
(2007) 02 GAU CK 0059
In the Gauhati High Court

Wilbirthforth Momin

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 311

Citation : (2007) 2 GLT 803

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.B. Misra, J.—Heard Mr. B.K. Deb Roy, learned Counsel for the petitioner and Mr. N.D. Chullai, learned Counsel for respondent Nos. 1 to 7. None appears for the respondent No. 8 despite notice to it.

2. In the present writ petition, the impugned order dated 01.07.99 (Annexure-4) passed by the Secretary, Managing Committee, Sualmari Govt. Aided (Deficit) ME School, East Garo Hills (in short "school") terminating the service of the petitioner working as Headmaster of the said school as well as another order dated 12.05.2000 (Annexure-7) giving approval of termination by the Deputy Inspector of Schools, Resubelpara, East Garo Hills have also been challenged. For convenience, the orders dated 01.07.99 and 12.05.2000 are extracted below:

3. According to the petitioner, he was originally appointed as Assistant Teacher in the year 1994 in officiating capacity in the said school and later on, his service was regularized on 14.09.1994. According to the petitioner, he has rendered service with sincerity and to the best of his ability. He had gone on leave on account of his suffering from Tuberculosis in the year 1998, and for continuance of his ailment he had applied for extension of leave from 12.04.99 to 12.07.99, and was even hospitalized on 11.04.99, however, the Managing Committee of the said School, without granting him leave had asked for an explanation and had also given him a warning that he should not submit an application in future. The

petitioner had addressed the letter on 03.06.99 to All Garo Hills Deficit School Teacher Employment Association seeking protection against the unusual treatment of the Managing Committee of the said School. The petitioner's service was terminated by an impugned order dated 01.07.99 (Annexure-4) by the Secretary of the Managing Committee of the said School. Despite submitting representation addressed to the Inspector of Schools, East Garo Hills, Meghalaya, no heed was paid. The petitioner was asked to appear before the Additional Director of Public Instruction, Tura, Inspector of Schools, East Garo Hills, Meghalaya, as well as before the Deputy Inspector of Schools, East Garo Hills, in connection with an inquiry on 15.10.99. It appears on the ground of the ailment, he could not appear and he had informed to the Deputy Inspector of Schools regarding his ailment. The petitioner was not informed about any subsequent date of hearing and instead was served the impugned termination order dated 01.07.99 which was subsequently approved on 12.05.2000 by the Deputy Inspector of Schools (Annexure-4).

4. According to the petitioner, the Managing Committee has not framed any Rules relating to the service conditions of the employees of the said School. However, the Meghalaya School Education Act, 1981 (for short "the Act") is still governing the fate of the employees of the said School. The petitioner has not been served with the charges and without appointing any Inquiry Officer or without conducting any inquiry, the termination order dated 01.07.99 has been passed without prior approval of the competent authority i.e., the Inspector of Schools. According to the petitioner, Section 9(2) of the "Act" as well as "Chapter IV" of the said Act contains the terms and conditions of the service of employees of recognized private Schools. Section 9(2) of the said "Act" provides as below:

Subject to any rule that may be made in this behalf no employee of a recognized private School shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the competent authority.

5. According to the learned Counsel for the petitioner, the impugned order dated 01.07.99 terminating the service of the petitioner is not an order simplicitor but an order by way of stigma where allegations and aspersions have been made against the petitioner and as such order is a measure punishment. The petitioner has not been afforded an opportunity of hearing or an opportunity for reverting the allegations and aspersions against him and principles of natural justice have apparently been violated. The impugned order dated 01.07.99 has been passed without the prior approval of competent authority and is in derogation to the provisions of Section 9(2) of the "Act", therefore, it is not legally sustainable. Requirement of obtaining prior approval of the competent authority i.e., Inspector of Schools or Deputy Inspector of Schools before terminating the service of the petitioner is a mandatory condition. In support of his stand, learned Counsel has referred and relied upon a decision of this High Court in 1995 (2) GLR 404 (Anjali Sarmah v. State of Meghalaya and Ors.), where, it was

held that the School authorities have no jurisdiction to terminate the service of a teacher/employee without taking prior approval of the Inspector of Schools as terminating the service of a teacher/employee without taking prior approval of the competent authority/Inspector of Schools would be in derogation to the provisions of Section 9(2) of the "Act". According to the learned Counsel for the petitioner, this Court in 1999 (2) GLT 625 (Ram Krishna Paul v. State of Meghalaya and Ors.), has also reiterated the above version.

6. On the other hand, learned Government Advocate addressing for respondent Nos. 1 to 7 has vehemently argued that there were large number of apparent complaints against the petitioner e.g. regarding his habitual irregularities in running the School, lack of punctuality, lack of cooperation, lack of quality of leadership etc. The petitioner was not enjoying good reputation amongst the teachers as well as the guardians of the students. He was usually defying and was not susceptible to suggestions and despite verbal warnings; he could not improve. The petitioner was not bothering to explain in respect of his deficiencies and faults to the higher authorities. Taking into consideration his sub-standard activities and misconduct and being perturbed, the order dated 01.07.99 was passed by the Secretary of the Managing Committee of the said School which though was not straightaway immediately approved by the competent authority but keeping in view the seriousness of detailed complaints and deficiencies of petitioner a spot inquiry was got conducted on 27.08.99 by the Deputy Inspector of Schools, Resubelpara Sub-Division and also an inquiry conducted on 15.10.99, (Enclosed as Annexure B and Annexure-C respectively to the affidavit-in-reply). The Secretary of the Managing Committee of the said School had even reported to the Inspector of Schools vide letter dated 10.10.99 (Annexure-A to the affidavit-in-reply) for getting the approval of the termination order said to have been passed on 01.07.99. All these formalities were undergone by the competent authority at the command of the Director, Elementary and Mass Education in order to ascertain the genuineness of deficiencies, drawbacks and complaints against the petitioner. After being satisfied that the petitioner was not fit and suitable and was not worthwhile to be kept in the School and in the interest of the welfare of the School and students, then in terms of the inquiry report, the impugned termination order dated 01.07.99 was approved by Deputy Inspector of Schools on 12.05.2000 as such these orders dated 01.07.99 and 12.05.2000 require no interference by this Court, despite the fact that Section 9(2) of the "Act" has indicated terminating the service of an employee with prior approval of the competent authority, giving approval prior to passing of the termination order is only a directory and not mandatory and the approval shall have to be treated as a sequence of the termination order dated 01.07.99 and giving approval of termination order passed on 01.07.99 even at subsequent stage should not be treated as fatal once the petitioner has been found to be bad for the School and the complaints and deficiencies against him have been verified.

7. I have heard learned Counsel for the parties. I find that Section 9(2) of the "Act" makes it clear that no teacher or employee of a recognized Private, School

shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the competent authority. The power by the Inspector of Schools was to be invoked or exercised before terminating the petitioner from service. Giving approval by competent authority or by Deputy Inspector of Schools or Inspector of Schools subsequent to the date of termination shall not meet the requirement of Section 9(2) of the "Act". The conditions of giving prior approval by the competent authority before dismissal, removal or reduction in rank of an employee or before termination is a mandatory condition and not a directory. Once the termination order has been passed by the Secretary of the Managing Committee of the said School on 01.07.99, then subsequent inquiry and subsequent approval by the competent authority shall not be in consonance to the requirement of the "Act". The text of impugned order dated 01.07.99 is not an order simplicitor. The said termination order has also not been passed in terms of the service conditions or in the terms and conditions of the agreement between the petitioner and the said School. After perusal of the impugned order dated 01.07.99 terminating the service of the petitioner, it is apparent that the order in question is full of stigma and indicates many of the deficiencies and aspersions. Such termination order is by way of a major punishment.

8. During the course of argument or from the pleadings, it is not appearing that the School authorities have observed principles of natural justice. Such termination order had been passed in defiance to the principles of natural justice without affording proper opportunity of hearing to the petitioner. Generally, if the service of an employee as probationer or having temporary status is to be terminated in reference to the terms and conditions of the employment treating that the service of a particular employee is not necessary or on the ground of unsuitability, then, an order simplicitor of termination may be passed. However, if service of a temporary or a permanent employee is to be terminated or removed or dismissed or punishment is to be awarded in reference to his misconduct or deficiencies or irregularities and in reference to complaints, then a proper disciplinary inquiry in consonance to the principles of natural justice and in consonance to the prevailing provisions of Rules or Scheme has to be made. Even if specific Rules have not been provided, then general principles of inquiry have to be adopted which requires that a charge sheet has to be served by the concerned authority of the institution to the employee indicating the specific charges against him and by appointing an Inquiry Officer, the inquiry has to be conducted in consonance to the principles of natural justice and in case of non-cooperation by the employee, the inquiry may also be conducted ex-parte on the basis of available documents and witnesses and on analysis of material documents and records referred and relied upon, that too, in consonance to the principles of natural justice and on the basis of the fact-finding report rendered by the Inquiry Officer, the competent authority may take appropriate subsequent decision.

9. (i) In view of Hon'ble Supreme Court in Jagdish Prasad Saxena v. State of MP

reported in AIR 1961 SC 1070 the departmental inquiry is not an empty formality, it is a serious proceeding intended to give the officer concerned a chance to meet the charge and prove his innocence.

(ii) In view of Union of India (UOI) Vs. H.C. Goel, and Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, , the disciplinary proceedings are quasi-judicial in nature.

(iii) In view of A.R.R .Deshpande v. Union of India, Lab IC 1972 Delhi 516 the departmental inquiry is neither a criminal trial for the imposition of punishment nor proceedings in a Court of Law.

(iv) In view of State of Tamil Nadu and another Vs. S. Subramaniam, the technical rules of evidence has no application for the disciplinary proceedings and the authority is to consider the materials on record.

(v) In State of Haryana and Another Vs. Rattan Singh, it has been observed that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply.

(vi) In Bachhittar Singh v. State of Punjab (1962) Supp 3 SCR 713, the departmental proceeding is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges alleged against the Government servant are established or not and the second is reached only if it is found that they are so established. The stage deals with the action to be taken against the Government servant concerned. The High Court accepts that the first stage is a judicial proceeding and indeed it must be so because charges have to be framed, notice has to be given and the person concerned has to be given an opportunity of being heard. Even so far as the second stage is concerned, Article 311(2) of the Constitution requires a notice to be given to the person concerned as also an opportunity of being heard. Therefore, this stage of the proceeding is no less judicial than the earlier one.

(vii) In view of A.K. Vyas v. State of Rajasthan AIR 1960 Raj, 1419 the CPC does not apply to Departmental Proceedings.

(viii) As observed in Tata Oil Mills Co. Ltd. Vs. Its Workmen, , State of Uttar Pradesh Vs. Om Prakash Gupta, , State of India v. R.K. Jain (1972) 1 SCR 775 and State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, and Laxmi Shankar Pandey v. Union of India reported in AIR1991 SCW 918 (923) the disciplinary proceedings should be held in accordance with the statutory rules and principles of natural justice as may be applicable.

(ix) In Pyare Lal Sharma Vs. Managing Director and Others, the protection granted by Article 311(1) is available to civil servants only. The principle shall have no application if it is not expressly enshrined in the Articles of Association, statute or rules of any other Government Company. However, the principle has no application to persons not in Government employment.

(x) Natural justice is a great humanizing principle intended to inquest law with fairness to secure ends of justice. The sole of natural justice is fair play in action in view of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , where the passport of the petitioner was impounded by the Government of India in "public interest", without affording an opportunity of hearing to the petitioner before taking the impugned action, therefore, the order was found to be violative of the principles of natural justice.

(xi) The principle of natural justice has to be considered in the context of the facts situation and in view of the scheme and the rules applicable in a particular case. If an employee remains absent for more than a stipulated period and stature rules or standing order provide for automatic termination of his services in such an eventuality, without holding inquiry or giving opportunity of being heard, observance of principles of natural justice is mandatory proposition. The Supreme Court has categorically held in a catena of decisions that a statutory rule is void if it stipulates for automatic termination of services of an absenting employee after expiry of a stipulated period [in the light of the decision in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, ; Gujarat State Road Corporation and Anr. v. Mulu Amra AIR 1994 SC 114; Scooters India and Others Vs. Vijai E.V. Eldred, ; Uptron India Limited Vs. Shammi Bhan and Another, and Scooters India Ltd. v. Mohammad Yaqub and Anr. (2001) 1 SCC 61

(xii) It is well settled legal proposition that every action complained of is to be tested and analysed on the touchstone of doctrine of prejudice Major G.S. Sodhi Vs. Union of India (UOI), ; State Bank of Patiala and others Vs. S.K. Sharma, ; S.K. Singh Vs. Central Bank of India and Others, ; Rajendra Singh v. State of M.P. AIR 1966 SC 2736.

(xiii) However, in K.L. Tripathi Vs. State Bank of India and Others, , the Supreme Court has observed as under:

It is not possible to lay down rigid rules, as to when the principles of natural justice are to apply, nor as to their scope and extent...there must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirement of natural justice must depend on the facts and circumstance of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject matter to be dealt with, and so on so forth.

(xiv) Just as principles of natural justice ensure fair decision where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative Assistant Excise Commissioner and Others Vs. Issac Peter and Others,

(xv) The principles of natural justice as integral part of the guarantee of equality assured by Article 14 of the Constitution. D.K. Yadav Vs. J.M.A. Industries Ltd., In State of West Bengal v. Anwar Ali Sarkar 1952 SCR 284, per majority, a seven

Judge bench of the Supreme Court held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In *Maneka Gandhi (supra)* another bench of seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14 [*D.K. Yadav (supra)*].

(xvi) Strict adherence to rules of Natural Justice is essential while taking decision affecting rights of a person so observed in *Ram Chander Vs. Union of India (UOI) and Others*,

It is a fundamental rule of law that no decision is to be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. Both the Privy Council as well as the Hon"ble Supreme Court have in a series of cases required the strict adherence to the rules of natural justice where a public authority or body has to deal with rights.

(xvii) The observance of the rules of natural justice is not referable to the fatness of the stake but is essentially related to the demands in a given situation. It does not supplant but supplement the law *Jain Exports (P) Ltd. and Another Vs. Union of India (UOI) and Others*,

(xviii) A fair hearing must be given before taking decision affecting rights of any person as observed in *O.P. Gupta Vs. Union of India (UOI) and Others*,

It is a fundamental rule of law that no decision should be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. There is always "the duty to act judicially" wherever the rules of natural justice are applicable. There is, therefore, the insistence upon the requirement of a "fair hearing".

(xix) In *Mangilal Vs. State of Madhya Pradesh*, the Supreme Court while dealing a situation where the statute was silent about the observance of the principles of natural justice has held that such statutory silence implies requirement of compliance of principles of natural justice *moreso*, where substantial rights of parties are considerably affected. In view of *Mangila (supra)* the application of natural justice becomes presumption unless found excluded by express words of statute or necessary intendment.

(xx) The requirement of "fairness" implies that even an administrative authority must not act arbitrarily or capriciously and must not come to a conclusion which is perverse or is such that no reasonable body of persons properly informed could arrive at; *Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others*,

Once the test of "fairness" is substituted for a "hearing" in this area of administrative decisions, it would follow that it cannot require that much of hearing when a person is charged with some offence or misconduct. Notice of the penalty sought to be imposed with an opportunity for making a representation and consideration of that representation in a fair and just manner, would suffice.

(xxi) Where the administrative function is statutory the Court must read into the statute the requirement of fairness, which means the minimum principles of natural justice. *Union of India v. Nambudri* AIR 1991 SC 1261, paragraph 9.

10. The rules of natural justice were originally only two viz:

1. Audi alteram partem, i.e., the person(s) to be affected by an order of the authority should be heard before the order passed, and

2. The rule against bias.

Subsequently, some more rules of natural justice are in the process of development e.g. that the administrative authority should give reasons for its decisions, particularly when the decisions affect the rights and liabilities of the citizens.

It must, however, be made clear that the rules of natural justice are flexible, and are not a straitjacket formula. In exceptional cases not only can they be modified but even excluded altogether. Natural justice is not an unruly horse. If fairness is shown, there can be no complaint of breach of natural justice. *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*,

As regard the rule audi alteram partem, up to 1964 the legal position in England was that injudicial and quasi-judicial proceedings opportunity of hearing had to be given, but it was not necessary to do so in administrative proceeding. This legal position changed in *Ridge v. Baldwin* (1963) 2 All ER 66 (HL) in which the House of Lords held that opportunity of hearing had to be given even in administrative proceedings if the administrative order would affect the rights and liabilities of the citizens. This view of the House of Lords was followed by the Supreme Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, and *State of Maharashtra v. Jalgaon Municipal Council* (2003) 9 SCC 73 wherein it was held that administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice. The expression "civil consequences" means where rights and liabilities are affected. Thus, before blacklisting a person he must be given a hearing, (1989) SCC 229 *Raghunath Thakur v. State of Bihar*.

It may be mentioned that a hearing need not always be an oral hearing. In certain circumstances, the Administrator can only issue a show cause notice to the party likely to be affected and on his/her reply can pass the decision without giving a personal hearing to the parties. However, in certain circumstances where the party may be very seriously affected the Courts have insisted that an oral hearing with opportunity of presenting witnesses and cross-examining the witnesses on the other side must be given.

Similarly, the principle that "no man should be a judge in his own cause" disqualifies an Administrator from giving a decision which affects the right and liabilities, if he is biased.

It may, however, be pointed out that in *H.C. Narayanappa and Others Vs. The State of Mysore and Others*, the Supreme Court observed that the Minister or officer invested with the power to hear objections to a scheme is acting in his official capacity and unless there is reliable evidence to show that he is actually biased, his decision will not be liable to be called in question merely because the objects to the Government scheme are heard by the government itself or by its officers.

The requirement to give reasons in administrative decisions which affect rights and liabilities has been held to be mandatory by the Supreme Court in *S.N. Mukherjee Vs. Union of India*, . This reduces the chances of arbitrariness on the part of the authority, as the reasons recorded by him are subject to judicial scrutiny by the higher Courts or authorities.

11. In the present case in question, if deficiencies, irregularities and complaints about the functioning and misconduct of the petitioner were available, then the authorities were under legal obligation to serve a charge sheet against the petitioner and inquiry was to be conducted against him in consonance to the principles of natural justice and in terms of the outcome of the inquiry report, the Secretary, Managing Committee of the said School was to refer the proposal of termination, if any, to the competent authority and only after obtaining the prior approval of the competent authority or the Deputy Inspector of Schools or the Inspector of Schools, the termination order was to be passed.

12. In my respectful consideration, the impugned termination order dated 01.07.99 was passed without prior approval of the competent authority and obtaining approval subsequent to the termination order is not recognized in relevant law. As such, the order dated 12.05.2000 is not an approval order in the eyes of law and not in consonance to the provisions of Section 9(2) of the "Act" therefore, the same is also not legally sustainable.

13. However, the authorities in the welfare of the School and in the interest of the students and for maintaining the status of the standard of education in the School, are at liberty to conduct an inquiry, if so advised, in accordance to the law in respect of the allegations, complaints, deficiencies, misbehaviour, misconduct, if any, including the earlier charges.

14. In view of the above observations, the impugned orders dated 01.07.99 (Annexure-4) and 12.05.2000 (Annexure-7) are set aside. Accordingly, the writ petition is allowed. No order as to costs.