate authority has jurisdiction in passing the impugned penalty order and (3) whether the petitioner was acquitted by a competent Criminal Court on the same charges, if

so, what is its effect? Perused the impugned order carefully. Admittedly, the impugned order was passed in an appeal filed by the petitioner against the order passed by the Disciplinary Authority. The impugned order clearly speaks that the petitioner was heard and in his presence the same was passed. The following paragraphs of the impugned order may be sufficient on the above point:

The charged official Shri Usha Ranjan Debbarma, L.D. Clerk of Ampinagar Higher Secondary School is present. Shri R. Debnath, Director of School Education is also present today, the 8th August, 1997.... As such, Shri Debbarma stated that since no penalty as prescribed by Rule 11 of the CCS (CCA) Rules, 1965 either major or even minor has been imposed upon the appellant in the departmental proceedings and in consideration of the judicial proceeding and finding of the Inquiring Authority and also in consideration of the representations of the appellant before the respondent, therefore, the order appealed against is an illegal order and requires to be set aside by Appellant Authority.... Since Shri Debbarma asserted that he has neither stolen the cash chest nor misappropriated the money and since Director, School Education has nothing more to say other than what is stated in respect of these charges by the Inquiring Authority I think that depriving an official of a considerable part of salary, for a period of two years and nine months and not to give pensionary benefits etc. for this period amount to major penalty and is definitely disproportionate to the charges proved against him.

A bare perusal of the above quoted paragraphs clearly reveal that the impugned order was passed by the appellate authority after giving all reasonable opportunity of being heard to the petitioner. Hence, I do not find sufficient force to the above submission of the learned Counsel appearing for the petitioner.

7. That, coming to the next point raised by the petitioner's learned Counsel regarding the jurisdiction of the appellate authority in passing the impugned order, it may be pointed out that the petitioner filed the said Departmental Appeal under Rule 23 of the CCS (CCA) Rules, 1965 against the order passed by the Disciplinary Authority dated 03.09.1996. It is well-settled principle of law that an appeal is the continuation of the earlier proceeding, the appellate authority may set aside, modify or alter the order passed by the Disciplinary Authority and may also pass any such order/orders which the appellate authority deem just and appropriate depending upon the facts and circumstances of each case. Rule 27(3) of the CCS (CCA) Rules, 1965 empowered the appellate authority to pass such order or orders in an appeal filed against any order specified in Rule 23 of the CCS (CCA) Rules, 1965 as it may deem just and equitable taking into consideration all the facts and circumstances of the given case. On going through the impugned order and in view of the above provisions of law, I am of the view that the appellate authority had ample jurisdiction for passing the impugned order. Thus, the second submission of the learned Counsel for the petitioner holds no water.

8. That, in support of the third contention raised by the learned Counsel

appearing for the petitioner, a reliance has been placed upon a decision of the Hon''ble Apex Court in G.M. Tank Vs. State of Gujarat and Another, . I have gone through the above cited case and of the view that the said decision is of no help to the case of the petitioner. In the said case the Hon''ble Apex Court held as follows:

In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge. In the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal Court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

In this regard, it may be relevant to reproduce the Article of Charge Nos. 1 and 2 which were proved against the petitioner in the disciplinary inquiry. The Article of Charge Nos. 1 and 2 are reproduced hereinbelow:

The Article of Charge No. 1 reads as follows--

While Shri Ranganath Mukherjee assuming the charge of Assistant Headmaster-cum-D.D.O. of Ampinagar H.S. School on 21.07.88 did not feel it necessary to follow the basic principle guide lines about preservation of keys of the cash chest enumerated in the Finance Department circular No. F. 10(6)-FIN(G)/81 - Vol-II dated 30.12.85 Rule 109(1) of Central Treasury Rule, Vol-I, and at the time of assuming of charge, Shri Mukherjee received in total three nos. of keys for outer and inner door of the cash chest from his predecessor Shri N.G Das, Assistant Headmaster, Shri Mukherjee did not inform his authority about non-availability of duplicate keys. This is done in contravention of aforesaid Finance Department's circular and Rule of C.T.R. Even Shri Usha Ranjan Debbarma, L.D.C. cum-cashier failed to bring the fact about non-existence of duplicate keys of cash chest to Shri Mukherjee, Assistant Headmaster.

Therefore, the commission of above acts by Shri Ranga Nath Mukherjee, Assistant Headmaster-cum-D.D.O. and Shri Usha Ranjan Debbarma, LDC-cum-cashier of Ampinagar H.S. School shows an act which is unbecoming on their part and thereby they both violated Rule 3(i) (iii) of Tripura Civil Services (Conduct) Rules, 1988 which has a good and sufficient reason within the meaning of Rule II of CCS. (CCA) Rules, 1965 for proceeding against them under Rule 14 of the said Rules.

The Article of Charge No. II against Shri Debbarma reads as follows:

During incumbency of Shri R.N. Mukherjee, an amount of Rs. 10,550/- vide fully vouched bills Nos. 323 dated 05.02.91, 327 dated 06.02.91 and 328 dated 06.02.91 were encashed on 13.12.91 by Shri Usha Ranjan Debbarma, LDC-cum-cashier but the entry to this effect was not given by Shri Debbarma in the relevant Cash Book with some ill motive.

Similarly an amount of Rs. 11,400/- vide Bill No. 324 dated 15.02.91 and bill No. 325 dated 15.02.91 was encashed on 07.02.91 by Shri Debbarma but entry to this effect was not given by Shri Debbarma in the relevant cash book with ill intent. Besides, these bills were prepared and presented in a highly irregular way. Shri R.N. Mukherjee, Assistant Headmaster-cum-D.D.O. did not ensure proper scrutiny with regard to the preparation and presentation and receipt of the amount in the relevant cash book. This was in contravention of Rule 3 of GFR and Rule 77 Clause (ii) to (iv) of C.T.R. Therefore, the Commission of above acts by Shri Ranga Nath Mukherjee, Assistant Headmaster-cum-DDO and Shri Usha Ranjan Debbarma, LDC-cum-cashier of Ampinagar H.S. School indicate commission of an act which leads to the failure of absolute integrity in discharging official duties and thereby they both have violated Rule 3(i)(I) of Tripura Civil Services (Conduct) Rules, 1988 which has a good and sufficient reason within the meaning of Rule-II of CCS. (CCA) Rule, 1965 for proceeding against them under Rule 14 of the said Rules.

9. Annexure-4 to the writ petition is the copy of the order dated 15.12.1993 passed by the Court of SDJM, Amarpur, South Tripura, discharging the petitioner from a police case of Ampinagar Police Station. The said order runs as follows-

In the Court of S.D.J.M., Amarpur, South Tripura. Case No:- GR. 99/91 The State v. Usha Ranjan Debbarma and Ors. Order dated:-15.12.93.

Received final report as true u/s 457/380 IPC as prayed by I.C. and recommended by C.I. of Police Ampinagar. F.R. is accepted as true u/s 457/380 IPC wanting in evidence as recommended by C.I. Ompi. O.O. to hand over the seized articles Sl. No. 1 to 9 & 10 to 12 to the owner from whom these were seized.

Heard Ld. A.P.P. Considered. The F.R. is accepted. A/Ps are discharged. Seized articles be returned towards from whom these were seized. Inform all concerned.

Sd/- B.Mazumdar, Sub-Divisional Judicial Magistrate, Amarpur. 12.12.1993.

The above article of charges which were proved against the petitioner and the order of the Court of S.D.J.M., Amarpur, South Tripura, clearly demonstrate that the charges proved against the petitioner are quite different from that of criminal case. It is evident that the charges in the said police case and that of the disciplinary proceeding are not the same and identical and that the petitioner was discharged from the said police case for want of evidence whereas the charges in the disciplinary proceeding were convincingly proved and the findings of the disciplinary inquiry has not been challenged at all. Thus, the ratio laid down in the above cited case is not applicable in the instant case at hand. Fact remains that the finding of the Inquiry Authority was confirmed both by the Disciplinary Authority as well as the Appellate Authority. Circumstances being as such, the third submission of the petitioner's learned Counsel also finds no leg.

10. Upon hearing the submission for both sides and on examination of the documents produced by the parties, I find no illegality, irregularity or otherwise in passing the impugned order by the Appellate Authority. It is not the case that the impugned order was passed arbitrarily, whimsically and on no evidence on record. That, having regard to the above discussions and observations, I am of the considered view that this writ petition is devoid of merit and consequently, the same is dismissed. No order as to costs.