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

Case No. : WP(C)/1379/2017

GOLOK CHANDRA BORA
PERMANENT R/O. FLAT NO. A-102, 'VIJAYA HEIGHTS', BYE LANE NO. 10,
GANESH MANDIR ROAD, NOONMATI, GHY.-781020. PRESENTLY SERVING
AS AN ACADEMIC OFFICER, BOARD OF SECONDARY EDUCATION, ASSAM

VERSUS

THE BOARD OF SECONDARY EDUCATION, ASSAM and 3 ORS.
A STATUTORY BOARD ESTD. UNDER THE ASSAM SECONDARY
EDUCATION ACT, 1961 REP. BY ITS CHAIRMAN HAVING ITS REGD. OFFICE
AT BAMUNIMAIDAN, GHY.-781021.

2:THE CHAIRMAN

BOARD OF SECONDARY EDUCATION
ASSAM
BAMUNIMAIDAN
GHY.-781021.

3:THE SECRETARY

BOARD OF SECONDARY EDUCATION
ASSAM
BAMUNIMAIDAN
GHY.-781021.

4:ASSAM STATE TEXTBOOK PRODUCTION and PUBLICATION CORPN. LTD.

A STATUTORY CORPORATION FLOATED BY THE GOVT. OF ASSAM REP.
BY ITS MANAGING DIRECTOR
G.N.B. ROAD
PANBAZAR



GHY.781001

Advocate for the Petitioner : MR.P MAHANTA

Advocate for the Respondent :

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the petitioner : Mr. P. Mananta.
Advocate.

For the Respondents : Mr. T. C. Chutia.
Standing Counsel, SEBA.

Date of Hearing : 31.05.2022, 14.06.2022

Date of Judgement : 20.06.2022

JUDGMENT & ORDER (CAV)

Heard Mr. P Mahanta, learned counsel for the petitioner. Also heard Mr. TC Chutia, learned standing counsel for the SEBA representing respondent Nos. 1,2 and 3.

2. The petitioner has preferred this writ petition challenging the order dated 14.02.2017 whereby the petitioner was imposed with the major penalty of reduction in rank.

3. **The brief facts leading to filing of the present writ petition can be**

summarized as follows:

- I. The petitioner was appointed as an Assistant Academic Officer by the respondent Board of Secondary Education, Assam (in short Board) on 01.04.1998.
- II. Subsequently, the petitioner was appointed as Controller of Examination by order dated 01.08.2009.
- III. Thereafter, by order dated 01.08.2011, the petitioner was posted as Academic Officer (Curriculum Reforms) on 09.08.2011.
- IV. The petitioner was regularized in the said post by an order dated 29.06.2012.
- V. The Service Regulation of the Board, 2016 provides the duties and functions of an Academic Officer, which includes curriculum, syllabus and textbooks development.
- VI. It is the case of the petitioner that subsequently he was entrusted with the responsibility of the Academic Officer, Mathematics, and Academic Officer, Social Science, in the year 2012 and 2014 respectively when the said two posts fell vacant.
- VII. Thereafter, on 04.07.2016, the petitioner was asked to show cause under Rule 9 of the Assam Services Discipline and Appeal Rules, 1964 read with Article 311 of the Constitution of India asking the petitioner to show cause why penalties prescribed under Rule 7 of the Assam Services Discipline and Appeal Rules, 1964 (in short Rules 1964) shall not be inflicted upon him.

VIII. In the said show cause notice, five charges were made against the petitioner containing five statements of allegations.

IX. Subsequent to such show cause, the petitioner by his communication dated 01.08.2016 requested the Secretary of the Board to allow him to inspect certain documents related to the enquiry, though he filed his reply along with his communication, denying the allegations made against him.

X. Subsequent to this, the impugned order dated 14.02.2017 was issued, whereby, the petitioner, who was under suspension was re-instated in the service with immediate effect, however, he was de-graded to the post of Assistant Academic Officer.

XII. The period of suspension of the petitioner was regularized as on duty for all purposes. By the said order the petitioner was warned not to repeat such type of negligence in duty in future. Being aggrieved, this present writ petition is filed.

3. **Mr. P. Mahanta, learned counsel for the petitioner assails the impugned order on the following counts:**

I. The procedure mandated under Rule 9 of the Assam Services (Discipline and Appeal) Rules 1964 (in short Rule, 1964) has not been followed.

II. There is complete violation of Rule 9(2) of the Rules 1964 as no list of witnesses and no list of documents were furnished with the show cause notice.

III. There is further violation of Rule 9 (6) of the said Rule as no formal

enquiry was conducted, the petitioner was not asked to participate in any enquiry, no witnesses were allowed to be cross-examined, no witness was allowed to be led in support of the case of the petitioner and no defense assistance was allowed. Therefore, the entire proceeding was vitiated, submits Mr. Mahanta, Learned Counsel. In support of such contention, Mr. Mahanta relies on the decision of the Hon'ble Apex court ***State of Uttar Pradesh and others –Vs- Saroj Kumar Sinha*** reported in ***2010 2 SCC 772***.

IV. The allegation made in the show cause notice dated 04.07.2016 cannot be treated to be act of misconduct inasmuch as bare perusal of the allegations so made reflects no misconduct on the part of the petitioner. Therefore, no proceeding could have been initiated against the petitioner. In support of such submission, Mr. Mahanta relies on the decision of the Hon'ble Apex Court in ***Union of India Vs. J Ahmed*** reported in ***1979 2 SCC 286***.

V. The findings of the authority are based on no evidence and without such evidence, the petitioner could not have been penalized in absence of any admission in his reply dated 01.08.2016. To buttress such argument, he relies on the decision of Hon'ble Apex Court in ***M.V Bijlani Vs. Union of India*** reported in ***(2006) 5 SCC 88***.

VI. The enquiry report has not been served upon the petitioner and such mistake on the part of the Board is fatal. In support of such contention, Mr. Mahanta relies on the decision of Hon'ble Apex Court in ***Union of India and Others –Vs- Mohd. Ramzan Khan*** reported in ***1991 1 SCC 588*** and in ***Managing Director, ECIL, Hyderabad and Others –Vs-***

B. Karunakar and Others* reported in **1993 4 SCC 727.*

VII. On merit also, the allegations and the erroneous printing in the textbook involved many people including the editor of the books, reviewers, translators, proof readers etc. and the petitioner was only in-charge of such publication. Therefore, when so many people are involved, the petitioner could not have been singled out and been punished. In support of such contention, he relies on the decision of the Hon'ble Apex Court in ***Bongaigaon Refinery Vs. Girish Ch. Sarma* reported in **2007 7 SCC 206.****

VIII. The last submission of Mr. Mahanta is that one of the persons who was also involved in the process of publication was made one of the enquiry officer and thereof entire proceeding is vitiated by bias.

4. The Board has filed an affidavit-in-opposition. The case of the Board can be summarized as follows:

I. The petitioner was entrusted with the responsibility of coordinating in preparing the manuscripts of Social Science textbook and reviewing the same engaging experts.

II. The mistakes are so glaring that it cannot be accepted from a responsible officer like the petitioner.

III. Since the mistakes were glaring, the Board on instruction from the Secretary to the Government of Assam, Education (Secondary Department), appointed one enquiry officer to enquire into the matter of erroneous printing of social science textbook of Class-X.

IV. The said enquiry officer conducted an enquiry and submitted his report. Such report reveals that the petitioner was called for by the Enquiry Officer and on verbal query, the petitioner himself confessed that the photograph of Netaji Subhash Chandra Bose was downloaded from internet and was pasted before finalization of computer ready copy (CRC) of manuscripts and he could not properly identify the photograph of Netaji Subhash Chandra Bose. Therefore, the petitioner cannot allege that due opportunity of hearing was not given to him.

V. As the show cause notice dated 04.07.2016 containing statements of allegation and each of the allegation itself is a document, it was not necessary to furnish any document or witness to prove the same. On the receipt of the application by the petitioner for inspection of report, the petitioner was duly allowed to inspect the report which is discernible from the reply of the petitioner dated 01.08.2016.

VI. To examine the reply filed by the petitioner to the show cause notice dated 04.07.2016 and to carry out final enquiry, the matter was placed before the Administrative Committee meeting on 10.08.2016, which was approved by the Board in its meeting held on 09.09.2016. As per recommendation of the Administrative Committee, two persons were entrusted to enquire into the matter.

VII. The said committee examined the Enquiry Report submitted earlier by One Man Enquiry Committee along with the show cause reply filed by the petitioner, and thereafter the said two committee members submitted its own report.

VIII. The said report was placed before the Board and the Board in its meeting held on 04.10.2016 after thread bare discussion, unanimously decided to reinstate the petitioner and degrade him to the post of Assistant Academic Officer.

IX. Subsequently, on the basis of such decision the Secretary issued the order dated 14.02.2017 which is put under challenge in the present writ petition.

5. **Submission of Mr. T C Chutia, learned counsel for SEBA:**

I. As per regulation 6.7 of the Service Regulation of the Board, 2016 an Academic Officer is entrusted with the duties to look after amongst other, the activity of curriculum, syllabus and textbook.

II. The error crept in the Social Science textbook of Class-X clearly reflects the failure on the part of the petitioner. Such errors are glaring and created uproar in the State of Assam.

III. The petitioner had admitted his guilt before the enquiry officer appointed to have a preliminary enquiry and therefore there is no further requirement of having a regular enquiry by leading evidence etc.

IV. Mr. Chutia, learned counsel further submits that the writ petition is also not maintainable for the reason that the petitioner is having alternative remedy of appeal under Rule 15 of the Rules, 1964. Therefore, this writ petition is not maintainable.

6. Countering such argument, Mr. Mahanta submits that principle of natural

of justice has been violated and the Rules procedural safeguard provided to the petitioner under the Rules 1964 has been violated. Therefore, alternative remedy shall not be a ground in the present case inasmuch as such proceeding was held without jurisdiction. In support of his contention, he relies on the decision in ***Harbanslal Sahnia and Another –Vs- Indian Oil Corporation and Ors.*** reported in ***(2003) 2 SCC 107***. He further submits that as the matter has already been admitted, the question of maintainability may not be taken up at this stage when the pleading has also been completed.

7. I have given anxious consideration submissions made by the learned counsels for the parties.

8. Law is by now well settled that Departmental Enquiry and the punishment thereof, can be interfered in exercise of judicial review only when the order passed of proceeding was contrary to law or relevant factors were not considered or irrelevant factors were considered or the decision was one which no reasonable person would have taken or in violation of principles of natural justice or the procedure prescribed is not followed.

9. In the case in hand, it is an admitted position that the provision of Assam Services (Discipline and Appeal) Rules, 1964 is applicable. Therefore, the respondent Board can punish its employees only by following procedure as laid down in Assam Services (Discipline and Appeal) Rule'1964.

10. It is an admitted position that no formal enquiry as contemplated under Rule 9 (6) of the Assam Services (Discipline and Appeal) Rule'1964 was conducted. No presenting officer was appointed, no defence assistance was allowed, no witnesses were examined or allowed or cross examined and the



Two Men Committee concluded, the guilt of the petitioner after considering the findings of the One Man Enquiry Committee and the show cause reply by the petitioner. The Two Committees cannot be treated as regular departmental enquiry as contemplated under the provision of Assam Services (Discipline and Appeal) Rule nor the petitioner had any opportunity to defend his case before these Committees.

11. The affidavit itself reveals that there was an alleged verbal admission on the part of the petitioner. The petitioner cannot be punished on the basis of such alleged admission of his guilt before the Committee, that too on the basis of verbal admission. The Two Men Committee cannot replace a regular Enquiry Committee as contemplated under Rules, 1964 inasmuch admittedly the procedure required and as contemplated under Rules, 1964 to impose major penalty were not followed, while examining the petitioner by both the Committees.

12. In the aforesaid backdrop, this Court is of the considered opinion that while imposing the punishment upon the petitioner, there were total procedural lapse inasmuch as violations of principle of natural justice and the violation of Assam Services (Discipline and Appeal) Rules, 1964 more particularly Rule 9(2) & 9(6).

13. It is no more res integra that the employers can have preliminary fact finding enquiry, can proceed it ex-parte and have report on it with the object of finding out real facts. The employer can also issue show cause/charge sheet on the basis of such material gathered through fact finding enquiry. However, the same can not replace a regular departmental enquiry when the delinquent is not a part of such enquiry nor the rules prescribed mandated for such enquiry

are followed.

14. Assam Services (Discipline and appeal) Rule'1964 is very much clear that departmental enquiry starts from issuance of charges under Rule 9 (2). Such Rule mandates that charge sheet must be definite and should set out the detail particulars in the shape of statement of allegations. The knowledge of the delinquent regarding fact finding committee and his recording of statement can not make such fact finding committee a regular Departmental enquiry as provided under the Rules.

15. Therefore, in the considered opinion of this Court, the Two man Enquiry Committee can not be treated as a regular departmental enquiry as contemplated under Rule 9 of the Assam Services (Discipline and appeal) Rule'1964 and therefore, the Committee had no sanction and authority under the said Rule'1964 to decide the misconduct alleged to have been committed by the petitioner and recommend penalty to be imposed upon the petitioner. For the same reasoning, the Board had committed illegality by inflicting the punishment upon the petitioner on the recommendation of the Two Men Enquiry Committee.

16. Now let this Court deal with the argument of Mr. Chutia, learned counsel regarding alternative remedy. It is well settled that such principle an self imposed principle of restriction by High Courts that when an effective, efficacious alternative remedy is available, it will not normally exercise its jurisdiction. However, it has consistently been held that it can not operate as a restraint, at least in three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or

proceedings are wholly without jurisdiction or the vires of an Act is challenged. Such finding is gets support from the thedecision of the Hon'ble Apex Court in **Whirlpool Corporation vs. Registrar of Trade marks, Mumbai & Ors. Reported in (1998) 8 SCC 1.**

17. The Ho'ble Apex Court in **Harbanslal Sahnia v Indian Oil Corpn. Ltd, reported in 2003-2-SCC-107**, held that in an appropriate case, inspite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

18. In the case in hand admittedly, the principles of natural justice as contemplated under Rule 9 of the Rules'1964 and under Article 311 of the Constitution of India were not followed in asmuch as the penalty was imposed based on the report of an Enquiry Committee, who had no sanction and authority under Assam Services (Discipline and appeal) Rule'1964 to recommend penalty, the same being not a departmental enquiry committee as contemplated under the said Rules'1964. Therefore, in the given facts and circumstances of the case and in view of settled proposition of Law, the argument of Mr. Chutia, learned Counsel is rejected.

19. Though Mr. Mahanta, learned Counsel urged upon the merit of his defence case and that there was no misconduct on the part of the petitioner, this Court is of the considered opinion that the merit of the allegation, in the given factual background cannot and should not be determined in the present proceeding inasmuch as it is well settled that Disciplinary Authority is the ultimate fact

findings authorities and are having exclusive power to consider the evidence and counter evidence. They are vested with the power to impose appropriate punishment as per extant rule on the basis of magnitude and gravity of misconduct.

20. In the case in hand, the disciplinary proceeding was not even continued except issuing a show cause notice. In that view of the matter, the points raised by the learned counsel for the petitioner may very well be taken note of by the respondent authorities, if they still want to continue with such Disciplinary Authority. The writ Court in exercise of its judicial power cannot assume the function of Disciplinary Authority. In that view of the matter, this Court is not inclined to adjudicate upon the merit inasmuch as to determine whether in the given facts and circumstance the petitioner has committed misconduct, will require what was the role of the petitioner in publishing those documents and such factual determination cannot be made in the present litigation, more so in view of the fact that the respondent authorities had taken a specific stand that petitioner was solely responsible for such determination.

21. For reasons discussed herein above, the impugned penalty of reduction in rank inflicted upon the petitioner is set aside and quashed. The petitioner be granted all the benefits in terms of his position as on the date of imposition of penalty, if any accrued during the intervening period. So far relating to back wages that the petitioner may claim, be determined by the Board by way of a speaking order and as per law.

22. While setting aside the impugned penalty, it is made clear that the employer shall be at liberty, if so advised to proceed with the enquiry afresh. It is further made clear that this Court has not expressed any opinion on merit of claim



either of the petitioner or of the employer.

23. Accordingly, this writ petition is allowed as indicated hereinabove. The Parties to bear their own costs.

JUDGE

Comparing Assistant