

(2006) 08 GAU CK 0012

Gauhati High Court (Imphal Bench)

Case No: WP (C) No. 1417 of 1999

Manipur Electronics
Development
Corporation and Others

APPELLANT

Vs

Manipur Human Rights
Commission and
Another

RESPONDENT

Date of Decision: Aug. 30, 2006

Acts Referred:

- Protection of Human Rights Act, 1993 - Section 17, 19, 2, 34, 39

Citation: (2006) GLT 42 Supp

Hon'ble Judges: T.N.K. Singh, J

Bench: Single Bench

Advocate: H. Genananda, for the Appellant; Th. Joy Raj, for the Respondent

Final Decision: Allowed

Judgement

T.N.K. Singh, J.

Heard Mr. Genananda, learned Counsel for the Petitioners and Mr. Th. Joy Raj, learned Counsel appearing for the Respondents.

2. By this writ petition, the Petitioners are assailing the notices dated 7.8.1999 and 29.10.1999 issued by the learned Manipur Human Rights Commission asking the Petitioner No. 2, Manager (Admn/Production) to appear in person or through authorized agents in connection with the Complaint case No. 90 of 1999 filed by the Respondent No. 2, Shri Laishram Chaoba Singh.

3. The precise fact leading to the filing of the present writ petition is that the Petitioner No. 1 "The Manipur Electronics Development Corporation" is a body corporate registered under the Companies Act, 1956 having perpetual succession with a common seal. It was

established with the object stated in the Memorandum of Association. As per Article 118 of Article of Association of the Corporation, management and general administration of the Corporation are vested in the Board of Directors and Article 119 gives certain specific powers enumerated therein, to the Director and Managing Director who is the Executive Head of the Corporation.

4. The service conditions of the employees of the corporation/Petitioner No. 1 are governed and regulated by the Service Rules framed and published in the year, 1998. Chapter IV of the Manipur State Electronics Development Corporation Ltd., Service Rules, 1998 (for short Service Rules, 1998) deal with the conduct, discipline, suspension and appeals of the employees of the Petitioner No. 1/corporation. Rule 21 of the Service Rules, 1998 specifically stated that every employee shall conform to and abide by these Rules and shall observe, comply with and obey all orders and directions which may from time to time be given to him or/her by any person or persons under whose jurisdiction, superintendence or control him/her may for the time being be placed. Rule 32 of the Service Rules, 1998 more fully mention the "act and omission constituting misconduct". In Rule 34 of the Service Rules, 1998 Disciplinary Authorities are specified in Schedule A or any other authorities higher than the Disciplinary Authority. Admittedly, Respondent No. 2, Shri Laishram Chaoba Singh is an employee of the category III of the Petitioner No. 1/corporation and the Managing Director is the Disciplinary Authority and the Board of Directors is the Appellate Authority. Under Rule 48 of the Service Rules, 1998 any employee, against whom, any order imposing upon the employee any of the penalty specified in the Rules or order of suspension has been issued shall have the right to appeal against any such orders issued by the superior authority which injuriously affect the interest of the employee, within 1 (one) month of the date of such order. For easy reference Rule 48, 49 and 50 of the Service Rules, 1998 are quoted hereunder

48. Right to Appeal:

An employee, against whom, any order imposing upon the employee any of the penalties specified in Rules or Order of Suspension has been issued shall have right to appeal against any such order issued by a Superior Authority, which injuriously affects the interest of the employee, within one month of the date of such order.

49. Appellate Authorities:

An appeal shall lie against any order passed by any Competent Authority to the Appellate Authority as specified in Schedule "B" Annexed to these Rules.

50. Conditions which an Appeal should satisfy:

Every appeal shall comply with the following requirements:

(i) It shall be written in English or if not written in English, be accompanied by a translated copy in English and shall be signed;

- (ii) It shall be couched in polite and respectful language and shall be free from unnecessary padding or superfluous verbiage;
- (iii) It shall contain all material statements and arguments relied on, and shall be complete in itself;
- (iv) It shall specify the relief desired;
- (v) It shall be submitted through the proper channel.

5. Kinds of leaves of the employee of the Petitioner No. 1/corporation are mentioned in Rule 62 of the Service Rules, 1998. According to Rule 64 employees who desire to obtain leave shall apply in writing to the competent authority and Rule 79 deal with the circumstances under which extra ordinary leave may be granted to an employee under exceptional circumstances that no other leave is due to the employee. For easy reference, Rule 62, 64 and 79 of the Service Rules, 1998 is reproduced below:

62. Kinds of Leave:

Subject to the provisions of these Rules, the following kinds of leave may be sanctioned to an employee, irrespective of his/her grade:

- (a) Casual Leave
- (b) Special Casual Leave
- (c) Earned Leave
- (d) Sick Leave
- (e) Extra-ordinary Leave
- (f) Maternity Leave
- (g) Study Leave.

64. Application for leave:

An employee who desires to obtain leave shall apply in writing in the competent authority. Such application for casual leave should be made at least one day in advance and for other leave, application shall be made not less than 15 days before the date from which the leave is to commence, except in urgent cases of unforeseen circumstances including illness when it is not possible to do so. If the leave asked for is granted, an order showing the date of commencement of the leave and the date on which the employee will have to resume duty shall be issued to him/her.

79. Extra ordinary leave:

(a) Extra ordinary leave may be granted an employee under exceptional circumstances, when no other leave is due to an employee.

(b) The duration of extra ordinary leave shall not exceed three months during the entire period of an employee's service.

(c) The competent authority may grant extra ordinary leave in combination with or in continuation of leave of any kind other than casual leave admissible to the employee.

(d) Extra ordinary leave shall be leave without pay and allowances and the period spent in such leave shall not be counted for increments:

Provided that in the cases the competent authority is satisfied that the leave taken was on account of illness for treatment of a prolonged nature or for any other reason beyond the employee's control the competent authority may direct that the period of extra ordinary leave may count for increments.

6. The Respondent No. 2 is a Grade-IV skilled worker of the Petitioner No. 1/corporation. On 17.10.1998 14 (fourteen) employees including Respondent No. 2 of the corporation were found unauthorizedly absent from office as per the report submitted by the Sectional Heads. As the Corporation did not want to be harsh with each absentees/employees, opportunities were given to all the absentees including Respondent No. 2 to submit casual leave applications for their absence on 17.10.1998. Accordingly, all the fourteen absentees except Respondent No. 2 and one Shri L. Birendra Singh submitted casual leave applications and their extra ordinary leave were adjusted against the earned leave. Surprisingly, despite several chances given to the Respondent No. 2 and the said Shri L. Birendra Singh they did not submit any application for adjustment of their leave against earned leave. Because of such compelling circumstances, Petitioner No. 1/corporation issued an order dated 3.6.1999 for granting extra ordinary leave to Respondent No. 2.

7. The Respondent No. 2 filed an application dated 3.6.1999 against the said order dated 3.6.1999 for granting extra ordinary leave to the Manager/Admn of the Petitioner No. 1/corporation for cancellation of the said order dated 3.6.1999. The Petitioner No. 2 after due consideration of the said application filed by Respondent No. 2 passed an order being No. 2/1/15-04 (Vol-I): 026 dated 8.6.1999 that "the application of Shri L. Chaoba Singh, Skilled Worker requesting to cancel the EOL awarded to him was considered by the authority and declared that the request was not accepted."

8. Being aggrieved by the said order of the Petitioner No. 2 dated 8.6.1999 for cancelling the said application filed by the Respondent No. 2, Respondent No. 2 made a complaint being Complaint Case No. 90 of 1999 for holding an inquiry u/s 17 of the Protection of Human Rights Act, 1993 for violation of the human rights before the learned Manipur Human Rights Commission. The learned Commission was pleased to issue the impugned notices dated 7.8.1999 and 29.10.1999 to the Petitioner No. 2 to appear before the Commission for hearing on the matter.

9. The Petitioner/corporation and Petitioner No. 2 filed the present writ petition as stated above for assailing the said impugned notices dated 7.8.1999 and 29.10.1999 on the interalia ground that:

(1) In the peculiar facts and circumstances of this case, the Manipur Human Rights Commission should not have admitted the complaint case No. 90 of 1999 filed by the Respondent No. 2;

(2) There is a specific remedial procedure prescribed in the said Service Rule, 1998; and

(3) There is no violation of human rights of Respondent No. 2 in the context of the present case.

10. Mr. Genananda, learned Counsel for the Petitioners forcefully put up the case of the Petitioners that granting of EOL (Extra ordinary Leave) to Respondent No. 2, according to Service Rules, 1998 cannot be termed as violation of human rights and by no stretch of imagination granting of EOL cannot be equated to violation of human rights. On the spectrum of human rights, only the topic and rights which are the very essence of human right would be the human right violation of which the Manipur Human Rights Commission would entertain the complaint under the Protection of Human Rights Act, 1993. According to Mr. Genananda, learned Counsel for the Petitioners, the Manipur State Human Rights Commission would accept the complaint for holding inquiry u/s 17 of the Protection of Human Rights Act, 1993 for violation of the human rights, such as "inhuman Existence", "Freedom of Religion", "Religion", "Right to Privacy and Information", "Legal Aid", "Clean and Wholesome Environment", "Custodial Violence", "Torture", "Terrorism", "Gangsterism", "Prisoner's, right/ prison justice", "Capital punishment" "Atrocities against Women", "Child Abuse", "Right of Child", "Atrocities of Scheduled castes and Scheduled Tribes", "Rights of Workers", "Right of Minorities", "Right of Juveniles". He further submits that by no stretch of imagination, liking and disliking of a tupe of leave granted to an employee by the employer, could not come within the category of human right of the employee defined in Section 2(d) of the Protection of Human Rights Act, 1993. The Manipur Human Rights Commission is no doubt a body sui juris created by the statute made by the Parliament for examination and investigating the question and complaint relating to violation of human rights, as also the negligence on the part of any public servant in preventing such violation. The Apex Court in [Paramjit Kaur Vs. State of Punjab and Others](#), held that human rights commission is a body sui juris created under the Central Act made by the Parliament for examining and investigating the question and complaints relating to violation of human rights and the concept of sui juris is applied quite often with reference to the resolution of disputes in the context of International law. When the conventions formulated by the compacting nations do not cover any territorial or any subject topically then the body to which such power to arbiter is entrusted to act sui juris, that is on its own and not under any law. This being the situation of law settled by the Apex Court, in Paramjit Kaur v. State of Punjab and Ors. (supra), this Court is of the considered view that the Human Rights Commission should have applied their minds as

to whether granting of EOL to the Respondent No. 2, according to the said Service Rules would amount to violation of the human rights before issuing the said notice mechanically. Further, this Court is of the considered view that granting of EOL to the Respondent No. 2 would not amount to violation of human rights defined in Section 2(d) of the Protection of Human Rights Act, 1993.

11. According to the Service Rules, 1998 there is a remedy for filing appeal available to the Respondent No. 2 against the order for granting EOL to him. Over and above, the said Service Rules, 1998 is also binding to the Respondent No. 2. The Apex Court in [I.N. Subba Reddy Vs. Andhra University and Others](#), held that "condition of service" regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it any matter like pension etc. The Apex Court in that case held that termination of service or action taken up according to the conditions of service is not illegal and as such, action taken up by the Syndicate of the Andhra University for taking up action of termination of service of the Appellant/professor from service, according to the conditions of service is valid. Para 13 of the AIR in Subba Reddy v. Andhra University and Ors. (supra) reads as follows:

13. Clause (d) of Section 19 of the Act confers power on the Syndicate to suspend or dismiss a teacher of the University (subject to such ordinances as may be made in this behalf) which obviously implies a power to take action for misconduct. Clause (C) (iii) of Section 19 of the Act empowers the Syndicate to fix the emoluments of the teachers of the University and to define their duties and conditions of service subject to such statutes as may be prescribed in this behalf u/s 39 (f). As explained by this Court in [State of Madhya Pradesh and Others Vs. Shardul Singh](#), the expression "conditions of service" means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it, in matters like pension etc. Section 39(f) of the Act lays down that subject to the provisions of the Act, the statutes (which can be framed by the Senate which is the supreme governing body of the University) may provide for the classification and the mode of appointment of the teachers of the University. It does not say that statutes can be made laying down the terms and conditions of service of the teachers nor does it put any fetter on the power of the Syndicate to define the terms and conditions of service of the teachers including the condition relating to termination of their services otherwise than by way of dismissal or removal. It follows, therefore, that the power conferred by Clause (c) (iii) of Section 19 of the Act is a power quite distinct and apart from the power to suspend or dismiss a teacher for misconduct and includes within its ambit power to lay down a condition relating to early termination of service of a teacher without casting any aspersion on him by giving him a notice for a specified period or on payment to him of salary and allowances in lieu of the notice although he may be eligible to continue in service upto a specified age. Section 34 of the Act laws down that every salaried officer and teacher of the University shall be appointed under a written contract. Section 42 of the Act inter alia empowers the Syndicate to make ordinances in consultation with the Academic Council with regard to all

matters which by the Act or by the statutes may be provided for by the ordinances.

The Apex Court is of the similar view in [Prafulla Kumar Swain Vs. Prakash Chandra Misra and Others](#). This Court is of the considered view that the authority prescribed in the said Service Rules, 1998 is the authority to grant EOL to the Respondent No. 2.

12. Since the Service Rules, 1998 is binding to the Respondent No. 2, he is to take necessary recourse/remedy against the said order of the Petitioner No. 2 dated 3.6.1999 and 8.6.1999 in the manner prescribed in the Service Rules, 1998. The Apex Court in [Hukam Chand Shyam Lal Vs. Union of India \(UOI\) and Others](#), held that "it is well settled that where the power is required to be exercised by certain authority in a certain manner/certain way, it should be exercised in that manner or not at all, and all other mode of performance are necessarily forbidden." The Respondent No. 2 who is abide by the Service Rules, 1998 has to seek remedy in the manner prescribed in the Service Rules, 1998 against the said order of the Respondent dated 3.6.1999 and 8.6.1999, but he approached the learned Manipur Human Rights Commission by filing the complaint case being No. 90 of 1999.

13. Having regard to the above discussion, this Court is of the considered view that an interference to the impugned proceeding of the complaint case No. 90 of 1999 of the Manipur Human Rights Commission, the impugned notices dated 7.8.1999 and 29.10.1999 issued by the Manipur Human Rights Commission is called for. Accordingly, writ petition is allowed, the impugned proceeding of complaint case No. 90 of 1999 of the Manipur Human Rights Commission and impugned notices dated 7.8.1999 and 29.10.1999 issued by the Manipur Human Rights Commission are hereby set aside.

Parties are to bear their own costs.