



Serial No. 04
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 129 of 2024

Date of Decision: 16.07.2024

Shri. Nantu Das
Son of Dhiren Das,
Resident of NEHU Campus,
Mawkynroh, Umshing,
East Khasi Hills District, Meghalaya

:::Petitioner

-Vs-

1.North Eastern Hill University, represented
by the Vice-Chancellor, Mawkynroh,
Umshing, East Khasi Hills District, Meghalaya

2.The Registrar, North Eastern Hill University,
Mawkynroh, Umshing, East Khasi Hills District,
Meghalaya

3.The Joint Registrar (Esst-II), North Eastern
Hill University, Mawkynroh, Umshing,
East Khasi Hills District, Meghalaya

:::Respondents



Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. M.L. Nongpiur, Adv.
Ms. L.M.D. Marak, Adv.

For the Respondent(s) : Mr. S. Sen, SC NEHU with
Ms. S. Shallam, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

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

JUDGMENT AND ORDER (ORAL)

1. The writ petitioner by this instant petition is assailing the action of the respondent University in continuing to place the petitioner under suspension beyond the period of 90(ninety) days, on the ground that the same is contrary to Rule 10 of the Central Civil Service (Classification Control and Appeal) Rules, 1965: CCS (CCA) Rules 1965.

2. The brief facts are that a First Information Report was lodged against the petitioner on the alleged offence of molestation and a case was registered being Mawlai P.S. Case No. 139(11) of 2023, under Sections 341/354A(i)/376/511 IPC. The petitioner was arrested on 19.11.2023, and



was placed under suspension by order dated 22.11.2023. Thereafter, the petitioner was released on bail on 20.12.2023, and the same was communicated to the respondent University vide letter dated 18.01.2024.

3. Mr. M.L. Nongpiur, learned counsel for the petitioner submits that Rules 10(6) and 10(7) of the aforementioned CCS (CCA) Rules 1965, provide that a suspension order shall be reviewed by the authority competent to modify or revoke suspension, before the expiry of 90 days from the effective date of suspension and the same shall not be valid, after a period of 90 days unless it is extended after review. In the instant case he submits, 90 days had expired on 17.04.2024, but the respondent University had not reviewed the suspension order, and as such, therefore, by virtue of the applicable Rules, the suspension order had become invalid. He therefore contends that the action of the respondents is in violation of the Rules in not re-instating the petitioner into service, in the absence of any review. In support of his case, the learned counsel has relied upon the following two decisions.

- (i) ***Union of India & Ors. vs. Dipak Mali*** reported in (2010) 2 SCC 222.
- (ii) ***Dipak Das vs. Indira Gandhi National Open University, Represented by its Registrar & Ors.*** reported in 2023 SCC OnLine Gau 4284.



4. Mr. S. Sen, learned Standing Counsel for the respondent University in reply has submitted that it is evident from the FIR and the police case, that the charges against the writ petitioner are serious and grievous in nature, and as such, accordingly he had been placed under suspension in exercise of Rule 10(2) of the CCS (CCA) Rules 1965. On being informed about the petitioner's release on bail on 18.01.2024, the learned counsel submits the respondents constituted a review committee on 28.03.2024, which was well within the 90 days provided by statute. He further submits that taking into account the nature of allegations, the Internal Complaint Committee (ICC) constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, had taken up the case for further inquiry as was provided in the Act. He also submits that the Committee on 03.05.2024, then recommended that the suspension be continued pending inquiry from the University. It is further submitted that the said recommendation has also been placed before the Executive Council on 01.07.2024, wherein the Council resolved to accept the report submitted by the Committee, and further resolved that status be maintained till the submission of another report by the ICC.

5. The learned counsel contends that the objection of the petitioner to his continuous suspension by relying upon the CCS (CCA) Rules 1965, is misplaced, inasmuch as, a case is being sought to be made out on a hyper



technicality that no order was passed within 90 days, after he had informed the respondents about being released on bail. It is also contended that, as the matter also involves proceedings before the ICC, they having not been made a party and further the recommendation and Executive Council Resolution not having been challenged, inspite of the same being in the knowledge of the writ petitioner, no relief will be admissible to him by way of the instant petition.

6. I have heard learned counsel for the parties. It is noted that as submitted by the learned counsel for the respondents, the prayer for reinstatement is on a technicality, that is by the strict application of the CCS (CCA) Rules 1965. Before determining the issue, it would be expedient to set out herein below, Rule 10(1), (2), (6), (7) and proviso thereto of the said Rules, which concerns suspension.

“10. Suspension.-(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension-
(a) where a disciplinary proceeding against him is contemplated or is pending; or
(aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or
(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:



Provided that, except in case of an order of suspension made by the Comptroller and Auditor - General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the appointing authority such authority shall, forthwith, report to the appointing authority the circumstances in which the order was made.

(2) A Government Servant shall be deemed to have been placed under suspension by an order of appointing authority –

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension, before expiry of ninety days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.



(7) An order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days' period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later."

7. A perusal of the above Rules, will show that Rule 10(6), 10(7) and the proviso thereto, stipulates that an order of suspension shall be reviewed before the expiry of 90 days from the effective date of suspension, and on recommendation of the review committee, be extended or revoked, and that an order of suspension made under 10(1) or 10(2) shall not be valid after a period of 90 days, unless it is extended after review. The proviso thereto, provides that 90 days period will count from the date, the Government Servant detained in custody, is released from detention, or the date on which the fact of his release from detention is intimated to the appointing authority, whichever is later.



8. In the instant case, the undisputed fact is that, the petitioner who was in detention and secured bail thereafter, had intimated the same to the respondents on 18.01.2024, and as such, by operation of the proviso as discussed above, 90 days would have elapsed on 17.04.2024, but however, by such date, no recommendation had been given. A review committee, which had been duly constituted on 28.03.2024, well within the 90 days period, though indicating the fact that, the process of review had been initiated by the respondents, the recommendation for continuance of the suspension, however, was given only on 04.05.2024, and accepted by the Executive Council on 01.07.2024, which was after the 90 day period.

9. From the facts as they pertain, by the strict application of Rules 10(6), 10(7) and the proviso thereto, notwithstanding the fact that the respondents had initiated the process of review before the lapse of 90 days, the fact that no recommendation was forthcoming within the stipulated period cannot be overlooked. The decisions placed by the learned counsel for the petitioner in this regard also underline this proposition.

10. As such, in view of the fact that, no order of review had been passed within 90 days, the suspension is no longer valid and the petitioner is liable to be reinstated forthwith, notwithstanding the fact that he is facing serious criminal charges, and an inquiry also pending before the ICC.



11. The writ petition is therefore allowed, but this order shall not be taken to preclude the respondents from taking such further actions as necessary under the law, or as provided under Section 10(1) of the CCS (CCA) Rules 1965.

12. As ordered, writ petition accordingly stands closed and disposed of.

Judge