

WP(C) 4/2003

BEFORE

HON'BLE JUSTICE RANJAN GOGOI

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF

ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA MIZORAM AND ARUNACHAL PRADESH)

Writ Petition(Civil) No.4 of 2003.

Petitioner :

Kamal Gogoi,

Resident of Village Konwerpur,

Teportol Gohaigaon,

District Sibsagar, Assam.

By Advocates :

Mr. B. D. Konwar,

Mrs. J. M. Konwar,

Mr. P. P. Bairagi.

-versus-

Respondents:

1. The Assam State Electricity Board,
Through its Chairman, Bijuli Bhawan,
Paltan Bazar, Guowahati - 1.

2. The Superintending Engineer,
Sibsagar Electrical Circle,
Assam State Electricity Board,
Sibsagar.

3. The Executive Engineer, Sibsagar Electical Division, Assam State Electri
city Board,
Sibsagar.

By Advocate:

Mr. D. Bhattacharyya, Standing Counsel, ASEB.

B E F O R E

THE HON'BLE MR. JUSTICE RANJAN GOGOI.

Date of hearing : 27.04.2007.

Date of delivery of Judgment : 27.04.2007.

JUDGMENT & ORDER (Oral)

1. Heard Mr. B. D. Konwar, learned counsel for the petitioner and Mr. D. Bh

attacharyya, learned Standing Counsel, Assam State Electricity Board.

2. An order dated 13.9.2002 passed by the Executive Engineer, Sibsagar Electrical Division, A.S.E.B., imposing the punishment of recovery of an amount of Rs.1.18 lakhs from the petitioner has been assailed in the present writ petition.

The aforesaid recovery has been ordered after holding of a departmental proceeding against the petitioner on a charge of negligence of duties in depositing the aforesaid amount in the bank. The facts, in brief, may be noticed at this stage.

The petitioner at the relevant point of time was working as a senior peon in the Sibsagar Electrical Sub-Division No.1. The petitioner was assigned the duty of taking the receipts of the Sub-Division in which he was working, received either in cash or in cheque, to the bank and to deposit the same. The petitioner has been performing the said duties since the year 1971. On 12.4.2002 the petitioner, in the course of his normal duties, went to the bank with a cash amount of Rs. 1.18 lakhs and 8 nos. of cheques for deposit. According to the respondents, the petitioner deposited the cheques first and while the said deposits were being made the bag containing the cash amount was stolen/lifted from inside the bank premises. The petitioner apparently informed the incident to his superior authority over telephone whereafter an F.I.R. was lodged by the Assistant Executive Engineer of the Sub-Division with the Police Station at Sibsagar at 3.00 P.M. of the same day. The incident itself had occurred around 12 noon. The cash amount, however, could not be recovered.

In the above circumstances, the petitioner was served with a show cause notice dated 22.5.2002 contemplating a departmental proceeding against him. On receipt of the show cause notice the petitioner submitted his reply, inter alia, contending that the incident was one of theft for which he was not responsible. In the reply submitted the petitioner reiterated the fact that during the long period of 30 years that he had served the Board no such incident had occurred. The reply of the petitioner not having been found to be satisfactory a regular departmental proceeding was ordered in which the petitioner participated. The Enquiry Officer, at the conclusion of the enquiry, found the petitioner guilty of negligence. The report of the enquiry was also made available to the petitioner who was given another opportunity to show cause against the contemplated punishment of recovery. The petitioner showed cause on receipt of which the employer by the impugned order dated 13.9.2002 imposed the punishment of recovery of Rs.1.18 lakhs. The petitioner retired shortly thereafter. As it appears from the statements made at the Bar, in the meantime, the entire amount has been recovered from the retirement benefits of the petitioner.

3. The respondents have filed an affidavit in the case asserting that the facts of the case make it abundantly clear that the petitioner, indeed, was guilty of negligence which had led to the loss of Rs.1.18 lakhs out of the revenues of the Board. In the affidavit filed the respondents have also stated in detail the manner in which the enquiry against the petitioner was held and on that basis have contended that there is no infirmity in the decision making process warranting interference of the Court. The petitioner was given full and adequate opportunity to contest the proceedings against him and the enquiry held was in consonance with well-established principles of natural justice.

4. I have gone through the pleadings made in the writ petition. I have also considered the contents of the F.I.R. filed in connection with the incident in question, a copy of which has been made available at the hearing. I have also looked into the stand of the respondents in the affidavit filed.

5. If the petitioner was entrusted with the duty of carrying cash to the bank and ensure deposit of the same, if the money carried by him gets stolen, some amount of responsibility will have to be owned by the petitioner. In the present case, in the enquiry held, it has been established that the incident could happen because the petitioner instead of depositing the cash amount in the first in

stance had engaged himself in depositing the cheques with the bank and while the said deposits were going on the bag containing the cash was stolen or lifted. In such circumstances, it cannot be said that the petitioner was not, in any manner, negligent in attending to his duties. That apart, the manner in which the enquiry against the petitioner was held goes to indicate that the petitioner was given full opportunity to contest the proceedings against him. In fact, it is not the grievance of the petitioner that the enquiry against him is vitiated in any manner.

6. The net result of the above discussion is that the petitioner must be held to be somewhat negligent in performance of his duties. Once the aforesaid finding is reached the other question that, the arguments made, would be required to consider is the extent or proportionality of the punishment imposed on the petitioner i.e. full recovery of the amount.

7. The power of the writ Court to interfere with the punishment imposed by the employer is a rare power which must be sparingly exercised and only if the conscience of the Court is fully satisfied that the punishment imposed is shockingly disproportionate or grossly exorbitant. That apart, it is the view of the Apex Court that if the writ Court is to interfere with the punishment imposed the reasons for doing so must be recorded before any variation in the punishment is effected.

8. In the present case it is clear and evident that the petitioner had been performing the duties of carrying cash to the bank and depositing the same, since the year 1971. There is also no dispute that though the petitioner had performed the said duties for over three decades no incident similar to the present had occurred during the long years of service of the petitioner. The incident that had occurred on 12.4.2002, though shows some amount of negligence on the part of the petitioner, the question that has to be determined is the extent of such negligence. That the cash amount was stolen by some miscreants is evident from the FIR filed. Therefore, at best, the negligence of the petitioner is that he unknowingly facilitated the commission of theft. The petitioner has also retired in the meantime and the entire amount of Rs.1.18 lakhs has been recovered from his retirement benefits. Taking into account all the aforesaid facts and circumstances, the Court is of the view that while maintaining the finding of negligence against the petitioner the present would be one of the rare cases where the writ Court would like to interfere with the punishment imposed. Having given my anxious consideration to the proper quantum of punishment that would be just and adequate in the present case I am of the view that punishment of recovery of 50% of the lost amount i.e. Rs.1.18 lakhs would meet the ends of justice. The respondents are, therefore, directed to return 50% of the said amount to the petitioner forthwith and in any case within a period of 45 days from the date of receipt of a certified copy of this order.

9. Consequently and in the light of the foregoing discussions the writ petition is partly allowed to the extent indicated above.

JUDGE

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