

GAHC010218262013



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

Case No. : WP(C)/4092/2013

PRABIN DUTTA
S/O SRI LOBESWAR DUTTA, R/O FETAGAON, P.S. and P.O. DERGAON,
DIST- GOLAGHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HOME DEPARTMENT, DISPUR, GHY-6

2:DIRECTOR GENERAL OF POLICE ULUBARI GHY-7 ASSAM

3:INSPECTOR GENERAL OF POLICE CENTRAL RANGE DIPHU
KARBI ANGLONG ASSAM

4:SUPERINTENDENT OF POLICE GOLAGHAT
DIST- GOALGHAT ASSAM

Advocate for the Petitioner : MR.T J MAHANTA

Advocate for the Respondent :

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 10.05.2024
Date of Judgment & order: 10.05.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. T. J. Mahanta, learned senior counsel, assisted by Mr. A. Baruah, learned counsel, appearing on behalf of the petitioner. Also heard Mr. D. Baruah, learned Government Advocate, appearing on behalf of all the respondents.

2. The petitioner, by way of instituting the present proceeding, has presented a challenge to an order, dated 01.08.2005, issued by the Superintendent of Police, Golaghat(disciplinary authority) imposing a penalty of removal of service on the petitioner. The petitioner has also assailed an order, dated 24.05.2006, issued by the Deputy Inspector General of Police(Central Range), Assam (appellate authority), whereby, the appeal as preferred by the petitioner in the matter, came to be rejected.

3. The facts as requisite for consideration of the issues arising in the present proceeding, is noticed as under:

The petitioner, herein, was initially appointed as an Armed Branch Constable under Golaghat DEF, in the year 1996. While working in the said capacity, the petitioner on being involved in a criminal case being Sarupathar P.S. Case No. 70/2003 under Section 493/376(2)(a) of the IPC; was placed under suspension vide issuance of an order, dated 15.08.2003.

The said order, dated 15.08.2003, was followed by a Show Cause Notice, dated 23.09.2003, issued under Section 7 of the Police Act *read with* Rule 66 of the Assam Police Manual Part-III and Article 311 of the Constitution of India.

The petitioner was charged with misconduct, indiscipline and negligence of duty basing on the allegation as was levelled against him, therein. The petitioner, thereafter, on receipt of the said Show Cause Notice; on 21.10.2003,

proceeded to submit his written statement in the matter and therein, while denying the allegation as levelled against him; had, by referring to the Sessions Case now pending against him, prayed for keeping the proceedings in the departmental inquiry in abeyance till conclusion of the criminal proceeding.

The said representation not being found to be satisfactory; the disciplinary authority proceeded to direct for holding of an inquiry against the petitioner in the matter. Accordingly, with the participation of the petitioner, an inquiry was duly conducted against the allegation/charge as levelled against the petitioner vide the Show Cause Notice, dated 23.09.2003. On conclusion of the said inquiry; the Inquiry Officer vide his report, dated 02.07.2004, proceeded to hold the allegation as levelled against the petitioner, to be proved.

Thereafter, the disciplinary authority, vide a communication, dated 17.07.2004; proceeded to direct the petitioner, herein, to submit his representation in the matter and to show cause as to why he should not be removed from his service. Thereafter, the petitioner submitted his representation against the said Show Cause Notice, dated 17.07.2004. The disciplinary authority, thereafter, on perusal of the reply as submitted by the petitioner in the matter, pursuant to the communication, dated 17.07.2004, as well as on examining the other materials available on record, proceeded vide order, dated 01.08.2005, to draw a conclusion that the petitioner on account of the charges as levelled against the petitioner being proved; was not found to be fit to be retained in the service of the Police Department and accordingly, proceeded to impose the penalty of removal of service of the petitioner. The

period of suspension w.e.f. 14.08.2003 to 14.11.2003, was, however, regularized as on duty.

The petitioner being aggrieved; proceeded to prefer an appeal in the matter vide appeal, dated 06.10.2005, and therein; by advancing his contentions, prayed before the appellate authority to interfere with the impugned order, dated 01.08.2005, passed by the disciplinary authority. The appellate authority on due consideration of the contentions as raised by the petitioner in his appeal and also on perusal of the materials coming on record in the inquiry; proceeded vide order, dated 25.04.2006, to reject his said appeal. The said rejection of the appeal had occasioned in the year 2006 and the order of penalty was imposed upon the petitioner on 01.08.2005.

As projected in the writ petition, the criminal case as instituted against the petitioner upon conclusion of trial, led to his conviction vide an order, dated 08.02.2006. The petitioner, thereafter, assailed the order of his conviction by the learned trial Court before this Court by way of preferring a criminal appeal viz. CrI. A. No. 33/2006. The said criminal appeal was given a final consideration by this Court vide order, dated 30.01.2013, and this Court on examination of the matter, was pleased to interfere with the impugned judgment, dated 08.02.2006, passed by the learned Sessions Judge, Golaghat, in Sessions Case No. 162/2003. On his acquittal by this Court in the criminal case instituted against him; the petitioner proceed to submit a representation, dated 26.02.2013, before the Superintendent of Police, Golaghat, praying for his reinstatement of service basing on his acquittal in the connected criminal case.

The same not having been duly considered; the present proceeding has been instituted by the petitioner before this Court.

4. Mr. Mahanta, learned senior counsel appearing for the petitioner; after having taken this Court through the Show Cause Notice, dated 23.09.2003; the inquiry report, dated 02.07.2004; as well as the order, dated 30.01.2013, passed before this Court in Crl. A. No. 33/2006; has contended that the petitioner having been honourably acquitted by this Court from the charges as levelled against him in the criminal proceeding and also the criminal proceeding as well as the departmental proceeding as initiated against the petitioner, being based on the same set of allegations and the evidence coming on record in both the proceedings being almost the same; the acquittal of the petitioner in the criminal proceeding, is after a due consideration of the evidence coming on record by this Court; the order of removal as imposed upon the petitioner vide the order, dated 01.08.2005, cannot be sustained and requires to be interfered with a further direction to the respondent authorities for his reinstatement in service with all consequential benefits.

5. Mr. Mahanta, learned senior counsel, by taking this Court through the inquiry report, has contended that there is no clear finding recorded in the inquiry report by the Inquiry Officer with regard to the allegation/charge as levelled against the petitioner vide the Show Cause Notice, dated 23.09.2003, and by drawing a sudden conclusion that the allegation/charge levelled against the petitioner to be proved; the inquiry report was closed.

6. It has been submitted by Mr. Mahanta that the manner in which the inquiry proceeding was so conducted and also the manner in which the charges levelled against the petitioner was held to be proved by the Inquiry Officer; the same reflects the clear non-application of mind and also that there was a premeditation to hold the petitioner guilty of the charges so levelled against him in the departmental proceeding instituted against him vide the Show Cause Notice, dated 23.09.2003.

7. Mr. Mahanta, learned senior counsel, has further contended that both in the written statement as preferred by the petitioner against the Show Cause Notice, dated 23.09.2003, as well as in the representation as preferred by the petitioner against the said inquiry report; the petitioner had categorically denied the allegation as levelled against him of cohabitation with the complainant in the matter. However, the respondent authorities while considering the case of the petitioner, had ignored such categorical assertions made by the petitioner in the matter.

8. In support of the submissions as made by him in the matter; Mr. Mahanta, learned senior counsel for the petitioner, has relied on the decisions of the Hon'ble Supreme Court rendered in the case of ***Ram Lal v. State of Rajasthan & ors.***, reported in ***(2024) 1 SCC 175***; as well as in the case of ***G. M. Tank v. State of Gujarat & ors.***, reported in ***(2006) 5 SCC 446***.

9. Per contra, Mr. Baruah, learned Government Advocate, appearing on behalf of all the respondents, has, at the outset, submitted that the

departmental proceeding against the petitioner has come to an end with the imposition of the penalty of removal from his service upon him, vide the order, dated 01.08.2005. Thereafter, the appeal as preferred by the petitioner was also rejected by the appellate authority vide the order, dated 25.04.2006. However, the petitioner had not assailed the said orders before this Court at any point of time before 18.07.2013 when the present writ petition was so instituted by the petitioner.

10. It is contended by the learned Government Advocate that the order, dated 01.08.2005, as well as the appellate order, dated 25.04.2006, has, in the meantime, attained its finality and the petitioner cannot now be permitted to challenge the said orders, basing on his acquittal in the criminal case as pending against him vide the order, dated 30.01.2013, passed by this Court in Crl.A. No. 33/2006.

11. Mr. Baruah, learned Government Advocate, has further submitted that the petitioner has not brought on record any material to demonstrate that the departmental proceeding was so held without giving him a due opportunity to defend himself in the matter. It is further contended by the learned Government Advocate that the petitioner was afforded due opportunity to cross-examine the witnesses who had deposed in the inquiry but the petitioner, for the reasons best known, had refused to cross-examine the said witnesses. Accordingly, it is the contention of the learned Government Advocate that the standard of evaluation in a departmental proceeding being that of preponderance and probability; the Inquiry Officer basing on materials coming on record and given

the allegation that was so levelled against the petitioner; had arrived at a conclusion of the charge so levelled against the petitioner, to be proved. The disciplinary authority on a due examination of the conclusions reached by the Inquiry Officer in the matter, also having noticed the materials so coming on record in the inquiry; had proceeded to impose upon the petitioner, the penalty of removal from service vide the order, dated 01.08.2005, and the same was also upheld by the appellate authority vide the order, dated 25.04.2006.

12. In the above premises; the learned Government Advocate has contended that no interference with the penalty as imposed upon the petitioner, herein, is called for and that too, only on the ground of his subsequent acquittal in the criminal case.

13. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

14. The petitioner, vide Show Cause Notice, dated 23.09.2003, was alleged to have visited the house of one Mamoni Gogoi frequently leaving his place of posting without any leave or permission from the competent authority since one and half years. However, it was further alleged that the petitioner though married, pretended himself to be unmarried and cohabitated with Mamoni Gogoi with inducement of marriage and as a result, she gave birth to a male child at Sarupathar 30-bedded Hospital on 10.08.2003. Basing on the said allegation; it was also recorded in the said Show Cause Notice, dated 23.09.2003, that the petitioner being a member of the disciplined force, had acted in a manner which

was not only disgraceful for him but also for the entire police force which had rendered himself unfit to be retained in service. Basing on the allegations so levelled, a charge of misconduct, indiscipline and negligence of duty, came to be drawn against the petitioner. The petitioner, thereafter, vide his reply, dated 21.10.2003, to the Show Cause Notice, dated 23.09.2003, had denied the allegation of having cohabitated with Mamoni Gogoi with inducement of marriage and by posing as a bachelor.

15. The petitioner had also, in his written statement, drawn the attention of the authorities to the fact that the Sessions case now pending against him involves similar allegations as that now levelled against him in the departmental proceeding. The Inquiry Officer in his inquiry report, had recorded a finding to the effect that the petitioner was given a due opportunity to cross-examine the witnesses deposing in the inquiry but he had refused to cross-examine any of the witnesses so deposing in the matter, but said position has not been disputed by the petitioner in the present proceeding.

16. The Inquiry Officer basing on the materials coming on record, proceeded to hold that the allegation as levelled against the petitioner vide the Show Cause Notice, dated 23.09.2003, was proved. At this stage; it is to be noted that the petitioner in the writ petition, has not raised any objection as regards to he having been deprived of a due opportunity to defend his case in the inquiry so held in the matter. Thereafter, after having provided the petitioner with an inquiry report and a reply received thereon, the disciplinary authority vide order, dated 01.08.2005, proceeded to impose upon the petitioner the penalty of

removal from his service. The petitioner, being aggrieved, had submitted an appeal in the matter on 06.10.2005. In the said appeal, the petitioner had raised a justification with regard to he not cross-examining the witnesses deposing in the inquiry with the contention that in view of the pendency of a criminal case against him; he had refused to cross-examine the witnesses so as to not expose his defence in the matter.

17. The said appeal as preferred by the petitioner was rejected by the appellate authority by a reasoned order, dated 25.04.2006. The witnesses deposing in the inquiry having admittedly not been cross-examined by the petitioner and their statements having not being disputed, the Inquiry Officer was not in error in taking into consideration such undisputed statements coming on record in the inquiry. The contentions as advanced by the petitioner in the appeal that he had refused to cross-examine the witnesses deposing in the inquiry only on the ground that if he had so done, his defence would have been exposed and it would have caused prejudice to him in the criminal proceeding, is being noticed only to be rejected in-as-much as the defence of the petitioner, if any, had already been disclosed when he had preferred his written statement against the Show Cause Notice, dated 23.09.2003. Accordingly, the petitioner not having challenged the continuation of the departmental proceeding against him, at a subsequent stage after having submitted to the departmental proceeding; he could not have taken-up any plea contrary to the above position.

18. The allegation as levelled against the petitioner being relevant in the matter, is extracted hereinbelow, for ready reference:

“That, while you were posted for PSO chuty with Sri M. Dev Roy, APS, the then SDPO, Dhansiri, Sarupathar, you used to visit the house of one Smti Mamoni Gogoi, D/O (L) Sadananda Gogoi of Panjan gaon under Sarupathar, PS-frequently leaving your place of posting without any leave or permission from competent authority since one and half year last. Being a married one, you pretended yourself to be unmarried and co-habited with Smti Mamoni Gogoi with inducement of marriage as a result she became pregnant and gave birth to a male child at Sarupathar 30 bedded hospital on 10/08/2003.

Being a member of the disciplined force you have acted such a manner which disgrace not only but also entire Police force and render yourself unfit to be retained in the service.

You are, therefore, charged with misconduct, indiscipline and negligence of duty.”

19. A close examination of the said allegation would reveal that what was so alleged against the petitioner is that while on duty, he had left his place of posting without any leave or permission from the competent authority and had visited the house of Mamoni Gogoi and had cohabited with her for around a year and a half and also that, he had induced the said woman with a false promise of marriage to have a relationship with him, resultantly, making her pregnant.

20. Although Mr. Mahanta, learned senior counsel, has strenuously argued that the charges levelled against the petitioner as available in both the departmental proceeding as well as the criminal proceeding are one and the same; this Court is unable to accept the said contention in-as-much as what was alleged against the petitioner in the criminal case, was an allegation pertaining to commission of offence covered by Sections 376 and 417 of the IPC. This Court, vide order, dated 30.01.2013, passed in Crl. A. No. 33/2006, had held in favour of the petitioner with regard to the allegation levelled against him under Section 376(1) of the IPC on the ground that the relationship between the petitioner and the woman, in question, were consensual. In this context, the relevant

observations of this Court in the said order, dated 30.01.2013, passed in CrI. A. No. 33/2006, is extracted hereinbelow for ready reference:

“8. The moot question before the trial Court was as to whether there was evidence against the appellant to establish the ingredients of Section 376(1) and 417 IPC beyond all reasonable doubt. Merely because there was an agreement by and between the parties (Ext.1) with the aforesaid condition of DNA test, the learned trial Court ought not to have held the appellant guilty of the offence under Section 376 and 317 IPC. It was only on the alleged failure of the accused appellant to pay the maintenance allowance, the victim lodged the FIR. Thus, if the maintenance allowance would have been paid, there would not have been any grievance on the part of the alleged victim.

9. Mr. T.J. Mahanta, learned counsel for the appellant submits that it being not a case of offence under Section 376(1) IPC and also there being no evidence to establish the charge under Section 417 IPC, the learned trial Court ought not to have held the appellant guilty of the charges. On the other hand, Mr. Gogoi, learned APP, Assam submits that considering the age of the victim girl, the consent even if it was there, same was immaterial.

10. The victim girl in her deposition stated that she was 16 years of age. On the other hand, in the Doctor's report, there is no mention of the age of the victim girl. Under 6th Exception of Section 375 IPC, the consent is material if the victim is below 16 years of age. It is on this count, Mr. Mahanta, learned counsel for the petitioner submits that it being a case of consent by and between the parties, it cannot be said to be a case falling under Section 376(1) IPC. As regards the offence under Section 417 IPC, he submits that there being no evidence to show that the appellant had promised to marry the victim girl and has cheated her, it cannot be said to be a case falling under Section 417 IPC. Alter natively, he also submits that the accused-appellant having already undergone imprisonment for more than 4(four) months during trial and after the impugned judgement of conviction, the same will meet the ends of justice even if the petitioner is held to be guilty under Section 417 IPC.”

21. The said findings as recorded by this Court in the said order, dated 30.01.2013, while negating the allegation as levelled against the petitioner, herein, with regard to the offence alleged to have been committed by him under Sections 376 and 417 of the IPC, also brings to the forefront that the petitioner had been in a relationship with a woman whose name is mentioned in the Show Cause Notice, dated 23.09.2003. In the departmental proceeding as initiated against the petitioner, there being no allegation of the petitioner having committed an offence akin to the offences under Sections 376(1) and 417 of the

IPC, and it only being to the extent of the petitioner having maintained an illegal relationship with the woman mentioned in the said Show Cause Notice, 23.09.2003, while he was posted for duty; the observations as made by this Court vide the order, dated 30.01.2013, in the considered view of this Court also proceeds to establish the said allegation.

22. In that view of the matter, this Court holds that the allegation as levelled against the petitioner cannot be contended to have been so levelled against him without there being any material to substantiate the same.

23. At this stage; it is relevant to note that the departmental proceeding as initiated against the petitioner had concluded in the year 2005 and the appellate authority had also passed its order in the year 2006. Thereafter, till 17.07.2013, the petitioner had not assailed the said orders which accordingly had attained its finality. It is only on 18.07.2013 when the present proceeding was instituted by the petitioner before this Court assailing the orders, in question.

24. The present proceeding has been solely filed on the basis of the acquittal as granted to the petitioner by this Court vide the order, dated 30.01.2013. It is, in this connection, this Court would like to refer to the decision of the Hon'ble Supreme Court in the case of **Deputy Inspector General of Police, & anr. v. S. Samuthiram**, reported in **(2013) 1 SCC 598**, wherein, the Hon'ble Supreme Court in a case involving similar circumstances, had concluded that mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the department. It further held that in the

absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and in the enquiry conducted by way of a disciplinary proceeding is entirely different.

25. The relevant paragraphs of the decision as rendered in the above-noted case, is extracted hereinbelow for ready reference:

“26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide that in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.”

26. Applying the ratio as available in the case of **S. Samuthiram** (supra) to the facts of the present case; it is seen that the provisions under which the petitioner was proceeded against in the departmental proceeding i.e. the Police

Act as well as the provisions of the Rules under the Assam Police Manual, Part-III, do not provide for a reinstatement of an employee who was imposed with a penalty of dismissal/removal/compulsory retirement and subsequently acquittal in a criminal case involving allegations of similar nature. It is to be noted that the penalty as imposed upon the petitioner vide the order, dated 01.08.2005, was not on the basis of the conviction of the petitioner in the criminal proceeding and it was on the basis of an independent proceeding initiated against him with the issuance of the Show Cause Notice, dated 23.09.2003.

27. In the above view of the matter and also applying the ratio of the decision as rendered by the Hon'ble Supreme Court in the case of ***S. Samuthiram*** (supra), the petitioner in the view of the fact that the service rules governing him having not made any provisions for reinstatement of an employee on his subsequent acquittal in the criminal proceeding; this Court is of the considered view that the prayer of the petitioner for an interference with the orders of penalty as well as the order passed by the appellate authority in the matter, does not merit acceptance.

28. In view of the conclusions as reached by this Court hereinabove, the decision of the Hon'ble Supreme Court as relied upon by Mr. Mahanta, learned senior counsel representing the petitioner, is not being alluded to.

29. The petitioner, herein, having not promptly presented a challenge to the penalty of removal as imposed upon him vide the order, dated 01.08,2005, as well as taking into consideration the decision rendered by the Hon'ble Supreme

Court in the case of ***S. Samuthiram*** (supra); this Court proceeds to hold that there exists no ground, at this belated stage, to interfere with the orders impugned in this writ petition.

30. In that view of the matter, the writ petition is hereby held to be bereft of merit and the same, accordingly, stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant