

(2011) 04 CAL CK 0113
In the Calcutta High Court
Case No : Writ Petition No. 1698 (W) of 2011

Animesh Dutta Gupta

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2011) 04 CAL CK 0113

Hon'ble Judges : Patherya, J

Bench : Single Bench

Advocate : Malay Kr. Basu, D.K. Samanta and Ashis Kr. Pal, for the Appellant; Asok Kr. De, Dhiman Kr. Sengupta, Sukanta Roy, Kumar jyoti Tewari, Kousik Biswas and Ajoy Agnihotri, Debabrata Karan, for the Respondent

Final Decision : Dismissed

Judgement

Patherya, J.—By an order dated 28th February, 2011, an interim order was passed which was the subject-matter of appeal. At the hearing of the appeal the question of maintainability of the writ petition was raised. Therefore, the appeal Court set aside the order dated 28th February, 2011 and directed the issue of maintainability to be decided prior to consideration of the merits of the case.

2. Counsel for the Respondent-bank submits that the writ Petitioner was an employee of the bank who was suspended and a chargesheet issued. An Enquiry Officer was also appointed and Enquiry Report filed. Thereafter, the employee was dismissed from service. W.P. 16181 (w) of 2010 was filed wherein by order dated 23rd December, 2010 the order of dismissal was set aside for non-service of the Enquiry Report. By the said order the disciplinary proceeding was not stopped in any manner whatsoever. In compliance with the said order the copy of the report has been given to the Petitioner and the disciplinary proceeding has been proceeded. The second proviso of Rule 108(16) of the 1987 Rules stipulates that the order of suspension will remain in force unless it is modified or revoked by the appropriate Court. There has been no statutory breach of the Provisions of

the 1983 Act, nor has the same been alleged in the writ petition. As the Respondent-bank is not a State under Article 12 of the Constitution of India but is governed by its bye laws with no financial aid or control of the State, no writ will lie against it. The employees of the Society are controlled by contract. Therefore, it is a private relationship. Reliance is placed on M.D., Bhadra Shahakari S.K. Niyamita Vs. President, Chitradurga Mazdoor Sangh and Others, ; 2006 (2) CHN 308; 2010 (1) CLT 643 para 15, 16, 17 and 18; unreported judgment in W.P 16676 (w) of 2000; A. Umarani Vs. Registrar, Cooperative Societies and Others,

3. In view of the order dated 23rd December, 2010, the disciplinary proceeding remained on record so also the charge sheet and order of suspension. The order of suspension would have merged with the order of dismissal if the entire proceeding had been set aside, as in Om Prakash Gupta Vs. The State of Uttar Pradesh, . There has been no violation of the principles of natural justice as held in 1973 (3) AER 796 ; 1976 SC 166 and 1993 Supp. (3) SCC 480. Any order on this writ petition, therefore, will amount to reinstatement and for the said reasons, this application is not maintainable.

4. Opposing the preliminary issue of maintainability Counsel for the writ Petitioner submits that the order dated 23rd December, 2010 has allowed the disciplinary proceeding to continue. On the passing of the order of dismissal the order of suspension merged with such order and on the order of dismissal being set aside, the order of suspension has also been set aside as held in Om Prakash Gupta Vs. The State of Uttar Pradesh, . By this writ petition all that is sought is implementation of the order dated 23rd December, 2010 and it is an accepted proposition of law that a second writ petition is maintainable for implementation of the earlier order. For such proposition reliance is placed on State of Haryana and Others Vs. M.P. Mohla, . The second proviso to Rule 108 (16) has no application as it applies to the pre-dismissal stage. Rule 108(16)(e) entitles the Petitioner to payment of full allowance. There has been non-compliance with the order dated 23rd December, 2010 and the Respondent-bank is entitled to place the writ Petitioner under suspension once again as held in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., Therefore, the writ petition is maintainable.

5. In reply, Counsel for the Respondent-bank submits that Rule 108(16) is not applicable to the facts of this case as there has been no breach. Any direction given will be to the Co-operative Bank.

6. Having considered the submissions of the parties, the only issue that needs to be considered is the maintainability of the writ petition against the Respondent No. 2, Co-operative Bank.

7. Admittedly the Petitioner has not alleged breach of any statutory provisions but has sought to file this writ petition solely to implement the order dated 23/12/2010 as the Respondent failed to allow the Petitioner to join in his post.

8. Violation of natural justice has been alleged but in view of (1973) 3 AER 796 such principle cannot be stretched too far. Assuming that there has been violation of this principle by the Respondents, the Petitioner is to demonstrate the Section or Rule of the 2006 Act or 2011 Rules respectively which has been violated. This undoubtedly is lacking in the present case.

9. The plea of implementation of the order dated 23-12-2010 cannot be accepted as any writ issued will be on the Co-operative Society and in the absence of breach of statute, this writ petition fails. The decisions cited by the Co-operative Society comes to its aid and in view of the decision reported in M.D., Bhadra Shahakari S.K. Niyamita Vs. President, Chitradurga Mazdoor Sangh and Others, and 2009 (1) CHN 573, the maintainability issue is decided in favour of the Respondent-Co-operative Bank.