(2003) 09 GAU CK 0029

Gauhati High Court

Case No: W.A. No. 292 of 2002

State of Mizoram and Others	APPELLANT
Vs	
Vijaya Lakshmi Rai	RESPONDENT

Date of Decision: Sept. 2, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2004) 1 GLR 46

Hon'ble Judges: P.P. Naolekar, C.J; A.H. Saikia, J

Bench: Division Bench

Advocate: A. Dasgupta, G.A, for the Appellant; B.C. Pathak, M. Pathak and D. Baruah, for the Respondent

Final Decision: Allowed

Judgement

P.P. Naolekar, C.J.

The facts of the case in brief are that the respondent herein Smti Vijaylakhsmi Rai during her tenure as Administrative Officer in Lallen and Tuipuibveri Group Centre in the year 1982-86 and 1986-88 has not deposited a sum of Rs. 1,02,194.16 and Rs. 5,66,583.33 respectively out of the sale proceeds of the rice of these two group centres and thus according to the State has misappropriated the said amounts. On the basis of the report dated 8.3.1990 submitted by the Deputy Commissioner, Aizawl State has issued a charge sheet. Enquiry Officer was appointed and enquiry proceedings were taken up against the respondent. In spite of several notices and WT messages served on the respondent she did not appear in the enquiry and the enquiry officer proceeded ex parte and found that the charges framed against the respondent are proved. A copy of the enquiry report was served on the respondent. The respondent was directed to pay the misappropriated amount within a period of one month by letter dated 31.3.1994, which was received by the respondent on 13.4.1994, but she did not deposit the amount and thereafter order of dismissal from service was issued on 5.11.1995. Statutory appeal was filed before the

appellate authority, which was dismissed on 20.5.1996. Being aggrieved by the order of dismissal, the respondent/petitioner filed a writ petition (WP (C) No. 20/98) before the learned Single Judge. It is submitted by the petitioner/ respondent that the short fall attributed to her was not due to misappropriation but the same occurred due to natural calamities and on account of the fact that the rice had been issued to the villagers on humanitarian grounds, however, she was the only person dismissed from service for such alleged misappropriation, which is quite arbitrary and discriminatory inasmuch as her colleague one Lalringsanga Colney was also dismissed from service on the allegation of misappropriation was however reinstated with some other minor penalties by the appellate authority, whereas in the case of the petitioner/respondent the appellate authority without having regard to the aforesaid peculiar nature and extenuating circumstances of the case/confirmed her dismissal from service. On the other hand it has been alleged by the State that Lalrinsanga Colney was given the opportunity to deposit the amount defalcated in extended time he deposited the whole amount, hence the authority reduced the penalty of dismissal from service to reduction to a lower stage in the time scale of pay by one stage and reinstated him in service/but so far the petitioner is concerned, she had not taken any extended opportunity for depositing the amount, therefore, the appellants justified the action taken in her case. The petitioner/respondent has challenged the ex parte proceeding on the basis of her inability to obtain permission to leave the place of duty.

2. The learned Single Judge has considered the case of the petitioner and by judgment and order dated 5th April, 2002 held that the ex parte enquiry taken against the petitioner was neither illegal nor unjust. The learned Single Judge has also reached to the conclusion that in spite of opportunity given to the petitioner/respondent she had not deposited the amount totalling Rs. 6,68,777.49, which she was under duty bound to refund. But the learned Single Judge has held that recovery of an amount of Rs. 71,205 from the petitioner without finalizing what amount was liable to be paid by the petitioner was illegal. After finding the disciplinary enquiry to be in accordance with law and the petitioner/respondent''s liability to pay back the amount defalcated, the learned Single Judge has proceeded with the quantum of punish and in paragraph 8 of the impugned judgment held thus :

"8. However, coming to the allegation of the petitioner that similarly situated person, namely Shri Lalringsanga, who was dismissed form service on the similar allegation of misappropriation, was subsequently reinstated with some minor penalty by the appellate authority, nothing substantial could be submitted by the respondents to convince this Court as to why the scale of punishment in both these cases is strikingly different. One of the reasons, if I may point out, assigned by the respondents for doing away with the penalty of dismissal imposed on Shri Lalringsanga is that he offered to repay the dues pending with him. Irrespective of the fact whether the petitioner had made such an offer or not, the fact remains that

since the respondent No. 2 thought it fit to reinstate Sri Lalringsanga on the condition of his making payment of the dues pending with him, there was no justification for not treating the present petitioner in the similar way, when the petitioner is, admittedly, a woman living with two of her school going children on being deserted by her husband."

3. On the basis of the aforesaid findings the learned Single Judge set aside the order of dismissal and instead thereof gave direction for imposition of same penalty as was imposed in the case of Lalringsanga Colney. The learned Single Judge gave further "direction that the respondent No. 2 shall after deduction of an amount of Rs. 71,205 from the total misappropriated amount of Rs. 6,68,777.49 pass necessary order directing monthly deductions from the petitioner''s pay and allowances to the extent of 50 per cent of the salary that she may receive. In short, the learned Single Judge has reduced the penalty from dismissal to that of reduction to lower stage in the time scale of pay by one stage and recovery of misappropriated amount. The learned Single Judge has strangely directed that the amount of Rs. 71,205 which has already been deducted from the salary of the petitioner would be adjusted towards the misappropriated amount, which was contrary to the finding reached by the learned Single Judge that such recovery was illegal as there is no finalisation as to what amount the respondent was liable to pay.

4. The law in the matter of imposition of penalty is settled. The High Court''s jurisdiction to interfere with the punishment is extended only if the Court comes to the conclusion that the punishment imposed was in outrageous defiance of logic and was shocking. If the imposition of penalty is shockingly disproportionate to the misconduct alleged and proved and it shocks the conscience of the Court, only for these circumstances the court shall exercise its power of juridical review and substitute its own conclusion on penalty and impose some other penalty. In B.C. Chaturvedi Vs. Union of India and others, the Apex Court in para 18 stated thus :

"18. The High Court/Tribunal, while exercising the power of judicial review/cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Similar view was taken in Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, where the Apex Court has held that in the matter of punishment the Court will not intervene unless the punishment is wholly disproportionate.

5. The learned Single Judge has reduced the punishment only on the ground that other person, who is charged with misappropriation of amount, has been imposed with the penalty other than dismissal from service. There is apparent difference in

factual standing in these two cases, whereas in the matter of Lalringsanga Colney, he has deposited the entire defalcated amount, however, in the case of the petitioner she has not deposited the defalcated amount. In the matter of imposition of punishment, there cannot be fixed yardstick. Similarity in matter of punishment cannot be on the basis of similarity of misconduct alleged. While imposing punishment Authority may take into consideration various aspects, such as, circumstances in which the misconduct was committed, manner and nature of misconduct, the conduct of employee himself in his service carrier etc. There cannot be, as a matter of rule, equivalence in punishment on account of similarity in the nature of misconduct alleged. In any case, just because a lenient punishment has been imposed in case of Lalringsanga Colney, it cannot be a ground for imposition of lenient punishment on the respondent too, on the face of the finding that huge amount has been defalcated by the respondent. If the defalcation of the amount is dealt with leniency that will not be in the interest of public in general nor the administration. The defalcation of large amount is a grave misconduct and cannot be dealt with in a lenient manner. In our view, the change of punishment, in the circumstances, by the punishment as directed by the learned Single Judge, does not stand the scrutiny of the principle laid down by the Apex Court for exercising the power of judicial review in the matter of punishment. We, therefore, do not agree with the learned Single Judge, the interference with the imposition of punishment was wholly unwarranted. Accordingly, the judgment and order dated 5.4.2002 passed by the learned Single Judge is set aside and the appeal is allowed. However, in the facts and circumstances of the case there shall be no order as to costs.