

Serial No.01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.338/2022 with
MC (WPC) No.165/2022

Date of Order: 18.04.2023

Union of India & anr Vs. Rinkoo Ram

Coram:

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

Appearance:

For the Petitioners : Mr. R. Debnath, CGC

For the Respondent : Mr. M. Chanda, Adv with
Mr. G.J. Sharma, Adv
Mr. M.L. Nongpiur, Adv

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

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

The Union has challenged an order dated April 13, 2021 passed by the Central Administrative Tribunal, Guwahati Bench by which the respondent herein was granted complete relief in the petition carried by the respondent herein to the Tribunal.

2. Three matters were heard and disposed of analogously by the common judgment and order. In all three cases, the petitioners before the

Tribunal were recruited to the post of constable and the letters of appointment indicated that they would be on probation for a period of two years from the date of appointment. For varying reasons, following disciplinary proceedings instituted against the three petitioners before the Tribunal, their services were sought to be terminated, though not by way of disciplinary punishment and beyond the period of two years from the date of joining the post. In such circumstances, the Tribunal held that they were deemed to have attained permanent status as they were not removed from service during the two-year period of probation.

3. As far as the present respondent is concerned, following an advertisement and the respondent offering his candidature for appointment, the respondent was appointed to the post of constable (GD) on January 31, 2014. The letter of appointment stipulated that the respondent would be in probation for a period of two years from the date of appointment. There is no dispute that the respondent herein immediately joined the service. The respondent's period of probation was extended by a year in accordance with the rules.

4. On August 13, 2015, disciplinary proceedings were commenced against the respondent herein under Rule 14 of the CCS (CCA) Rules, 1965. Following the inquiry officer finding the respondent herein at fault, by an order of September 5, 2016, the disciplinary authority imposed a

penalty of withholding increment for a period of three years with cumulative effect.

5. Following the penalty imposed on the respondent pursuant to the departmental proceedings, his services were sought to be terminated by an order dated November 7, 2017 under Rule 5(1) of the CCS (Temporary Service) Rules, 1965. However, by such time the respondent's period of probation was long over.

6. The Tribunal referred to the relevant rules, several precedents, including Supreme Court judgments, and rendered the view that the disciplinary proceedings and the termination were independent and while disciplinary proceedings could be initiated and concluded; and an order termination could be made by way of punishment as a consequence of the disciplinary proceedings, but termination on account of not being confirmed could not be effected if the period of probation had run out. The Tribunal noticed that in the case of the respondent herein a wholesome punishment, commensurate with the charges that were levelled against the respondent, had been imposed. His increment was withheld for a period of three years with cumulative effect but the disciplinary proceedings did not result in any major punishment like termination of service. It was much later, as a possible consequence of the disciplinary proceedings having been instituted against him, that the

respondent's services were sought to be terminated, possibly, because he had suffered a punishment before he was formally confirmed in the post. However, by the time the termination letter was issued in November, 2017, the respondent had completed more than three years since the date of his appointment and, as such, he had covered the extended period of probation.

7. Indeed, the Tribunal noticed that in case of the respondent herein his probation period was extended for one year vide order dated July 23, 2015. However, notwithstanding the extension of the period of probation, the termination was sought to be effected beyond the extended period of probation.

8. There is no infirmity in the reasoning or in the decision rendered by the Tribunal. The Tribunal noticed several Supreme Court judgments, including one reported at (2005) 13 SCC 179 (*Rajinder Singh Chauhan v. State of Haryana*), where it was held that when in a particular case, the service rules fixed a certain period of time beyond which the probationary period could not be extended and an employee appointed or promoted to a post on probation was allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he could not be deemed to continue in that post as a probationer by implication. The judgment further instructs that once the

stipulated period of probation was over, it is “permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication.”

9. Thus, there was no express act of confirmation necessary for the respondent herein. Despite the period of probation in case of the respondent being extended by one year, even such extended period ran out by the end of January, 2017. The order of termination was sought to be issued only in November, 2017 and not as a punishment in any disciplinary action.

10. Accordingly, there is no merit in the Union’s grievance against the judgment and order of the Tribunal. WP (C) No.338 of 2022 is dismissed. The Union will pay costs assessed at Rs.5000/- to the respondent, in addition to all the benefits that are to be restored to the respondent herein in terms of the order passed by the Tribunal.

11. MC (WPC) No.165 of 2022 is disposed of.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
18.04.2023
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