

Baikuntha Chetia Vs. State of Assam, Represented by the Chief Secretary to the Government of Assam and Others

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Court : Guwahati

Decided On : Aug-19-2013

Judge : Ujjal Bhuyan

Appeal No. : WP(C) No. 2356 of 2012

Appellant : Baikuntha Chetia

Respondent : State of Assam, Represented by the Chief Secretary to the Government of Assam and Others

Judgement :

Judgment and Order (Oral)

1. Heard Mr. G Uzir, learned counsel for the petitioner and Mr. J. Handique, learned Government Advocate, Assam, who has also produced the record. Also heard Mr. C. Baruah, learned Standing counsel, Accountant General.
2. Challenge made in this writ petition is to the suspension order dated 29.12.2001 and show-cause notice dated 29.11.2002. Further prayer made is for quashing of the disciplinary proceeding initiated against the petitioner.
3. Case of the petitioner is that while he was serving as Block Development Officer (BDO) in the Tingkhong Development Block in Dibrugarh district, he was placed

under suspension on 29.12.2001, 3 (three) days prior to his retirement. The allegation against the petitioner was of mis-appropriation of Government money. Petitioner thereafter superannuated from service on 31.12.2001.

4. A departmental proceeding was drawn up against the petitioner by serving upon him a show-cause notice dated 29.11.2002 under Rule 21 of the Assam Services (Pension) Rules, 1969 containing as many as 10 (ten) charges against the petitioner. Petitioner thereafter submitted his reply. It appears that the reply of the petitioner was not found to be satisfactory and an enquiry was ordered.

5. Petitioner first approached this Court in WP(C) No. 8643/2005 seeking a direction to the respondents to pay provisional pension as he was not paid provisional pension from 01.01.2005, though he was paid provisional pension from 01.01.2002 to 31.12.2004. This Court by order dated 13.03.2006 disposed of the said writ petition with a direction to the respondents to pass necessary orders granting provisional pension to the petitioner w.e.f., 01.01.2005 till conclusion of the departmental proceeding initiated against him.

6. Aggrieved by non-conclusion of the departmental proceeding drawn up against him, petitioner approached this Court by filing WP(C) No. 3043/2006, which was disposed of by this Court by order dated 23.06.2006 directing the respondents to complete the disciplinary proceeding within a period of 4 (four) months.

7. When the disciplinary proceeding was not concluded, petitioner again approached this Court by filing WP(C) No. 5518/2007. This Court by order dated 26.03.2008 disposed of the said writ petition by directing the disciplinary authority to ensure that the departmental proceeding against the petitioner initiated by the charge memo dated 29.11.2002 be concluded within a period of 4 (four) months, whether the petitioner co-operated with the Enquiry Officer or not.

8. As the departmental proceeding was not concluded within the period specified and appeared to drag on indefinitely, petitioner has instituted the present proceeding seeking the reliefs as indicated above.

9. Respondent No. 2 has filed affidavit. This affidavit was filed on 01.08.2012. It is stated that following above orders of this Court, the Department had requested the Enquiry Officer, who was conducting the enquiry, to complete the same vide order dated 12.07.2006. This request was repeated again on 14.09.2006 and 20.02.2008. It is further stated that enquiry was ultimately completed in the year 2009. Though report of the Enquiry Officer was received in the office of the Principal Secretary, Panchayat and Rural Development Department but the same could not be traced out in the Department. Later on, another copy of the enquiry report was collected. It is stated that in the enquiry report dated 09.03.2009, all the charges framed against the petitioner were found to have been proved. The enquiry report was being processed for final decision.

10. Petitioner in his reply affidavit, while denying the charges framed against him, has contended that it is indeed strange that an enquiry report of a departmental proceeding could remain untraceable in a Government department. He has expressed the apprehension that there was every possibility of tampering of the enquiry report to implicate the petitioner. He has also denied any role or responsibility for delay in conclusion of the departmental proceeding.

11. During the pendency of this proceeding, learned State counsel informed the Court on 23.05.2013 that the departmental proceeding against the petitioner was at the final stage. On 13.06.2013, learned State counsel informed the Court that the disciplinary authority had issued notification on 24.05.2013 imposing the penalty of recovery of Rs. 3,75,000.00 from the pensionary dues of the petitioner. A copy of the said notification was directed to be served on learned counsel for the petitioner. Learned State counsel produced the voluminous record before the Court on 01.08.2013. However, he was directed to produce that part of the record which pertains to the enquiry proceeding. On the next date, i.e., on 07.08.2013, learned Government Advocate placed before the Court a written instruction dated 06.08.2013 of the Panchayat and Rural Development Department stating that as reported by the State Enquiry Officer, the original enquiry report alongwith the relevant documents including the evidence of the witnesses recorded during the course of enquiry, cross-examination by the defence, other documents in original were sent to the Panchayat and Rural Development Department vide letter No.

ABE 15/2005/270 dated 07.03.2009. But the said documents including the enquiry report could not be traced out in the Department. Only a photo copy of the enquiry report maintained in the office of the State Enquiry Officer was collected and on the basis of the findings of the said enquiry report, the departmental proceeding was finally disposed of by issuing the notification dated 24.05.2013.

12. Though the prayer made in the writ petition is for quashing of the suspension order as well as the charge memo, in view of the subsequent developments, Court has taken judicial notice of the notification dated 24.05.2013 concluding the departmental proceeding drawn up against the petitioner by imposing the penalty as noticed above. As already noticed in the earlier part of the judgment, petitioner had retired from service on attaining the age of superannuation on 31.12.2001. The departmental proceeding was initiated on 29.11.2002. More than a decade has gone by since then. At this stage, it would neither be fair nor equitable to ask the petitioner to institute a fresh challenge to the notification dated 24.05.2013. Accordingly, the notification dated 24.05.2013 is taken on record and is also made a subject of adjudication in the present proceeding.

13. A copy of the enquiry report has been placed on record by the respondent No. 2 in his affidavit. From a perusal thereof, it appears that 5 Nos. of prosecution witnesses were examined. Though the petitioner wanted to cross-examine the witnesses, his prayer was not accepted and the evidence were recorded ex-parte. In his report, the Enquiry Officer found certain charges to have been proved and the others not proved.

14. A perusal of the notification dated 24.05.2013 would show that the Enquiry Officer in his report held that the charge numbers 1, 2, 3, 6 and 7 and a part of charge No. 9 were proved. Disciplinary authority accepted the enquiry report and based on the findings of the Enquiry Officer, it was held that petitioner was guilty of mis-appropriation of Government money amounting to Rs. 3,75,000.00 and accordingly, penalty of recovery of the said amount from the pensionary dues of the petitioner was ordered. Relevant portion of the notification dated 24.05.2013 is as under:-

And whereas Shri Baikuntha Chetia the then Block Development Officer had submitted his written reply to the show-cause on 24.09.2004 denied the charges drawn against him. The reply was examined and not found acceptable and therefore, Governor of Assam was pleased to order to enquire into the charges drawn against the delinquent officer. An enquiry was initiated under Sub- Rule (4) of Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 and appointed the State Enquiry Officer, Assam as Inquiry Officer to enquire into the charges drawn against the delinquent officer.

And whereas the Inquiry Officer had submitted his report of enquiry to the State Government on 07.03.2009 in which it was found that charge No. 1, 2, 3, 6, 7 and additional para of charge No. 9 were proved.

And whereas after going through the charges and written reply submitted by the delinquent officer and the report of the Inquiry Officer, the Disciplinary Authority who is also the Appointing Authority has accepted the enquiry report submitted by the Inquiry Officer.

And whereas based on evidence brought on record and findings of the Inquiry Officer, the charges of financial irregularity and mis-appropriation of Government money amounting to Rs. 3,75,000.00 (Rupees Three Lakhs Seventy Five Thousand) only are proved and hence the Appointing Authority has decided that to meet the ends of justice a penalty of recovery be inflicted on Shri Baikuntha Chetia the then Block Development Officer, Tingkhong Development Block, Dibrugarh as per provision under Rule 7(iii) of the Assam Services (Discipline and Appeal) Rules, 1964. As Shri Chetia had already retired from Service, it has been further decided to recover the amount from Pensionary benefit of the officer as per Rule 73 of Assam and Meghalaya Pension Code, 1969.

And whereas the views of the Assam Public Service Commission were also sought for and the Assam Public Service Commission has agreed to the Government proposal to impose the penalty of recovery of misappropriated amount from the Pension, Gratuity etc., of the Delinquent Officer.

Accordingly, the Governor of Assam is pleased to award the penalty of recovery to Shri Baikuntha Chetia the then Block Development Officer, Tingkhong Development Block, Dibrugarh under Rule 7(iii) of Assam Services (Discipline and Appeal) Rules, 1964 and it has been decided to recover the amount of Rs. 3,75,000.00 (Rupees Three lakhs seventy five thousand) only from pensionary benefit of the officer as per Rule 73 of Assam and Meghalaya Pension Code with immediate effect. The period of intervention between date of suspension i.e., 29.12.2001 to date of retirement i.e., 31.12.2001 is to be treated as on duty for pensionary benefit only.

15. A perusal of the notification dated 24.05.2013 would indicate that a copy of the enquiry report was not furnished to the petitioner and he was not given an opportunity to make his representation on the said report. This has caused serious prejudice to the petitioner as without considering the views of the petitioner, the impugned order was passed. Though ordinarily the Court would have remanded the matter back to the disciplinary authority to start the proceeding afresh from the stage of furnishing of the enquiry report, considering the long pendency of the disciplinary proceeding and the fact that petitioner had superannuated from service almost 12 years ago, it would not be in the interest of justice to further prolong the disciplinary proceeding. In any case, since the original records are not available, including the original copy of enquiry report, neither any effective representation from the petitioner nor any effective consideration of the same by the disciplinary authority can be expected.

16. Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 lays down the procedure for imposing penalties. Under Sub-Rule (7), at the conclusion of the enquiry, the Enquiry Officer shall prepare a record of the enquiry, recording his findings on each of the charges together with reasons therefor. Under Sub-Rule (8), the record of enquiry shall include the charges framed against the delinquent including the statement of allegations, his written statement of defence, oral evidence taken in the enquiry, documentary evidence considered in the enquiry, orders made by the Enquiry Officer in the course of the enquiry and a report setting out the findings on each charge and the reasons therefor. Under Sub-Rule (9), the disciplinary authority is required to consider the record of the enquiry and

record his findings on each charge.

17. A careful perusal of the notification dated 24.05.2013 does not indicate that the disciplinary authority had considered the record of the enquiry, which in any case is now admitted to be untraceable. The disciplinary authority has also not recorded his finding on each of the charges.

18. Considering the above, Court is of the view that the prescribed procedure was not followed while passing the notification dated 24.05.2013. The penalty imposed is in violation of the principles of natural justice and cannot be sustained.

19. In view of above, the departmental proceeding drawn up against the petitioner including the order of penalty as contained in the notification dated 24.05.2013 is hereby set aside and quashed. Respondents shall now compute the pensionary dues of the petitioner so that the same can be paid to him without any further delay.

20. Before parting with the record, Court would like to observe that disappearance of record of disciplinary proceeding from the Department is indeed disturbing. Firstly, there was unusual delay in concluding the disciplinary proceeding and secondly, after it was stated to have been concluded and the enquiry report handed over to the Panchayat and Rural Development Department, the same disappeared from the Department. The Principal Secretary to the Government of Assam, Panchayat and Rural Development Department should look into this aspect of matter and fix responsibility on the persons responsible for such gross negligence.

21. Subject to the observations made above, writ petition is allowed.

22. However, there will be no order as to cost.

23. Record produced is returned back to Mr. J. Handique, learned Government Advocate, Assam.