



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)

Case No. : WP(C)/5/2021

P. L. Zohmingliana
Chaltlang Venglai, Aizawl

VERSUS

State of Mizoram and 3 Ors
Aizawl, Mizoram

2:Secretary FCS and CA Dept

3:Secretary DP and AR

4:MPSC represented by its secretar

Advocate for the Petitioner : Mr Anil Rinliana Malhotra

Advocate for the Respondent : Mrs. H Lalmalsawmi (Addl. AG/GA, Mizoram)

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

JUDGEMENT

Date : 01-02-2023

Heard Mr. A.R. Malhotra, learned counsel for the petitioner and Mrs. H. Lalmalsawmi, learned Government Advocate for all the respondents.

[2.] This is the second time the writ petition is before this Court. The earlier writ petition being WP(C) No. 166/2017 was disposed of vide Judgment & Order dated

16.07.2019, by setting aside the penalty imposed upon the petitioner while remanding the matter back to the disciplinary authority for reconsideration, after furnishing a copy of the opinion rendered by the Mizoram Public Service Commission (MPSC) on the penalty proposed to be awarded to the petitioner. Accordingly, the petitioner was supplied with a copy of the opinion of the MPSC and he submitted his representation. The disciplinary authority thereafter, vide Order dated 19.06.2020, imposed a major penalty of compulsory retirement upon the petitioner under Rule 11 (vii) of the CCS (CCA) Rules, 1965. Following the order, another Order dated 16.07.2020 was issued by which the period of suspension of the petitioner was directed to be treated as "not on duty" and not to be counted as qualifying service for the purpose of pension. His pay and allowance was also restricted to the subsistence allowance already received by him. Against the said order, the petitioner preferred an appeal before the Governor on 12.08.2020 and since the same was not disposed, he again submitted a reminder on 15.10.2020. Consequently, his appeal was disposed of by the Governor and he was intimated about the same vide a covering letter dated 10.12.2020. As per the order passed, the decision of the disciplinary authority was not interfered with. Being aggrieved, the petitioner is again before this Court.

[3.] Mr. A.R. Malhotra, learned counsel for the petitioner submits that as per the Charge Memorandum dated 23.12.2014, the petitioner was charged of having

indulged in illegal selling of 150 qtls. of Government rice from the FCS & CA Godown, Kolasib during the period from April, 2012 to 10.10.2014. As such, he was charged of having violated Rule 3(1)(i)(iii) of the CCS (Conduct) Rules, 1964. The learned counsel submits that he restricts the challenge made and his submission only on the point of discrimination meted out to the petitioner while imposing the penalty upon him, compared to others who committed similar misconduct. To substantiate his submission, Mr. A.R. Malhotra, the learned counsel has drawn the attention of this Court to paragraph No. 29 of the writ petition, wherein one Mr. J. Vanlalchhuanga, Inspector, Mr. H. Lalruata, Store Keeper, Mr. F. Zirliana, Store Keeper and Mr. F.C. Zohmingliana, Store Keeper, all from the same department, i.e. Food Civil Supplies & Consumer Affairs Department (FCS & CA) were imposed with a minor penalty in spite of the finding that there was huge shortage of rice and that they were responsible for the shortages. The learned counsel submits that the departmental officials directed recovery of the shortages from the monthly pay of the officials concerned. As such, the present petitioner also having been found to be responsible for the shortages of rice, a similar minor penalty ought to have been imposed upon him and not the major penalty of compulsory retirement. He therefore submits that Court may set aside the impugned orders passed by the respondents and direct imposition of a minor penalty upon the petitioner instead. In support of his

submission, Mr. A.R. Malhotra relies upon the Apex Court decision rendered in *Life Insurance Corporation of India & Ors. Vs. Triveni Sharan Mishra*, reported in (2014) 10 SCC 346.

[4.] Mrs. H. Lalmalsawmi, learned Government Advocate, on the other hand submits that it was after a full fledged departmental enquiry that the charge against the petitioner was found to be proved. After affording all reasonable opportunity to the petitioner, he was imposed with the penalty of compulsory retirement. The penalty according to the respondent authorities was found to be adequate and justified. Therefore, under such circumstance, Court may not interfere with the penalty imposed. The learned Government Advocate further submits that the petitioner cannot claim negative discrimination, inasmuch as, no case can be said to be identical and similar. She submits that the nature of allegations, the role attributed to the delinquent Government servant and position held would differ from person to person. As such, there is no question of claiming lesser and similar penalty as imposed on others against the charge which was proved on the petitioner. She submits that the writ petition being without merit, the same should be dismissed. In support of her submission, the learned Government Advocate relies upon the Apex Court decision rendered in *Anil Kumar Upadhyay Vs. Director General, SSB & Ors.*, reported in 2022 SCC Online SC 478.

[5.] I have heard the submissions made by the learned counsels for the rival

parties and I have perused the materials available on record.

[6.] From the submissions made before this Court, the only question to be considered is as to whether the petitioner should have been imposed with a lesser or minor penalty instead of the major penalty of compulsory retirement. In support of this ground, the learned counsel for the petitioner has drawn my attention to various orders imposing minor penalty upon the delinquent officials concerned which are annexed as Annexure 24 to 27. It is true that in all these cases, shortages of rice of certain value was found and the persons concerned were held to be responsible and penalised with minor penalties. It may however be seen that the positions held by these persons are not similar to that of the instant writ petitioner. The present writ petitioner was working as the District Civil Supply Officer, Kolasib and under the FCS & CA Department and that after a detailed enquiry, the charge framed against him was found to have been proved and accordingly, the penalty of compulsory retirement was imposed upon him. The delinquent officials in the other cases referred to by the petitioner were mainly Store Keepers and in one case an Inspector of the department. The Apex Court in the case of *Anil Kumar Upadhyay (Supra)* held that there cannot be any negative discrimination. The punishment/penalty to be imposed on a particular employee depends on various factors, like the position of the employee in the department, role attributed to him and the nature of allegations against him. The

Apex Court also appreciated the decision rendered by the same Court in *Om Kumar Vs. Union of India*, reported in (2001) 2 SCC 386, wherein the Apex Court after considering the Wednesbury principles and the doctrine of proportionality observed and held that the question of quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as "Wednesbury principles". In the Wednesbury case [1948] 1 K.B. 223, it was observed that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken.

[7.] The Apex Court further went on to quote the decision made in *B.C. Chaturvedi Vs. Union of India*, reported in (1995) 6 SCC 749, wherein the Apex Court observed and held as under:-

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose

appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof."

[8.] Therefore, upon due consideration, the law laid down by the Apex Court as abstracted above is found to be squarely applicable to the facts of the present case. Although the learned counsel for the petitioner has placed reliance upon the case of *Life Insurance Corporation of India & Ors. (Supra)*, but it may be seen that the same was pressed into service even in the earlier round of litigation and that this Court had not interfered with the impugned orders on the ground of discrimination or proportionality of the penalty. The facts involved in that case was wrong declaration of educational qualification in seeking appointment. The parties concerned were penalized differently. However, in the present case, the gravity of the offence alleged to have been committed is with regard to causing illegal and unauthorized loss of food grain (rice) of the Government and after holding appropriate departmental proceeding and the charge being proved, the impugned penalty was imposed. Therefore, the facts are found to be distinguishable and therefore, the authority relied upon by the learned counsel

for the petitioner is found to be not applicable.

[9.] Thus, upon due consideration of the case in its entirety on the ground urged by the petitioner, I find no merit in the writ petition and accordingly, the same is dismissed. No cost.

JUDGE

Comparing Assistant