

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.69/2019 with
MC (WPC) No.41/2019

Date of Order: 21.03.2023

Gaya Prasad

Vs.

Union of India & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner

: In-person

For the Respondents

: Dr. N. Mozika, DSGI with
Ms. A. Pradhan, Adv

- i) Whether approved for reporting in Law journals etc.: Yes/No
- ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

This writ petition filed in the year 2017 stood dismissed for default and has been restored recently to be dealt with on merits.

2. The writ petitioner challenges an order dated December 7, 2016 by which the Central Administrative Tribunal, Calcutta Bench granted substantial relief to the writ petitioner.

3. The facts are not much in dispute. Following the writ petitioner purchasing a car in or about the year 2007, the government employer wanted to ascertain the source of the funds for such purchase and, in such

regard, required the writ petitioner herein to furnish his savings bank passbook or accounts. Upon the writ petitioner's failure to respond to the employer's request, disciplinary proceedings were instituted and the writ petitioner was served a memorandum of charges along with statements in support thereof and certain annexures appended thereto.

4. Two principal objections were taken by the writ petitioner in course of the contemporaneous correspondence exchanged with the employer: that no rule or law obliged the writ petitioner to share his bank savings passbook or details of his bank accounts with his employer; and, that the annexures to the notice issued to him did not bear the signature of the disciplinary authority and were, as such, non est.

5. The writ petitioner stuck his ground that he did not respond to the notice issued by the employer, nor produced any bank passbook or statements. This culminated in an order being passed by the employer on March 25, 2010 with a punishment of reduction to a lower scale in the time scale of pay for a period of three years without it having cumulative effect or affecting his ultimate pension.

6. Such order was challenged by the writ petitioner before the CAT, Calcutta Bench and the resultant OA No.1766 of 2010 was disposed of by an order dated November 10, 2010 that gave the writ petitioner the liberty to prefer an appeal against the disciplinary order within 15 days from the date of the order. It appears that the writ petitioner availed of the liberty

granted by the Tribunal and preferred a belated appeal which was rejected by an order of February 27, 2012.

7. The Tribunal did not enter into the merits of the matter at the first instance since the Tribunal noticed that the writ petitioner herein had not exhausted his remedies against the order of punishment and had jumped the gun, so to say, to challenge the punishment directly before the Tribunal. The Tribunal also noticed that the time to prefer the appeal against the order of punishment had lapsed; yet, the Tribunal was charitable in affording the writ petitioner herein a chance to avail of the appellate remedy. Both the original order of punishment and the resultant appellate order were carried again to the Tribunal by way of OA No.423 of 2012. On OA No.423 of 2012 an order was made by the CAT, Calcutta Bench on December 7, 2016 to the effect that hyper- technical stands had been taken by both sides. The impugned order of punishment of March 25, 2010 and the impugned appellate order of February 27, 2012 were both set aside and the writ petitioner was directed to file his reply against the imputation of charges within a month from the date of the order. Such order of December 7, 2016 is challenged herein.

8. It is the case of the employer that despite such liberty, the writ petitioner chose not to file a reply to the imputation of charges. Accordingly, the employer claims that the disciplinary proceedings have been concluded and the same punishment as earlier was meted out to the

writ petitioner by an order dated August 4, 2017. It appears that the writ petitioner filed this petition challenging the order of the CAT of December 7, 2016 and, during the pendency of the petition, suggested that the disciplinary proceedings which were revived pursuant to the order dated December 7, 2016 should not be proceeded with. There was, of course, no impediment to the continuation of the disciplinary proceedings. As a consequence, the respondents proceeded with the disciplinary proceedings against the writ petitioner and the same order of punishment as earlier was passed on August 4, 2017.

9. The present petition is confined to the propriety of the order passed by the CAT on December 7, 2016. No question arises of addressing any further order in disciplinary proceedings that may have been passed against the writ petitioner.

10. It is rather surprising that the writ petitioner has assailed the order dated December 7, 2016 which has conferred substantial benefit on the writ petitioner. The Tribunal granted the relief that the writ petitioner wanted: of setting aside the disciplinary order against him. The Tribunal also gave the writ petitioner an opportunity to face the disciplinary proceedings afresh by furnishing a reply to the imputation of charges since the writ petitioner chose not to file any reply. The law has since taken its own course; but the order of the Tribunal cannot be assailed on any ground by the writ petitioner. The writ petitioner enjoyed considerable benefit in terms

of the relevant order of the Tribunal. Since the petitioner failed to meet with the conditions attached to such order, the petitioner has only himself to blame. At any rate, the Tribunal could not have quashed the proceedings altogether.

11. Since there is no legal embargo on an employer making an inquiry into the source of funds of an employee upon such employee purchasing an asset, the writ petitioner's underlying objection cannot be appreciated. It is evident that the writ petitioner had no legitimate funds to show for his acquisition and has, thus, resorted to the present proceedings despite being granted more than adequate relief by the Tribunal.

12. WP (C) No.69 of 2019 is dismissed with costs assessed at Rs.10,000/- as the relevant order calls for no interference.

13. The costs awarded will be payable to the employer within a month and, in default, the employer will be entitled to deduct such amount from any salary or other payment that may be due to the writ petitioner.

14. MC (WPC) No.41 of 2019 is disposed of.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
21.03.2023
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