(2010) 09 SIK CK 0007

Sikkim High Court

Case No: Writ Petition (C) No. 25 of 2010

Shri Jeewan Pradhan		APPELLANT
	Vs	
The State of Sikkim		RESPONDENT

Date of Decision: Sept. 30, 2010

Hon'ble Judges: P.D. Dinakaran, C.J; Sonam Phintso Wangdi, J

Bench: Division Bench

Judgement

P.D. Dinakaran, C.J.
The Petitioner who was working as a Deputy Superintendent of Police in the Department of Sikkim Police, has challenged the impugned proceedings dated 03.08.2009 of the Government of Sikkim, Department of Personnel, Administrative Reforms and Training, whereunder the Governor has imposed the penalty of compulsory retirement under Rule 3(xiii) of the Sikkim Police Force (Discipline and Appeal) Rules, 1989 with effect from 03.08.2009, pursuant to a disciplinary action initiated against him.

2. The Petitioner by his representation dated 18.05.2007 addressed to the Commissioner-cum-Secretary, Department of Personnel, Administrative Reforms and Training, Government of Sikkim sent through proper channel had requested for voluntary retirement from service with effect from 17.08.2007. The Respondent No. 2 instead of considering the said request, initiated a disciplinary proceeding against the Petitioner for certain misconducts and also passed an order of suspension pending such disciplinary proceedings which ultimately culminated into this impugned proceedings dated 03.08.2009.

3. The Charges leveled against the Petitioner are as follows:

(i) that he has availed leave during the period from 03.02.2007 to 09.03.2007 without prior sanction, which attracts Rule 4(4) of the Sikkim Government Service (Leave) Rules, 1982;

(ii) that he remained absent beyond 09.03.2007 unauthorizely which is a violation of Rule 4(4) of the Sikkim Government Service (Leave) Rules, 1982 and Rule 3(1) of Sikkim Government Service (Conduct) Rules, 1981;

(iii) that the Petitioner had conducted an indoor meeting with members of a political party in the house of his brother Mr. Kishore Pradhan at Rongli Bazar on 16.05.2007, violating Rule 6(i) of Sikkim Government Service (Conduct) Rules, 1981; and

(iv) that the Petitioner during his suspension period reportedly joined a political party (SHRP) and held the responsibility of office bearer of the party as President, East District Unit of the party in the month of December, 2007.

4. The findings of the Inquiring Authority is that except for the first and fourth charges the other two charges were not proved.

5.1 Even though the Final Report dated 04.02.2009 states that the first charge is proved, but from the records we find that the leave applied for by the Petitioner for the period from 03.02.2007 to 09.03.2007 was not routed through proper channel which resulted in violation of Rule 4(4) of the Sikkim Government Service (Leave) Rules, 1982.

5.2 The background of the said leave application reveals that the Petitioner was constrained to go on leave during the said period for the treatment of his wife Mrs. Lua Pradhan, at Vellore, Tamil Nadu, which necessitated him to send the leave by fax. If that be the case, the Respondents could take a lenient view with effect from Charge No. 1.

6.1 With regard to the fourth charge, the Petitioner fairly admits the same and tenders his regret.

6.2 In the light of the above facts, Mr. A. Moulik, learned Senior Counsel submits that the Government ought to have accepted the Petitioner''s application for voluntary retirement and pass appropriate orders instead of terminating his service by imposing the penalty of compulsory retirement.

7. In our considered opinion, even though the case of the Petitioner appears to be convincing, it may not be proper for this Court to interfere in such matters dealing with the uniform forces.

8. However, Mr. A. Moulik, learned Senior Counsel with the approval of the Petitioner, who is also present in the Court, submits that he may be permitted to withdraw this writ petition and approach the Government to convince them for passing an order of voluntary retirement instead of an order of compulsory retirement.

9. Of course, the learned Additional Advocate General submits that if the Petitioner approaches the Government, the Government may exercise its discretion and pass appropriate orders at their end.

10. In the circumstances, suffice it to permit the Petitioner to withdraw the above writ petition and to approach the Government for appropriate relief within four weeks from the date of receipt of this order; and on receipt of such representation, the Government shall pass appropriate orders within 12 weeks thereafter. If the Petitioner is still aggrieved, he is at liberty to work out his rights in the manner known to law.

In view of the above facts and circumstances of the case, the writ petition stands disposed of. However, no orders as to cost.