

GAHC030000932022



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

Case No. : WP(C)/32/2022

Smt. C. Lalhmingchhuangi
Aizawl

VERSUS

The State of Mizoram r/b The Commissioner and Secretary, School Education
Deptt., and 2 Ors.
Aizawl 2: The Director
School Education Department
Govt. of Mizoram
Aizawl

3: The Sub-Divisional Education Officer
Darlawn
Aizawl Dist.
Mizoram
Darlawn

Advocate for the Petitioner : Mr L H Lianhrima Sr. Adv.

Advocate for the Respondent : Mrs. Linda L Fambawl (Addl.A.G/G.A., Mizoram)

BEFORE
HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : 14.02.2023

Date of judgment : 17.03.2023

JUDGMENT & ORDER (CAV)

Heard Ms. Ruth Lalruatfeli, learned counsel for the petitioner and Mrs. Linda L. Fambawl, learned Government Advocate appearing for the respondents.

[2.] The facts of the case in brief is that the petitioner was appointed as Middle School Teacher on 10.06.1994 and was posted at Champhai Bethel Middle School. Due to her proficiency in computer and typing, she was attached to the office of Sub-Divisional Education Officer (North) on 25.02.2001 and thereafter, she was attached to the office of the Sub-Divisional Education Officer, Darlawn (SDEO, Darlawn) in the month of November, 2008. The SDEO Darlawn made work distribution vide Office Order dated 15.10.2014 to be effective immediately and the petitioner was allotted the file of Recurring Grants-in-Aid for Non-Govt. Middle Schools, Non-Recurring Grants of All Schools, U.C & APR's of all kinds of GIA etc, Pay & Allowances of Hindi Teacher, Revenue Receipt, Pay & Allowances of Est., Pay & Allowances of Govt. M/S, Pay & Allowances of Govt. P/S, Pay and Allowances of H/T and the Pay roll Scheme. However, as the office of the SDEO Darlawn was a small establishment, the petitioner mainly functioned as a Computer Operator.

[3.] The petitioner on account of certain allegation made against her and pending drawal of the departmental proceeding was placed under suspension

on 27.07.2016. The allegation made against her was that she was involved in the alleged misappropriation and embezzlement of Government money by fraudulently drawing of pay and arrears of teachers. The order of suspension was revoked by an Order dated 24.03.2017 w.e.f. 25.10.2016 and the petitioner joined her service. However, she was again suspended on 06.04.2017 on the apprehension that her presence may prejudice the ongoing special audit. Thereafter, her suspension was revoked again on 19.07.2017 during the ongoing departmental enquiry.

[4.] The respondent No. 1 issued a memorandum of charge dated 03.05.2017 against the petitioner proposing to hold an enquiry against her for violation of Rule 3(i)(ii)(iii) and Rule 3-C of CCS (Conduct) Rules, 1964, Rule 21 of GFR and Rule 13(c) of the Prevention of Corruption Act, 1988 (PC Act). Against the memorandum of charge, the petitioner submitted her written statement of defence but the authority decided to continue with the departmental proceeding. During the proceeding, two State witnesses were examined and thereafter, the Enquiring Authority upon completing the enquiry submitted the enquiry report to the Commissioner & Secretary to the Government of Mizoram, School Education on 16.03.2018 by concluding that the charge against the petitioner was proved. A copy of the enquiry report was given to the petitioner on 11.04.2018, asking her to submit a written representation if any, against the

enquiry report within 15 days of the receipt of the same. The petitioner submitted her written representation on 24.04.2018, stating that whatever steps she had taken was as per the instruction of the Cashier. She had no knowledge of whether the excess drawal had been made or not and how it was utilized and also who had pocketed the same. She also stated that she had submitted her bank account statement to the Enquiry Officer to show that none of the personal bills of the teachers concerned were credited to her bank account. Therefore, the allegation made against her was not true and if there was any excess drawal, it was only due to her compliance to the instruction given by the higher authorities. Thereafter, the petitioner was imposed with a major penalty of dismissal from service with immediate effect vide Order dated 13.09.2019. Being aggrieved with the same, the petitioner preferred an appeal under Rule 24 of the CCS (CCA) Rules, 1965 before the Chief Secretary. However, the petitioner's appeal was rejected by the said authority vide Order dated 24.11.2021 and that is how the petitioner is before this Court.

[5.] Ms. Ruth Lalruatfeli, learned counsel for the petitioner submits that the petitioner although was appointed as a Middle School Teacher but on account of her proficiency in computer, she was given the task of looking after the official files and operate the computer to prepare the pay bills. She accordingly prepared the same as per the instruction of the Cashier concerned. She

therefore has no role in the alleged misappropriation of the fund. The same is clear from the bank statement/account of the petitioner which she submitted during the enquiry. In other words, none of the alleged excess drawal of money has been credited to her account. Therefore, the petitioner is only innocent. By referring to the Apex Court decision in ***Girish Bhushan Goyal -Vs- Bhel & Another***, reported in ***(2014) 1 SCC 82***, she submits that in the given facts of that case, the Apex Court held that the order of termination was bad as it did not mention any form of criminal charge against the delinquent employee concerned. Similarly, in the present case, no criminal charge has been incorporated in the Memorandum of Charge or in the impugned order itself. As such, the penalty imposed upon the petitioner should be set aside or in the alternative, a lesser penalty may be imposed upon her.

[6.] Mrs. Linda L. Fambawl, learned Govt. Advovate on the other hand submits that it is clear from the Enquiry Report that the petitioner was aware of the fact that there was excess drawal of pay arrear of School Teachers and it was the petitioner who prepared the pay bills. The petitioner was given due opportunity of defending herself during the departmental proceeding and the respondent authorities observed all the formalities required in this regard. Therefore, the penalty imposed upon the petitioner may not be interfered by this Court. She also submits that the Disciplinary Authority under the given facts and

circumstances found it appropriate to impose the penalty of dismissal from service upon the petitioner after consulting the Mizoram Public Service Commission (MPSC). Therefore, the same may not be interfered with by this Court. In support of her submission, she relies upon the case of ***State of Meghalaya & Others -Vs- Mecken Singh N. Marak***, reported in ***(2008) 7 SCC 580***.

[7.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The charge made against the petitioner is that while working under the SDEO, Darlawn on attachment, she was found to be involved in fraudulent drawal, misappropriation and embezzlement of Government money. By her action, the petitioner has acted in a manner unbecoming a Government Servant and violating the provisions of Rule 3 (i) (ii) (iii) and Rule 3-C of CCS (Conduct) Rules, 1964, Rule 21 of the General Financial Rules and Rule 13 (c) of the Prevention of Corruption Act, 1988 (PC Act). Having denied the charge, enquiry was conducted against her. During the enquiry, the petitioner submitted her written statements of defense on 30.05.2017 against the charge memorandum, denying the charges while stating that all the bills were made as per the instruction of the Cashier and that she has no involvement in the matter. The petitioner also submitted her statements of defense on 11.09.2017 wherein, she stated that

due to her proficiency in computer, she was given the task of preparation of pay bills and pay arrear bills. She stated that according to her belief, the sum of money drawn using the pay bills and arrear bills are utilized for official work and she has no reason to believe that she has not committed any wrong. She further stated that her stand and explanation is proved from the fact that she printed her SG pay arrear bill/statement for as many as 4 times in the year 2015 in EX.S-III - SI No. 3 of Annexure for a total amount of Rs. 6,67,464/- ($1,66,866 \times 4 = 6,67,464$). As known to everyone, personal claim is directly credited to the bank account of the employee concerned and in her bank account, her personal bill of Rs. 1,66,866/- was only credited in the month of March, 2015 and besides this amount, no other amount was credited into her account. She accordingly submitted her bank statement to show that excess amount has not been credited to her account.

[8.] The Enquiry Officer in his enquiry report by taking into consideration the statement of the petitioner herself in which she admitted of having printed the arrear bills for 4 times concluded that the charge against the petitioner was proved. The Enquiry Officer opined that the petitioner was clearly aware of the repeated fraudulent overdrawal made from the Government Ex-chequer. The amount of Rs. 6,67,464/- not being deposited in her account was not a proof that the fraudulent excess drawal and the overall fraudulent excess drawal was

not received wholly or partly by the petitioner in cash or otherwise. Therefore, based upon the findings of the Enquiry Officer, the petitioner was given an opportunity to submit her representation and accordingly, she submitted her representation on 24.04.2018. However, the Disciplinary Authority did not accept the petitioner's representation and imposed the penalty of dismissal from service upon her vide the impugned order dated 13.09.2019.

[9.] It is an established principle of law that the criteria for establishing the charge or proving the charge in a departmental proceeding can be achieved by preponderance of probability. Unlike a criminal trial, there is no requirement that the charge has to be established with proof beyond any reasonable doubt. From the statement of the petitioner herself, it is clear that she was aware of the fact that the pay bills/pay arrear bills were prepared and printed repeatedly. The same has therefore resulted in the excess drawal or overdrawal from the Government Ex-chequer. The amount drawn may not be reflected in her bank account but she herself has admitted in preparing her own SG pay bills and arrear bills repeatedly for four (4) times. Therefore, the Disciplinary Authority is found to be within its own right to take a decision for imposing penalty upon the petitioner, which of course was done after giving due opportunity to submit representation against the finding of the Enquiry Officer and after consulting the MPSC.

[10.] As regards the quantum of the penalty imposed, it is a well established law that the scope of interference by the Court is limited. In other words, the Court has a limited role to play and unless the penalty imposed shocks the judicial conscience of the Court, Court, ordinarily does not invoke its power of judicial review on the quantum of penalty. In the present case as well, the petitioner on being found to be involved in the fraudulent drawal, misappropriation and embezzlement of Government money through duly constituted departmental proceeding was imposed with the penalty. The penalty imposed therefore in my considered view cannot be said to be excessive. The case of *State of Meghalaya & Ors. Vs. Merken Singh N. Marak (Supra)* is found to be applicable to the instant case. The case of ***Girish Bhushan Goyal*** (supra) referred to by the learned counsel for the petitioner however is not found to be applicable to the present case inasmuch as, the Apex Court in that case held that in order to attract the penalty under Rule 23 (i) of BHEL Conduct Rules, mentioning of criminal charge was necessary. The same however is not the requirement in the present case although there is a mention of violation of the provision of Rule 13 (c) of the PC Act, which in fact should have been written as Section 13 (a) or Section 13 (b) of the PC Act.

[11.] Thus, upon due consideration, I find no merit in the writ petition and the same is dismissed. No cost.

JUDGE

Comparing Assistant