

Serial No.01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.16/2021

Date of Order: 07.03.2022

State of Meghalaya & ors

Vs.

Satya Narayan Roy

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice H.S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A Kumar, Advocate General with
Mr. AH Kharwanlang, GA
For the Respondent(s) : Dr. N Mozika, Sr.Adv with
Ms. T Sutnga, Adv

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

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The appeal is directed against a judgment and order of April 6, 2021 passed on the respondent's writ petition challenging the punishment of dismissal from service on the ground of the writ petitioner having indulged in immoral activities amounting to moral turpitude and tarnishing the image of the Police Department.

2. At the relevant time, the writ petitioner was a Sub-Inspector in the East Khasi Hills DEF. By a notice dated November 29, 2011, the writ petitioner was informed that in course of the investigation pertaining to a particular criminal case, it was revealed that "on 17.03.2011 evening, you along with victim girl namely Miss Sanchita Dhar, Miss Kim Mercy Vaiphei and another two boys namely Bobby and Johny went to Assembly Hotel, Police Bazar and booked a room in your name. Thereafter, you

indulged yourself in immoral activities with your accomplices which amounts to moral turpitude, tarnishing the image of the department as a whole.”

3. Following the writ petitioner’s response and the protracted disciplinary proceedings, a terse, one-page order was passed by the Superintendent of Police as the disciplinary authority on August 10, 2013 concluding, inter alia, that the delinquent and his accomplices had “indulged in an act of immoral activity by indulging in illicit sexual intercourse with the two minor girls ...”. The writ petitioner was discharged from service. The punishment was, subsequently, modified to dismissal from service with immediate effect. The departmental appeal did not result in any cheer for the writ petitioner, whereupon he approached this Court under Article 226 of the Constitution with WP (C) No.146 of 2015, that has culminated in the judgment and order impugned dated April 6, 2021 being passed.

4. The principal ground that weighed with the writ court was that a statement rendered by one of the alleged minor girls under Section 164 of the Code of Criminal Procedure, 1973 may have been used by the disciplinary authority to arrive at a conclusion that the writ petitioner had indulged in sexual activities, but no copy of such statement was made available to the writ petitioner, nor was the writ petitioner given an opportunity to cross-examine either of the alleged minor girls since the alleged minor girls were not examined in course of the departmental proceedings.

5. The appellants assert that since independent criminal proceedings pertaining to Laitumkhrah P.S. Case No.18(3) 2011 under Sections 365 and 366A of the Indian Penal Code, 1860 are pending and the writ petitioner was charge-sheeted therein and, obviously, has received all papers pertaining to the investigation under Section 207 of the Code, the writ petitioner could not have contended that he had no access to the statements recorded by one of the alleged minor victims under Section 164 of the Code.

6. It appears from the impugned order that the proceedings have not been entirely set aside, but the orders passed by the disciplinary authority and the appellate authority have been set aside and the writ petitioner has been required to be served with a copy of the relevant statement recorded under Section 164 of the Code for the disciplinary proceedings to continue thereupon. The order impugned also requires the immediate reinstatement of the writ petitioner with back wages to the extent of fifty per cent for the entire period.

7. There is nothing to show that prior to the conclusion of the disciplinary proceedings, the charge-sheet had been filed in the criminal proceedings or copies of the relevant documents had been made over to the writ petitioner under Section 207 of the Code. There is no dispute that the alleged victims were not examined and, indeed, one of the alleged victims has, since, died. It is submitted on behalf of the writ petitioner that from the statement of the other alleged victim – the person who is said to have been raped by the writ petitioner – it does not appear that she has asserted that she was raped.

8. Thus, what is evident is that merely on the basis of the statements of the two alleged accomplices of the writ petitioner – with neither of them having spoken of any sexual intercourse being indulged in by any person on the relevant date – the disciplinary authority jumped to the conclusion that the writ petitioner had committed rape on a minor girl, even when the alleged minor girl may not have made such allegation. The statement rendered under Section 164 of the Code by the other alleged victim, who has since died, pertained to such alleged victim being raped by an accomplice of the writ petitioner and not by the writ petitioner.

9. In any event, the order of August 10, 2013 passed by the disciplinary authority travelled beyond the scope of the charge-sheet. The sole charge levelled against the writ petitioner pertained to acts of moral turpitude and did not refer to rape or rape of any alleged minor. Further, nothing in the disciplinary authority's order of August 10, 2013 reveals the age of the two alleged victims or of the alleged victim that the writ petitioner is supposed to have raped.

10. While it comes through from the evidence that the writ petitioner may not have been present at his post on the relevant date and may have visited the hotel or indulged in drinking, the disciplinary authority jumped to the conclusion that the writ petitioner had indulged in sexual intercourse with a minor without there being any material in support thereof. To such extent, the order impugned is justified in requiring the disciplinary proceedings to be conducted afresh from the stage after affording the writ petitioner copies of the statements rendered by the two alleged minor victims under Section 164 of the Code.

11. Since, prima facie, it appears from the drift of the evidence adduced in course of the departmental proceedings that the writ petitioner had not attended his duty on the relevant date despite his name being on the roster for night duty, the writ petitioner will not be entitled to immediate reinstatement or any back wages and any decision in such regard will have to await the outcome of the departmental proceedings which will be conducted afresh from the stage as indicated in the order impugned.

12. Accordingly, the judgment and order of April 6, 2021 is modified to the limited extent as indicated above. The writ petitioner will not be entitled to seek or obtain any adjournment of the proceedings. The disciplinary authority is requested to ensure that the proceedings are concluded and a reasoned decision rendered within four months from date. In default, the writ petitioner will be entitled to reinstatement with fifty per cent back wages in terms of the order impugned herein.

13. WA No.16 of 2021 is disposed of without any order as to costs.

(H.S. Thangkhiew)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
07.03.2022
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