



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

Case No. : WA/8/2020

Sh. Joseph Laldinsanga
Kawn Veng, Aibawk
Aizawl District, Mizoram

VERSUS

State of Mizoram and 4 Ors.
Aizawl2:The Secretary to the Govt. of Mizoram Home Department
Aizawl

Advocate for the Petitioner : Mr Zochhuana
Advocate for the Respondent : Mr C Zoramchhana for R1-4

Linked Case : I.A.(Civil)/60/2020

Joseph Laldinsanga
Kawn Veng
Aibawk

VERSUS

State of Mizoram and 4 Ors.
Aizawl Mizoram

Advocate for the Petitioner : Mr Zochhuana
Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 30.01.2023

Heard Mr. R. Lalnunpuia, learned counsel for the appellants and Mr. C. Zoramchhana, learned Additional Advocate General for the State respondents.

2. This is an appeal against the Judgment & Order dated 21.05.2020 passed by the learned Single Judge in WP(C) No. 179/2019, whereby the writ petition of the petitioner/writ appellant was dismissed. In filing the writ appeal, the appellant has taken the ground amongst others that the departmental proceeding was not conducted properly and therefore, the penalty imposed upon him is vitiated.

3. According to the appellant, although the respondents have contended that the Enquiry Officer and the Presenting Officer was appointed vide Order dated 04.02.2016, but the same is only false and fabricated, in view of the fact that the appellant was said to have received the same on 08.01.2016, i.e. more than one month prior to the issuance of the order. According to the appellant, he was made to sign on a piece of blank paper and the order of appointing the Presenting and Enquiry Officer were issued thereafter. Therefore, since no proper enquiry has been conducted as stipulated under the Mizoram Police Manual, 2005, the writ petition could not have been dismissed by the learned Single Judge and as such, the impugned judgment and order may be interfered with. In support of his submission, the learned counsel has relied upon the case of *Jagdish Prasad Saxena Vs. State of Madhya Bharat (now Madhya Pradesh)*, reported in *AIR 1961 SC 1070* to contend that departmental enquiry is not an empty formality and it is a serious proceeding intended to give the Officer concerned a chance to meet the charge and to prove his innocence. Therefore, in absence of any enquiry, it

would be unfair to impose a penalty upon the delinquent Official concerned.

4. Mr. C. Zoramchhana, learned Additional Advocate General, on the other hand submits that proper enquiry was done and it was only after such enquiry that the impugned penalty of compulsory retirement from service with full benefit was imposed upon the appellant. The period of his absence was also treated as extra ordinary leave. The learned Additional Advocate General also submits that against the show cause notice issued to the appellant, the appellant fully admitted his guilt and asked for leniency. In this connection, the learned Additional Advocate General has drawn our attention to Annexure VIII (A) of the affidavit-in-opposition filed by the State respondents against the writ petition and which is annexed in the writ appeal at page 80. He therefore submits that the petitioner cannot be said to have any legitimate grievance against the respondents.

5. We have heard the learned counsels for the rival parties and also perused the materials available on record including the records produced by the learned Additional Advocate General.

6. Against the contention of the petitioner that no Enquiry Officer or Presenting Officer was appointed by the respondent authorities during the departmental proceeding, the State respondents in their counter-affidavit have taken a specific plea that one Mr. F. Ramchagliana , MPS, Assistant Commandant was appointed as the EO and Inspector, Mr. H. Lalrinsanga was appointed as a Presenting Officer to conduct the departmental proceeding and therefore, there was no denial of justice to the petitioner

during the departmental proceeding. Such stand has been taken in paragraph No. 7 of the affidavit-in-opposition of the State respondents. A copy of the Order dated 04.02.2016, by which the officials were appointed have also been annexed to the counter-affidavit. Against the counter-affidavit, the appellant did not file any reply affidavit and it is only in the writ appeal that he has raised for the first time that he was asked to sign on a blank paper and that the Order dated 04.02.2016, could not have been issued after making him receive a copy of the said order in advance on 08.01.2016. Such a stand has already indicated hereinabove was not the stand taken before the Writ Court.

7. It is the settled principle of law that the Writ Appellate Court as well as the Writ Court exercise same jurisdiction under Article 226 of the Constitution of India and that a Writ Appellate Court is not to exercise its jurisdiction, unless patent error is found to have been committed by the Writ Court or irrelevant considerations had been made by the Writ Court. The Writ Appellate Court should not substitute the findings made just because it felt that its view is a better view which ought to have been taken by the Writ Court. In the present case, if there was any discrepancy in the manner in which the order of appointing the Presenting Officer and the Enquiry Officer was made, the appellant ought to have raised the same during the writ proceeding and not at the appellate stage.

8. It may also be seen that against the impugned penalty of compulsory retirement with full benefit, the petitioner did not file a departmental appeal and instead,

approached the Writ Court after over for 3 years and 8 months from the date of issuance of the impugned penalty. This aspect was also considered by the learned Single Judge, as can be seen from the impugned judgment and order. Therefore, upon due consideration, we are of the view that there is no merit in the writ appeal and accordingly, we are not inclined to interfere with the impugned judgment and order and as such, we dismiss the writ appeal.

JUDGE

JUDGE

Comparing Assistant