
(2001) 08 GAU CK 0019
In the Gauhati High Court
Case No : WP (C) No. 54 (K) of 2000

Zashevol Angami	Vs	APPELLANT
State of Nagaland and Others		RESPONDENT

Date of Decision : 23-08-2001

Acts Referred:

Nagaland Services (Discipline and Appeal) Rules, 1967 — Rule 1(1)
Penal Code, 1860 (IPC) — Section 420, 468

Citation : (2001) 3 GLT 274

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : M. Khroe, for the Appellant; Y. Longkumer, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Phukan, J.—I have heard Mr. M. Khroe, learned counsel for the petitioner and Ms. Y. Longkumer, learned Govt. Advocate appearing for the respondents.

2. The petitioner was serving as an UDA in T. M. Govt. High School. He was served a copy of the impugned order dated 10.9.1996 issued by the Additional Director of School Education. Relevant portion of the impugned order (Annexure-D) is extracted below :

".... Whereas a disciplinary proceeding against Shri Mhasikhol, UDA of T.M. Government High School, Kohima is contemplated.

2. Now, therefore, the undersigned in exercise of the powers conferred by Sub-rule (1) of Rule (1) of the Nagaland Services (Discipline and Appeal) Rules, 1967 hereby places the said Shri Mhasikhol UDA, T.M. Government High School under suspension with effect from the date of issue of this order."

It is submitted on behalf of the petitioner that at that point of time there was no person named Mhasikhol serving in the establishment of T.M. Government High School, Kohima as UDA and since there was only one UDA in the School, he was

placed under suspension. However, it transpires from the corrigendum dated 15.5.1997 (Annexure-1 to the affidavit in opposition filed on behalf of the respondents 1, 2, 3 and 4 stating) that the name of the suspended UDA of T.M. Govt. High School, Kohima which appeared in the suspension order vide memo No. ED/CON-56/A/96 dated 10.9.1996 should be read as Shri Zashevol Angami instead of Shri Mhasikhol. Shri Zashevol Angami is the petitioner in the instant writ petition. It is submitted that although in the impugned order it was stated that the disciplinary proceeding was contemplated, till date no such proceeding was initiated. It is further submitted that on the basis of a written complaint made by the Headmaster, John (Govt.) High School, Viswema, Kohima P.S. Case No. 139/96 was registered u/s 468/420 IPC corresponding to G.R. Case No. 266/96. The said complaint was about the alleged withdrawal of a bogus bill amounting to Rs. 1,69,769 drawn in the month of December 1995 in the name of the Headmaster of the said School. That in the month of April 1997 Shri Mhasikhol was implicated in the G.R. Case No. 266/96 and the petitioner was suspended from service by the alleged name of Shri Mhasikhol. However, in a summons to the accused in G.R. Case No. 266/96 the name of the accused has been shown as Mhasikhol @ Zashevol with the father's name and address of the petitioner. It is further submitted that the G.R. Case was registered in 1998 but till date the Investigating Officer has not filed any charged sheet against the petitioner. It is contended that the impugned suspension order dated 10.9.1996 is arbitrary, illegal and violative of principles of natural justice and was issued by the respondents without application of mind, hence liable to be quashed and set aside.

3. In the affidavit-in-opposition filed on behalf of respondents, it is stated that the name in the impugned suspension order was inadvertently recorded as Mhasikhol instead of Zashevol and the mistake was corrected in the later stage through the corrigendum dated 15.4.1997 (Annexure-1 to the affidavit-in-opposition). It is revealed in the affidavit-in-opposition that the petitioner was posted at Govt. High School, Viswema before his transfer and promotion to T.M. Govt. High School, Kohima and that having full knowledge of the style of signature of the Headmaster, the petitioner UDA prepared fictitious bill amounting to Rs. 3,69,000 and had drawn the amount by forging the signature of the Headmaster Shri O. Haolai. In connection with the said case he was remanded to judicial custody and then he was granted bail. It is further stated that the petitioner confessed to have committed the offence and named three officers as associates and they were also subsequently arrested by the police and later released on bail.

4. Mr. Khroe, learned counsel for the petitioner submits that the petitioner should not have been placed under suspension for such a long time since 10.9.1996. The learned counsel for the petitioner has relied upon two decisions of this Court reported in 1999 (1) GLT 404 and 1993 (1) GLR 207 In the first decision the learned Single Judge has quoted from a Supreme Court decision in State of Orissa Vs. Bimal Kumar Mohanty, wherein it has been held :

".... It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds of serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words, it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses of the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge."

5. In the instant case there is nothing on record to show that the action of the concerned authority suspending the petitioner was actuated by mala fides, arbitrary or for ulterior purpose. It seems that on consideration of the gravity of defalcation of funds to the tune of Rs. 3,69,000 and to refrain him to avail further opportunity to perpetrate the alleged misconduct and keeping in mind public interest of the impact of the delinquent's continuance in office while facing the criminal charge, the authority concerned has placed the petitioner under suspension. In the other case relied upon by the learned counsel for the petitioner, *Jahirul Haque Choudhury v. The State of Assam* (1993) 1 GLR 207, it has been held :

"Considering over-all aspects of the matter, I am of the view that no official should ordinarily be kept under suspension for a period of more than three months, barring exceptional cases; and that for quick disposal of such cases the

charge sheet should be served on the official in case of departmental proceedings, or, investigation should be completed in the case of criminal prosecution, ordinarily within six months save in rare or unusual cases. In those rare or unusual cases, where there is no possibility to adhere to the above time limits as the cases are likely to be delayed, the competent authority should examine for revocation of suspension orders from time to time."

In the instant case having regard to the gravity and seriousness of the charge of defalcating a huge amount to the tune of Rs. 3,69,000, it is not possible to adhere to the time limits stated above.

6. After careful consideration of the entire matter, I am not inclined to set aside and quash the impugned order dated 10.9.1996 (Annexure-D) read with the corrigendum dated 15.4.1997, and in the result, this writ petition is dismissed. In the facts and circumstances of the case, the parties are left to bear their own costs. However, the competent authority, the State respondents are hereby directed to examine the case of the petitioner for revocation of the suspension order in view of the fact that he has been under suspension since 10.9.1996.

7. The petitioner shall furnish a copy of this order to the respondent No. 2 who shall comply with the above direction of the Court within two months from the date of receipt of the same.

This writ petition stands dismissed subject to the above direction.