

Item No. 19

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C)No.83 of 2016

Md. Nasir Khan, aged about 41 years, S/o Md. Bashir, Ex-Rifleman No.1194148, "C" Coy, 2nd Bn. Manipur Rifle and a resident of Wangoi, PO & PS Wangoi in Imphal West District, Wangoi

...Petitioner

- Versus

1. The State of Manipur represented by the Principal Secretary, Home to the Govt. of Manipur at the Civil Secretariat Complex, Imphal.
2. The Director of General of Police, Manipur at the Manipur Police Headquarter at Imphal.
3. The Commandant, 2nd Bn. Manipur Rifles at Imphal.

...Respondents

BEFORE
HON'BLE JUSTICE MR. JUSTICE A. GUNESHWAR SHARMA
J U D G E M E N T & O R D E R
(Oral)

03.04.2024.

[1] Heard Mr. N. Umakanta, learned counsel assisted by Ms. Sapna, learned counsel appearing for the petitioner and Mr. Shyam Sharma, learned GA for all the respondents.

[2] The fact of the present case is that the petitioner was a Rifleman in 2nd Bn. Manipur Rifles and his application for voluntary

retirement was accepted by the authority vide order dated 28.03.2015 w.e.f. 01.04.2015 and allowed to retire from the service. Thereafter, the respondent (Commandant, 2nd Bn. Manipur Rifles, Imphal) issued a show cause notice dated 20.10.2015 to the petitioner regarding the suppression of a pending FIR case against him in his representation for voluntary retirement and as to why order of the voluntary retirement should not be revoked to face the Departmental Enquiry with respect to the FIR case No.12(2)2010 u/s 400/489-C IPC.

[3] Subsequently, the petitioner submitted a detailed written statement dated 05.11.2015. However, vide order dated 27.11.2015 the Commandant, 2nd Bn. Manipur Rifles recalled and revoked the voluntary retirement order and re-instate the petitioner in service to face Departmental Enquiry in connection with the aforesaid FIR. The relevant portion of the order dated 27.11.2015 is reproduced as below:

“Now, therefore, the undersigned Commandant, 2MR Imphal in exercise of the power conferred upon me under rules 66 of AP Manual Part-III do hereby revoked and re-instate Ex-Rifleman No.1194148, Md. Nasir Khan from voluntary retirement with immediate effect and conduct a Departmental enquiry against him for his grave misconduct by involving FIR case No.12(2)2010 WGI-PS u/s 400/489-C IPC during his service.”

[4] The petitioner challenged the revocation order dated 27.11.2015 by way of writ petition being WP(C)No.1026 of 2015 and this Court passed an interim order dated 16.12.2015 restraining the

respondents not to take coercive action against the petitioner if he was not able to attend office after his reinstatement.

[5] The Commandant, 2nd Bn. Manipur Rifles issued Memorandum dated 07.01.2016 to the petitioner for initiating Departmental Enquiry against him in connection with the above mentioned FIR case and the petitioner has challenged the said Memorandum dated 07.01.2016 as well as article of charges by way of the present writ petition i.e. WP(C)No.83 of 2016.

[6] During the course of hearing, Mr. N. Umakanta, learned counsel for the petitioner submits that vide order dated 13.06.2017 passed by this Court in connected writ petition being WP(C)No.1026 of 2015, the reinstatement order dated 27.11.2015 was quashed on the ground that once the voluntary retirement of the petitioner was accepted by the authority, the authority did not have jurisdiction to recall the order by which the relationship between an employer and an employee had already been snapped and there was no provision to revive the same. The relevant portion of the order dated 13.06.2017 is reproduced herein below:

“7. Normally, an authority which has the power to issue an order has the power to revoke, amend, vary or rescind the same as provided under Section 21 of the General Clauses Act, 1987. But in the present case, what is of interest is that by the order dated 28.03.2015 by accepting the request for voluntary retirement sought by the petitioner, the relationship of the petitioner and the State Government as an employee and

employer is snapped. Once the voluntary retirement is accepted, a Government employee ceases to be a Government employee except for the purpose of any retiral and other benefits which would accrue because of the service already rendered by the Government employee and which will be governed by the relevant rules/pension rules. Otherwise, there ceases to be any relationship between the Government employee and the Government. Therefore, the question which arises is as to whether once the relationship of employee and employer is snapped, can the ex-employer i.e., the State Government continue to treat the petitioner as an employee so as to subject him to any further action by way of giving show cause notice and recalling an order by which the relationship of an employee and employer had already been snapped? In the opinion of this Court, once the employer-employee relationship is snapped, it becomes irreversible. For the same reason, the petitioner also cannot seek withdrawal of his application for voluntary retirement once it has been accepted and given effect to. Voluntary retirement is just another method of terminating the service of the Government employee and as such once the service is effectively terminated, his relationship with the State Government as a Government employee ceases and the employee has no further obligation towards the employer except for the purpose of retiral or pensionary benefits which could be withheld or deprived of in accordance with the provisions under the relevant Pension Rules. If the service rules enable the authority to revoke any such order of voluntary retirement, the matter would have been otherwise. However, the learned Sr. GA for the State respondents has not been able to show or point out any such provision under any rule which enables the State Government to revoke an order allowing voluntary retirement from service which had already become effective. The relationship between the

employee and the employer is governed by the statutory rules and if the statutory rules do not provide for governing the service conditions post employment, the employer will have no authority to do anything which is not provided by the rules. Accordingly, this Court is of the view that the authorities has no jurisdiction to recall and order by which the relationship between and employer and an employee has been snapped. Therefore, this Court is of the opinion that the petition should be allowed as the respondent authorities have no jurisdiction or authority to recall any such order allowing voluntary retirement.

For the reasons discussed above, the present writ petition is allowed by setting aside the impugned order dated 27.11.2015.”

[7] Mr. N. Umakanta, learned counsel appearing for the petitioner draws the attention of this Court to the peculiar fact that on perusal of the Show Cause notice and the reinstatement order, the very purpose of reinstatement of service of the petitioner is to face Departmental Enquiry and once the reinstatement order is set aside, the proceeding of Departmental Enquiry cannot survive on its own independently.

[8] On the other hand, Mr. Shyam Sharma, learned GA submits that Departmental Enquiry can be proceeded against the retired employee and there is no infirmity to continue with impugned Departmental Enquiry against the petitioner and the same may be

allowed to continue. He has also pointed out that the petitioner has not avail the alternative remedy of approaching the Appellate Authority under Assam Police Manual and the petitioner approached this Court directly without affording alternative statutory remedy. It is also stated that the petitioner has concealed the fact of his involvement in the previous criminal case.

[9] Mr. N. Umakanta, learned counsel appearing for the petitioner has clarified that the petitioner can approach the Appellate Authority in case of any punishment imposed against him by the authority but in the present case, the impugned order of reinstatement is not a punishment and hence there is no occasion to approach the Appellate Authority.

[10] This Court has considered the submission made by the learned counsel for the parties at the Bar and perused the materials on record. On perusal of the Show cause notice dated 20.10.2015 and the reinstatement as well as the revocation of voluntary retirement order dated 27.11.2015, it is clear that the purpose of reinstatement is to initiate Departmental Enquiry against the petitioner in connection of his involvement in the aforesaid FIR. Once the reinstatement order dated 27.11.2015 has been set aside by this Court by an order dated

13.06.2017 in WP(C)No. 1026 of 2015 filed by the petitioner herein, the very basic foundation for initiating the Departmental Enquiry against the petitioner is no longer in existence and the Departmental proceeding is devoid of any authority.

[11] Accordingly, the present writ petition is allowed and the Office Memorandum dated 07.01.2016 and the article of charges are set aside on this limited ground only.

[12] It is clarified that the respondents may proceed as per law if the same is permissible and if so advised.

[13] With the above observations, this writ petition is disposed of.

JUDGE

John Kom