
(2007) 02 CAL CK 0036
In the Calcutta High Court
Case No : W.P.S.T. No. 701 of 2006

Amit Biswas

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 4
Penal Code, 1860 (IPC) — Section 34, 498A
West Bengal Services (Classification, Control and Appeal) Rules, 1971 — Rule 7, 7(1), 7(2), 7(3)

Citation : (2007) 2 CHN 9

Hon'ble Judges : Bhaskar Bhattacharya, Acting C.J.; Kishore Kumar Prasad, J

Bench : Division Bench

Advocate : Kamalesh Bhattacharyya and Biswarup Biswas, for the Appellant; Kallol Kr. Basu, for the Respondent

Judgement

1. This application under Article 226/227 of the Constitution of India is at the instance of an applicant u/s 19 of the Administrative Tribunals Act, 1985 and is directed against order dated 21st September, 2006 passed by the learned Tribunal below thereby disposing of the application by directing the employer to initiate and complete the departmental proceedings against the writ petitioner within a period of one year from the date of communication of the order. The Tribunal has further passed an order that in case, the departmental proceedings are not completed within one year, the order of suspension should stand quashed. The writ petitioner was directed to cooperate with the employer in the matter of carriage of departmental proceedings.

2. Being dissatisfied, the employee has come up before us with the present writ application.

3. The following facts are not in dispute:

The writ petitioner is an employee under the State Government and was arrested in connection with a criminal case u/s 498A of the Indian Penal Code on 26th December, 2004. He was, however, released on bail on 10th January, 2005 and subsequently, joined his duty on 22nd February, 2005 after filing an application for medical leave.

4. From 22nd February, 2005 till 4th April, 2005 the petitioner performed his official duty under the respondents, but on 4th April, 2005 he was served with an order of suspension on the ground that as the petitioner was arrested by police on 26th December, 2004 in Kotwali (Krishnagar. Nadia) Police Station Case No. 588 of 2004 u/s 498A read with Section 34 of the Indian Penal Code and was detained in jail custody after 10th January, 2005 as per report of the said police station, the petitioner should be put under suspension in terms of Rules 7(1)(c) and 7(3) of the West Bengal Service (C.C. & A.) Rules, 1971 with retrospective effect from 26th December, 2004 until further orders, pending the issue of final judgment from the Court of Law.

5. In the past, the writ petitioner challenged the aforesaid order of suspension by filing another application u/s 19 of the Act before the Tribunal and the Tribunal by order dated 4th October, 2005 disposed of the same by directing the employer to treat the said application together with all annexures as representation and to dispose of the same in accordance with law by passing a reasoned order within a period of three months from the date of communication of such order with further direction that after a decision is taken, the same should be communicated to the writ petitioner within three weeks thereafter.

6. Pursuant to such order passed by the Tribunal, the employer by order dated 3rd January, 2006 decided that the action previously taken was strictly based on facts and circumstances of the case and in accordance with law and that there was no scope to consider the withdrawal of the order of suspension till the final decision of Kotwali Police Station Case No. 588 of 2004.

7. After going through the entire order passed by the employer dated 3rd January, 2006, we find that the employer merely narrated the incident earlier occurred regarding arrest of the writ petitioner and subsequent application for medical leave and then came to the aforesaid conclusion.

8. However, being dissatisfied with the aforesaid order dated 3rd January, 2006 passed by the employer, the writ petitioner filed another application u/s 19 of the Act before the Tribunal and the Tribunal by order dated 10th March, 2006 disposed of such application by directing the employer to make review of the suspension order within a period of three months from the date of communication of that order with further direction that if there was any further reason to keep the writ petitioner under suspension any more in the changed situation, it should pass appropriate order in accordance with law after giving all admissible benefits to the writ petitioner.

9. In consequence of the aforesaid order passed by the Tribunal the

Superintending Engineer, the employer, passed a fresh order by which the suspension allowance was merely enhanced from 50% to 75% of the salary of the writ petitioner with effect from 22nd June, 2006, but order of suspension was not rescinded.

10. The aforesaid order dated 22nd June, 2006 passed by the employer gave rise to filing of the third application u/s 19 of the Act before the Tribunal and by the order impugned in this application, the Tribunal has disposed of the said application by directing the respondents-authority to initiate and complete the departmental proceeding against the writ petitioner within a period of one year from the date of communication of such order with further direction that in the event the employer did not conclude the departmental proceeding within the said period, the suspension order should stand quashed.

11. The writ petitioner was further directed to co-operate with the concerned authorities in the matter of carriage of departmental proceeding.

12. Being dissatisfied, the employee has come up with the present writ application.

13. Mr. Bhattacharyya, the learned Advocate appearing on behalf of the writ petitioner, has vehemently contended before us that the learned Tribunal below did not appreciate the scope of Rule 7 of the West Bengal Service (C.C. & A.) Rules, 1971 and erred in law in passing direction upon the employer to initiate departmental proceedings against his client, notwithstanding the fact that the allegation against his client did not relate anything with regard to his service with the employer. According to Mr. Bhattacharyya, his client having been simply implicated in a criminal case u/s 498A of the Indian Penal Code, the employer is under obligation to wait till the decision of the criminal proceeding.

14. Mr. Bhattacharyya submits that if his client is convicted in the long run that will afford a ground for termination of his client's service; but if he is acquitted, there is no scope of initiating further departmental enquiry on the same allegation as the alleged offence was not committed in course of employment of his client.

15. Mr. Bhattacharyya further submits that the Tribunal in page 2 of the order impugned appreciated the fact that a person, who is released in bail, should not be kept under suspension for indefinitely long period, but in spite of realizing such fact, the Tribunal directed the employer to start departmental enquiry which is not permissible under the law. Mr. Bhattacharyya, therefore, prays for setting aside the order passed by the Tribunal.

16. Mr. Basu, the learned Advocate appearing on behalf of the State-respondents, however, has fairly conceded that in this case, there is no scope of initiating departmental proceeding on the question whether the writ petitioner was really guilty u/s 498A of the Indian Penal Code inasmuch as such offence has nothing to do with the duty of the respondents as an employee, nor was it

alleged that such offence was committed within the premises of employment.

17. Mr. Basu, however, contends that according to Rule 7(1)(c) of the rules of 1971, his clients are vested with authority to keep any employee under suspension during the period of investigation and trial of a criminal case, and as such, there was no illegality on the part of his clients in keeping the writ petitioner under suspension till the disposal of the criminal proceeding. Mr. Basu, therefore, contends that the writ petitioner should be kept under suspension till the disposal of the criminal proceeding although he was not supporting the other direction of the Tribunal regarding initiation of departmental proceeding.

18. After hearing the learned Counsel for the parties and after going through the materials on record, we find that the Tribunal definitely committed an error apparent on the face of record in directing the employer to start departmental proceeding against the writ petitioner although the offence alleged was u/s 498A of the Indian Penal Code.

19. It is now settled law that parallel proceedings, both in criminal Court and by employer, are permissible only in cases where offence alleged is against the person or property of employer, co-employee, in course of employment, at the place of employment or in connection with the employment of the employee. In the aforesaid situation, even if an employee is acquitted in a criminal proceeding before the Court of Law, an employer can nevertheless proceed with the departmental enquiry. For instance, if on an allegation of defalcation of employer's money, in the criminal proceedings due to faulty police investigation the employee is acquitted, an employer can reasonably contend that he is not satisfied with the police investigation and he having suffered, he has the right to start parallel departmental enquiry against the employee. Similar is the cases where it relates to any offence against the property or person of the co-employees or if the incident occurred in the place of employment as it relates to discipline of the places of employment; but, in a situation like the present one, we cannot conceive of initiation of departmental enquiry which has nothing to do with the employment of the employee. If we accept the reason assigned by the Tribunal, then even in a murder case or a case of rape, after an employee is acquitted, the employer will get jurisdiction to probe those incidents which is specifically barred u/s 4 of the Code of Criminal Procedure.

20. We, therefore, find that the learned Tribunal below erred in law in directing the employer to initiate disciplinary proceeding against the employee in the facts and circumstances of the present case and we, accordingly, set aside that part of the order passed by the Tribunal.

21. The next question is whether in this case the writ petitioner should be kept under suspension for indefinite point of time till the disposal of the criminal proceedings.

22. After going through the Sub-rule (2) of Rule 7, we find that a Government servant against whom a proceeding has been commenced on a criminal charge

but who is not actually detained in custody (e.g., a person released on bail) may be placed under suspension under Clause (c) of Sub-rule (1) by an order made by any of the authorities mentioned in that Sub-rule; if the criminal charge is related to the official position of the Government servant or involves any moral turpitude on his part, suspension shall be ordered under the sub-rule, unless there are exceptional reasons for not adopting such a course.

23. In a case where an employee has already obtained bail, but the investigation or trial is pending, a duty is cast upon the employer to see whether there are exceptional reasons for not keeping the employee under suspension on the basis of materials then available. In this case, as indicated earlier, the employer proceeded, merely because he was in jail custody for more than forty-eight hours, as if it is the law that he should be under suspension till the end of the judicial proceedings.

24. We, therefore, find substance in the contention of Mr. Bhattacharyya that the employer has, in this case, not exercised its discretion in terms of Sub-rule (2) of Rule 7. It is needless to mention that in exercising such discretion it is the duty of the employer to see that unless there is grave reason for suspecting that the employee is really guilty, he should not be unnecessarily kept under suspension by paying initially 50% of the pay -and thereafter at the rate of 75% of the pay without taking any service from such employee at the cost of public exchequer.

25. We, therefore, set aside the order passed by the Tribunal and direct the employer to reconsider whether the materials so far gathered prima facie make out a case involving moral turpitude and that it is a fit case where the writ petitioner should be kept under suspension without taking any service from him by payment of subsistence allowance for indefinite point of time. Such decision should be taken within one month from the date of communication of this order after giving the writ petitioner an opportunity of making submission on prima facie merit of the allegation.

26. The concerned respondent is directed to pay off all arrears of subsistence allowance, if not paid, within one month from today.

27. The writ application, thus, succeeds to the extent indicated above, and the same is disposed of accordingly.

28. In the facts and circumstances, there will be, however, no order as to costs.