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Court : Guwahati

Decided On : Jan-07-2005

Judge : B.K. Sharma, J.

Acts : Constitution of India - Article 226

Appeal No. : WP(C) No. 6010 of 2004

Appellant : Suren Das

Respondent : State of Assam and ors.

Advocate for Def. : J. Roy, Adv.

Advocate for Pet/Ap. : P. Pathak and P. Barman, Advs.

Prior history : B.K. Sharma, J. 1. By this writ application the petitioner who is presently serving as Chief Engineer, P.W.D (Border Roads) seeks to challenge the order date 15.5.2004 by which he has been placed under suspension in contemplation of a departmental proceeding. The ground assigned for placing the petitioner under suspension is his alleged indulgence in deliberate delay in execution of border roads and fence works on the Indo-Bangladesh border and thereby savotism of the efforts of the Govt. at t

Judgement :

B.K. Sharma, J.

1. By this writ application the petitioner who is presently serving as Chief Engineer, P.W.D (Border Roads) seeks to challenge the order date 15.5.2004 by which he has been placed under suspension in contemplation of a departmental proceeding. The ground assigned for placing the petitioner under suspension is his alleged indulgence in deliberate delay in execution of border roads and fence works on the Indo-Bangladesh border and thereby savotism of the efforts of the Govt. at the highest level for personal gain of the petitioner. According to the respondents the alleged deliberate delay on the part of the petitioner has jeopardized the reputation and interest of the State Govt. vis-a-vis the Central Govt. and that there is prima facie evidence to proceed against the petitioner.

2. In response to the said order of suspension dated 15.5.2004, the petitioner made a request for withdrawal of the order of suspension by representation dated 17.5.2004 addressed to the Commissioner and Special Secretary to the Govt. of Assam, P.W.D. It is the case of the petitioner that he has been applying all out efforts from the date of joining as Chief Engineer on 30.9.2003 to get the time bound project of Indo-Bangladesh Border to be completed in time. Certain work measurements as indicated in his said representation dated 17.5.2004, according to the petitioner is adequate to curb any doubt of the alleged slow progress. According to the petitioner no progress could be made in respect of a particular portion as the land required for construction was yet to be acquired by the department from the Revenue Authority of the District. Thus, it is a case of total denial on the part of the petitioner that there was any deliberate delay in execution of border roads and fence on his part.

3. The petitioner made a further representation dated nil in May, 2004 to the Chief Secretary to the Govt. of Assam followed by another representation dated 14.6.2004 to the Commissioner and Special Secretary to the Govt. of Assam, P.W.D. In the said representations, the petitioner whose retirement is fast approaching (March/2005) on attaining the age of superannuation prayed for withdrawal of the order of suspension facilitating his career advancement as a Scheduled Case candidate. The petitioner also made further representations dated 1.7.2004 and 9.8.2004. However, such representations having not yielded any result, he invoked the writ jurisdiction of this Court by filing the instant writ

application.

4. The respondents have filed their affidavit in opposition to which the petitioner has also filed his affidavit in reply. The respondents have denied the stand of the petitioner and have reiterated their stand as in the impugned order of suspension. According to them the petitioner has been placed under suspension so as to have an impartial enquiry/ investigation and to facilitate the same the records towards preparation of charge sheet, etc., are being scrutinised. The stand in the affidavit is that the Secretary to the Govt. of Assam in the P.W.D. had prepared a note bringing out all facts for initiating action against the petitioner. Subsequently, the Addl. Chief Secretary of the State recommended that the petitioner be placed under suspension. Presently the relevant files are under the seizure of the Superintendent of Police, Vigilance and Anti Corruption Department for investigation.

5. Giving the details of the border road construction and issuance of tenders etc., the respondents have stated in their affidavit that the recommendation made by the Tender Committee was sent to the petitioner and the petitioner deliberately kept pending the files without issuing formal work order to the contractors although the agreements were signed resulting in delay of about 7 1/2 months. Thus, according to the respondents the petitioner is accountable for the delay. In the affidavit the respondents have given the details of the progress during the tenure of the petitioner which according to them was very poor.

6. In the affidavit in reply filed by the petitioner he has stated his version of the case justifying the delay in execution of the works. According to the petitioner he by his letter dated 26.5.2004 addressed to the Secretary to the Govt. of Assam, P.W.D. furnished the reasons regarding the delay in execution of the works.

7. I have heard Mr. P. Pathak, learned senior counsel appearing for the petitioner assisted by Ms. P. Barman, learned Advocate. I have also heard Mr. J. Roy, learned Standing counsel, P.W.D. Mr. P. Pathak submitted that the petitioner having joined as Chief Engineer, Border Roads only on 30.9.2003, the impugned order dated 15.5.2004 placing him under suspension could not have been issued attributing delay in execution of works in question. He submitted that the fact that

charge sheet has not been issued to the petitioner even after elapse of about 7 months from the date of the impugned order placing the petitioner under suspension, amply demonstrate the hollowness of the claims of the respondents. He submitted that the entire episode was the handy work of some interested persons to thwart the process of promotion of the petitioner by way of placing him under suspension, which he would have otherwise earned, more particularly, when he belongs to the reserved category (SC). Mr. Pathak, learned senior counsel placed reliance on the decision of the Apex Court as reported in : (1995)ILLJ568SC (State of Orissa v. Bimal Kumar Mohanty) to bring home his argument that an order of suspension cannot be in a routine manner.

8. Countering the above arguments, Mr. J. Roy, learned Standing Counsel, P.W.D. justified the action of the respondents in placing the petitioner under suspension. He submitted that when there is enough materials and prima facie evidence against the petitioner so as to sustain the order of suspension, the writ Court in exercise of its power of judicial review under Article 226 of the Constitution of India will not entertain the writ petition entering into the disputed questions of fact as to the measures adopted by the petitioner towards execution of the argument. He placed reliance on two decisions which are U.P Rajya Krishi Udpadan Mandi Parishad v. Sanjiv Ranjan as reported in 1993 Supp. (3) SCC 483 and Darshan Singh v. Arunachal Pradesh as reported in 1997 (1) GLT 30.

9. I have considered the rival submissions made by the learned Counsel for the parties and perused the materials available on record. Mr. J. Roy, learned Standing counsel, P.W.D. has produced the relevant files pertaining to the impugned order of suspension. The records revealed that the matter relating to placing the petitioner under suspension was processed at different levels from the stage of preparation of note by the Secretary of the Department. The Addl. Chief Secretary of the State examined and recommended to place the petitioner under suspension. Necessary approval etc. was also obtained towards placing the petitioner under suspension. As stated in the affidavit in opposition, the matter is also under investigation by the Vigilance department of the State. The records have also revealed the preparation of charge sheet vide No. Con. 20/2004/4 dated 07.12.04 which has been signed by the Commissioner and Special Secretary to

the Govt. of Assam in the P.W.D. During the course of the hearing it was alleged on behalf of the petitioner that till then no charge sheet was served. A complaint was also made that the petitioner was not paid the subsistence allowance. However, the records have also revealed that by letter dated 7.12.2004 issued by the Govt. of Assam in the P.W.D. and addressed to the Accountant General, Assam, the decision towards sanctioning the subsistence allowance to the petitioner was conveyed. By now the petitioner must have been served with the charge sheet and paid his subsistence allowance.

10. On perusal of the records, it cannot be said that the respondents with any mala fide exercise of power have placed the petitioner under suspension. In fact, the matter was examined in detail and after observing all the formalities including the approval of the Chief Minister, the petitioner was placed under suspension by the impugned order dated 15.5.2004.

11. The petitioner has arrayed the respondents Nos. 2 and 3 who are the Addl. Chief Secretary and the Commissioner and Special Secretary as party respondents by name. However, on perusal of the writ petition, I do not find any attribution of mala fide against the said respondents. While there is no whisper against the respondent No. 2, only allegation made against the respondent No. 3 towards attributing mala fide against him is that he deliberately in exercise of his mischievous executive action arbitrarily issued the impugned order of suspension only to malign the petitioner in the public and to deprive him of the promotional post of Commissioner, P.W.D. Except such a vague and sweeping remarks, nothing has been pin pointed in the writ petition towards attributing personal malice against the petitioner. With such kind of a situation and in absence of any disclosure made in the records it cannot be said that the petitioner has been placed under suspension with mala fide exercise of power by the respondents Nos. 2 and 3. Merely because, both the officers are involved in initiating notes etc. bringing out the purported facts involved in the matter, no mala fide and/or colourable exercise of power can be attributed against them.

12. A definite ground has been assigned to place the petitioner under suspension. Challenging the said ground, the petitioner has highlighted his own version of the

incident. The petitioner's version of the incident cannot be said to be conclusive enough so as to hold the order of suspension to be wholly unjustified. The allegations made against the petitioner, if found to be correct and proved, by its very nature is serious enough warranting suspension of the petitioner to facilitate the disciplinary proceeding against him. Mr. P. Pathak, learned senior, counsel for the petitioner placed reliance on the decision of Bimal Kumar Mohanty (supra). The Apex Court emphasised the need of the appointing or disciplinary authority to consider the aspects mentioned in the judgment itself and to decide whether it is expedient to keep an employee under suspension pending the contemplated action against him. In the said decision, the Apex Court further emphasised that it would not be an administrative routine and/or 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.

13. The aspects mentioned in the judgment on which the Apex Court emphasized are the factors relating to the gravity of the misconduct sought to be enquired into or investigated and the nature of the evidence placed before the appointing authority and/or application of mind by the disciplinary authority. In the instant case as discussed above, the records clearly indicate due application of mind by the authority to the gravity of the misconduct and the nature of evidence placed before it. The following observations of the Apex Court in the said case of Bimal Kumar Mohanty are noteworthy :

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 inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having • had the opportunity in office to impede the progress of the investigation or inquiry, 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 Inquiry or contemplated Inquiry 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 inquiry. The authority also should keep in mind public interest of the Impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.

14. In the aforesaid case the Apex Court interfered with the order of the Tribunal holding the same to be quite unjustified in interfering with the orders of suspension of the respondents therein pending enquiry. The Apex Court noticed the serious allegations of misconduct alleged against the respondents. As in the said case, in the instant case also as observed above, the nature of allegations made against the petitioner are of serious nature. The allegations were discussed at different levels and thereafter a conscious decision was arrived at with due approval of the Chief Minister of the State to place the petitioner under suspension. Thus, all the requirements as contemplated in the aforesaid decision of Bimal Kumar Mohanty (supra) are present in the instant case. It cannot be said that the order of suspension has been resorted to as an administrative routine and/or an automatic order of suspension.

15. In the case of U.P. Rajya Krishi Udpadan Mandi Parishad v. Sanjiv Ranjan (supra) on which Mr. J. Roy, learned Standing counsel placed reliance, the Apex Court observed that whether the employees should or should not continue in their office during the period of enquiry is a matter to be assessed by the authority concerned and ordinarily, the Court should not interfere with the order of suspension unless they are based on mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question. In the instant case as observed above, there is prima facie evidence against the petitioner and upon a threadbare discussion of the matter the competent authority decided to place the petitioner under suspension. It is not a case of lack of prima facie evidence against the petitioner or that the order of suspension is based on mala fide exercise of power.

16. In the case of Darshan Singh v. Arunachal Pradesh (supra), this Court made similar observations as in the aforesaid case of Sanjiv Ranjan. Placing reliance on various decisions of the Apex Court including the decisions of the Apex Court in the case of Bimal Kumar Mohanty (supra), this Court held the said case to be not a fit case to interfere with the order of suspension. Applying the test laid down by the Apex Court in its various decisions, in that case it was found that except for a bald assertion that political heavy weights conspired to oust the petitioner from the post of Chief Engineer, there was nothing material on record to make out a prima facie case of mala fide. As in that case, in the instant case also it cannot be said that there is no material on record to make out a prima facie case connecting the petitioner with the misconduct alleged. Any minute exnminntion and elaboration, is neither necessary nor desirable at this stage lest it prejudice either party at the departmental enquiry which is yet to commence.

17. For the foregoing reasons and discussions, I am not inclined to interfere with the order of suspension. However, the matter does not end with the declination to interfere with the order of suspension. It appears that the respondents themselves are aware of the requirement to carry out periodical review of the order of suspension. The records produced by the learned Standing Counsel, P.W.D. do contain a Circular No. ABP. 49/82/Pt-A dated 11.2.1982 issued by the Govt. of Assam in the Department of Personnel and addressed to the Commissioners and Secretaries on the subject of reinstatement of Govt. servants who have been under suspension for a period of over six months emphasised the need for examining the case of the Govt. Servants by the Disciplinary authority/Appellate authority sympathetically and in appropriate case to pass orders of reinstatement in service without prejudice to the departmental proceeding as expeditiously as possible.

18. The petitioner was placed under suspension by order dated 15.5.2004. By now more than six months have passed requiring to consider the case of the petitioner to find out as to whether his prolonged suspension is essential. It appears that the adverse materials and evidence which have been made the foundation towards placing the petitioner under suspension, have already been collected which have resulted into framing of charges against the petitioner by the charge sheet dated

7.12.2004. As emphasized in the said Circular letter dated 11.2.1982, the case of the petitioner is now required to be considered by the appropriate authority so as to arrive at a conclusion as to whether his continued suspension is still necessary or not. The respondents will also bear in mind that the petitioner's retirement from service on attaining the age of superannuation is fast approaching. Decision in this regard shall be taken by 31.1.2005.

19. While not interfering with the order of suspension assailed in this writ proceeding, the writ petition stands disposed of with the directions made above: There shall be no order as to costs.

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