



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 248 of 2021

Date of Decision: 17.10.2024

Shri. Senora Johny Areng
S/o Shri. David Shira
R/o Sunny Hills Council Complex,
New Tura, West Garo Hills District,
Meghalaya.

.....Petitioner

-Versus-

1. The Garo Hills Autonomous District Council, represented by its Secretary, Executive Committee, West Garo Hills, Tura.
2. The Chief Executive Member of Garo Hills Autonomous District Council, Tura.
3. The Principle Secretary to the Executive Committee Garo Hills Autonomous District Council, Tura.

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P.T. Sangma, Adv.
For the Respondent(s) : Mr. S. Dey, SC, GHADC
Ms. N. Rajee, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
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ii) Whether approved for publication
in press: Yes/No

J U D G M E N T

1. Heard Mr. P.T. Sangma, learned counsel for the petitioner who has submitted that the fundamental rights of the petitioner guaranteed under Article 14, 16 and 21 of the Constitution of India having been violated by the action of the respondents herein has prompted the filing of this instant application for issuance of a writ in the nature of mandamus, and/or certiorari and any other appropriate writ.

2. The learned counsel has also submitted that the petitioner was appointed as an employee of the Garo Hills Autonomous District Council (GHADC), Tura and at the relevant period, was functioning as a Lower Divisional Assistant on the strength of an order dated 16.01.2013 passed by the Secretary to the Executive Committee, GHADC.

3. In course of his service, the petitioner was served with a show cause notice dated 30.07.2021 issued by the Principal Secretary, GHADC with a direction to file a reply within 72 hours. In the said show cause notice addressed to the petitioner as President of the Non-Gazetted Employee Association (NGEA), it was alleged, inter alia, that he had instigated other non-gazetted staff members of the Council to gather in the office premises of the GHADC, Tura on 22.07.2021 in protest of the said authority, and that he had also made several statements with the intention to denigrate and defame the Administration and Officers of the GHADC.

4. The petitioner has then replied to the said show cause notice which was received by the respondent authorities on 01.08.2021,



refuting the charges made against him. However, the respondent authority in the Executive Committee meeting held on 05.08.2021 in the office chamber of the Chief Executive Member, GHADC/respondent No. 2 had inter alia, decided to terminate the services of the petitioner, the said decision being followed by the order dated 06.08.2021 whereby his services has been terminated.

5. The learned counsel has submitted that the action of the respondent authority is in gross violation of the accepted norms of service jurisprudence wherein an employee can be terminated only after proper disciplinary or departmental procedure has been followed. However, in the case of the petitioner no departmental proceeding has been initiated and as such, without the appointment of an Enquiry Officer who would conduct such enquiry in a proper manner, the termination of the services of the petitioner has been carried out arbitrarily and illegally.

6. The learned counsel has also submitted that apart from the show cause notice and suspension of the petitioner, seven other employees of the Council were also issued similar show cause for which a joint written reply dated 01.08.2021 was filed by them including the petitioner herein. It is to be noted that the seven other employees have been placed under suspension vide relevant order dated 06.08.2021 issued by the Principal Secretary to the Executive Committee, GHADC, Tura whereas, the petitioner vide a separate order dated 06.08.2021 (supra) has been terminated from service. Furthermore, as on date, all the seven employees referred to hereinabove have since been reinstated in service vide respective order of the Secretary to the Executive Committee, GHADC, Tura. One such order dated 22.03.2022 has been



brought on record by way of an additional affidavit by the petitioner wherein vide the said order one of the suspended employees named Henyvirth Ch. Marak, Forest Guard, Forest Department, GHADC was reinstated in service and directed to join office duty. This smacks of differential treatment to the petitioner, thereby violating his right of being treated equally with other similarly situated employees who were charged with the same offence.

7. The principle of natural justice having been violated, the petitioner is therefore before this Court with a prayer to set aside and quash the impugned termination order dated 06.08.2021, submits the learned counsel.

8. Per contra, Mr. S. Dey, learned Standing Counsel, GHADC appearing for all the respondents herein has submitted that the petitioner as President of NGEA was in the forefront of several protests, strikes and agitations against the authorities of the GHADC. The said show cause notice dated 30.07.2021 was issued upon the petitioner who was found to have indulged in activities unbecoming of an employee of the District Council when on 22.07.2021 in the midst of the COVID-19 pandemic lockdown he had instigated other employees to protest against the authorities, such activities being violative of the conduct expected from an employee of the Council.

9. The learned Standing Counsel has also further submitted that the Executive Committee has carefully considered the reply filed by the petitioner and has found out that the same was more of a challenge and counter allegation in nature, the same being directed at the authorities concerned. It is on this ground, the reply not being found satisfactory,



that the Executive Committee had decided to terminate the services of the petitioner.

10. The learned Standing Counsel has also submitted that the GHADC is not governed by the service rules of the State Government and/or the Central Government to make it applicable to its employees, and as such, there is no requirement of a formal disciplinary enquiry to be initiated. However, due opportunity was given to the petitioner to explain himself. As such, there is no violation of the principle of natural justice.

11. The learned Standing Counsel has also submitted that the petitioner is well aware that his employment is temporary in nature, for which the respondent authority has the right to terminate such temporary services at any point of time which was done so under the circumstances. Therefore, having lost faith in the conduct of the petitioner, his termination from service is found justified and there is no question of his reinstatement.

12. The learned Standing Counsel has cited the case of *Sirsi Municipality v. Cecelia Kom Frances Tellis*, reported in 1973(3) SCR 348 to say that in such case the Hon'ble Supreme Court has held that termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity however wrongful and illegal it may be. The reason is that dismissal in breach of contract is remedied by damages. The same principle was also followed in the case of *Executive Committee of U.P. State Warehousing Corporation Limited v. Chandra Kiran Tyagi*, (1970) 2 SCR 250 and also in the case of *Indian Airlines Corporation v. Sukhdeo Rai*, 1971 (2) SCC 192, further submits



the learned Standing Counsel.

13. In order to lay stress on the nature of employment of the petitioner and the consequences thereof, the learned Standing Counsel has also referred to the case of Abdul Motaleb v. Garo Hills District Council, Tura & Anr., AIR 1961 Assam 69 wherein at para 5 the Court has observed as follows:

“5. In this matter the petitioner does not contend that the State Government had anything to do either with the appointment or dismissal or had any control over the duties and activities of the person concerned. Therefore in our opinion Article 311 of the Constitution has no application and he could not invoke the aid thereof. Apart from what is stated above, we find nothing in the facts stated in the petition that there has been any violation of the principles of natural justice. The petitioner was an employee of the District Council and was asked to serve on a temporary basis. It is not contended either on his behalf that the post became either permanent or quasi-permanent and therefore the notice terminating his appointment could not be said to be invalid in the eye of law. The petition accordingly fails and is dismissed but without costs.”

14. Finding nothing wrong with the passing of the impugned order of termination of the services of the petitioner the learned Standing Counsel has submitted that this petition being devoid of merits is liable to be dismissed.

15. What is apparent from the materials on record and on consideration of the submission and contention made by the learned counsels for the rival parties is that the mode and manner in which the employment of the petitioner as an employee of the GHADC, Tura was terminated is under scrutiny herein.

16. The services of the petitioner have not been terminated



simpliciter, that is, because such employment is temporary in nature. Even if this is the case, adequate reasons for such termination have to be furnished to justify the action taken. However, the termination of the petitioner was based solely on the fact that on an apparent misconduct on his part, after show cause was called for to which he has accordingly replied, the reply found not satisfactory, he was thereafter terminated from his employment.

17. The learned Standing Counsel for the respondent/GHADC has not been able to show from the records that before the said termination order was passed the petitioner was subjected to a proper enquiry to allow the concerned authorities to come to a finding necessitating his termination. Though reliance was placed in the authority of the case of Abdul Motaleb(supra) to say that as far as the issue of termination from service of an employee of the GHADC vis-à-vis the case of an employee under the State or Union Government, is concerned, there cannot be any comparison as the provision of Article 311 of the Constitution of India will not be applicable to an employee of the GHADC, the ruling never suggested that the principle of natural justice as far as the applicability of the principles of service jurisprudence is concerned will not be applicable in matters of employment.

18. Be that as it may, the learned Standing Counsel has contradicted himself in this respect as it is very evident from the contents of the minutes of the meeting of the Executive Committee, the Apex body of the GHADC, held on 05.08.2021, which has been annexed as Annexure-4 in this petition, certain resolutions have been passed, one, being that the seven employees mentioned by the petitioner be placed under suspension, secondly, that the petitioner be terminated



from service, thirdly, that an Inquiry Committee for disciplinary action has been constituted with the Chairman and members named therein. Yet another resolution is the decision to adopt the Meghalaya Services (Discipline & Appeal) Rules, 2011.

19. What the above entails is that the Executive Committee is conscious of the fact that for the purpose of fair administration, a delinquent employee has to be subjected to a process of an enquiry before any action is contemplated to be taken against him or her. If such a process is made available to the seven employees who were served with similar show cause notices and who have jointly filed their reply along with the petitioner, then indeed the principle of natural justice as far as the petitioner is concerned has not been followed or applied.

20. Furthermore, to say that the GHADC is not required to follow the accepted norm of institution of an enquiry to examine a case of misdemeanor of an employee, the adopting of the Meghalaya Services (Discipline & Appeal) Rules, 2011 should not have been resorted to. It may be pointed out that as per Rule 9 of the said Rules of 2011, the procedure of how an inquiry is to be conducted has been laid down. This Rule is extracted herein as:

“9. Procedure for imposing penalties. - (9,1) Without prejudice to the provisions of the Public Servants (Inquiry) Act, 1850, no order imposing on a Government servant any of the penalties specified in rule 7 shall be passed except after an inquiry, held as far as may be, in the manner hereinafter provided.

(9.2) The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be hold. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Government servant, and he shall be required to



submit within such time as may be specified by the Disciplinary Authority, a written statement of his defence and also to state whether he desires to be heard in person. At the time of delivering the charges, the Disciplinary Authority shall invariably furnish to the Government servant a list of documents and witnesses by which each article of charges is proposed to be sustained.

Explanation - In this sub-rule and in sub-rule (3), the expression "the Disciplinary Authority" shall include the authority competent under these rules to impose upon the Government servant any of the penalties specified in rule 7.

(9.3) The Government servant shall, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records as he may specify, provided that such permission may be refused if, for reasons to be recorded in writing in the opinion of the Disciplinary Authority such records are not relevant for the purpose or it is against the public interest to allow him access thereto:

Provided that when a Government servant is permitted to inspect and take extracts from official records due care shall be taken against tampering, removal or destruction of records.

(9.4) On receipt of the written statement of defence, or if no such statement is received within the time specified the Disciplinary Authority may itself inquire into such of the charges as are not admitted or, if it considers it necessary so to do, appoint for the purpose a Board of inquiry or an Inquiring Officer.

(9.5) The Disciplinary Authority may nominate any person to present the case in support of the charges before the Authority inquiring into the charges (hereinafter referred to as the Inquiring Authority). The Government servant may present his case with the assistance of any other Government servant approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case, so permits.

(9.6) The Inquiring Authority shall, in the course of the inquiry consider such documentary evidence and take such oral



evidence as may be relevant or material in regard to the charges. The Government servant shall be entitled to cross-examine witnesses examined in support of the charges and to give evidence in person, and to adduce documentary and oral evidence in his defence. The person presenting the case in support of the charges shall be entitled to cross-examine the Government servant and the witnesses examined in his defence. If the Inquiring Authority declines to examine any witness or to admit any document in evidence on the ground that his evidence or such document is not relevant or material, it shall record its reasons in writing.

Explanation - If in the opinion of the Inquiring Authority the proceedings of the enquiry establish any article of charge different from the original article of the charge, it may record its findings on such article of charge;

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted that facts on which such article of charge is based or has been afforded a reasonable opportunity of defending himself against such article of charge.

(9.7) At the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefore.

(9.8) The record of the inquiry shall include

- (i) the charges framed against the Government servant and the statement of allegations furnished to him under sub-rule (2)
- (ii) his written statement of defence, if any;
- (iii) the oral evidence taken in the course of the enquiry;
- (iv) the documentary evidence considered in the course of the inquiry;
- (v) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry; and
- (vi) a report netting out the findings on each charge and the reasons therefore.

(9.9) The Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its



findings on each charge....”

21. It is obvious that the said procedure as prescribed in Rule 9 (supra) has not been carried out in the case of the petitioner. Therefore, his termination from service has not only violated the related Rule 9 but has also demonstrated that the principle of natural justice has not been followed in his case.

22. On an overall analysis of the case of the parties, this Court is convinced that the impugned order of termination has been passed arbitrarily and is therefore illegal. The same is, therefore, liable to be quashed which is done so herewith.

23. The prayer of the petitioner in this regard is allowed, the said order of termination dated 06.08.2021 is hereby set aside and quashed and the respondent authorities are directed to reinstate the petitioner in service forthwith with all consequential financial benefits.

24. Petition disposed of. No costs.

Judge