
(2009) 08 GAU CK 0073
In the Gauhati High Court
Case No : Writ Petition (C) No. 80 of 2001

Ashis Kanti Saha	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 01-08-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 409

Citation : (2010) 1 GLR 795 : (2009) 5 GLT 760

Hon'ble Judges : Maibam B.K. Singh, J

Bench : Single Bench

Advocate : P. Roy Barman, for the Appellant; A. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Maibam B.K. Singh, J.—Heard Mr. P. Roy Barman, Learned Counsel appearing on behalf of the petitioner and Mr. A. Ghosh, learned Government advocate appearing on behalf of the respondents. The pleadings of the parties are also perused.

2. There is no dispute in respect of the following facts:

That, vide order No. TKB/2(200)/80/3933-35, dated 6.11.1999, issued by the Executive Officer, Tripura Khadi and Village Industries Board, the petitioner, while serving as an Assistant Organizer (Khadi), was placed under suspension in contemplation of a disciplinary proceeding against him, purported in exercise of power conferred by para 13 sub-para 4(C) of the Tripura Khadi and Village Industries Board Regulations, 1970. In the said suspension order, it is also mentioned to the effect that during the period of suspension, the petitioner will be entitled to half-average pay and other allowances as admissible on the basis of half-average pay. On 15.11.1999, the Executive Officer/lodged a written ejahar to the O.C., West Agartala P.S. alleging commission of criminal breach of trust by the petitioner and another during 14.2.1994 to 13.10.1999 in respect of store articles of the value of Rs. 26,46, 701.80p. entrusted to them by the Board.

A case being West Agartala PS case No. 164 of 1999 u/s 409, IPC was registered and the petitioner was in judicial custody for 45 days in connection with the said case. The petitioner submitted representation to the Executive Officer praying for increasing his subsistence allowances and also for giving the benefit of revised pay-scale. On 1.2.2001, the Executive Officer issued a memorandum being No. TKB/2(200)/80/2566 to the petitioner stating that his prayer for increasing the rate of subsistence allowance could not be considered as delay in framing the departmental proceeding was directly attributable to him. The contemplated departmental enquiry has not also yet been started.

3. The petitioner has filed this writ petition praying mainly for quashing the said suspension order No. TKB/2(200)/80/3933-35, dated 6.11.1999 and the said memorandum being No. TKB/2(200)/80/2566 dated 1.2.2001. The petitioner has also prayed for directing the respondents to increase the amount of his subsistence allowance and also to provide him the benefit of revised pay-scale of Rs. 5,500-10,700 w.e.f. 1.1.1996.

4. Upon hearing the parties through their respective Counsel and also on perusal of their pleadings, I have ascertained that one vital issue involved in this case is if the impugned suspension order is legally valid or not. This issue is required to be determined in the light of well settled principles of law.

5. In V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, , the hon''ble Apex Court held at para Nos. 6, 7 and 8 as below:

6. Three kinds of suspension are known to law. A public servant may be suspended as a mode of punishment or he may be suspended during the pendency of an enquiry against him if the order appointing him or statutory provisions governing his service provide for such suspension. Lastly, he may merely be forbidden from discharging his duties during the pendency of an enquiry against him which act is also called suspension. The right to suspend as a measure of punishment as well as the right to suspend the contract of service during the pendency of an enquiry are both regulated by the contract of employment or the provisions regulating the conditions of service. But the last category of suspension referred to earlier is the right of the master to forbid his servant from doing the work which he had to do under the terms of the contract of service or the provisions governing his conditions of service at the same time keeping in force the master's obligations under the contract. In other words the master may ask his servant to refrain from rendering his services but he must fulfil his part of the contract.

7. The legal position as regards a master's right to place his servants under suspension is now well settled by the decisions of this Court. In The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union, , the question whether a master could suspend his servant during the pendency of an enquiry came up for consideration by this Court. Therein, this Court observed that it was well settled that under the ordinary law of master and servant the power to

suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provision governing such contract. It was further observed therein that ordinarily in the absence of such a power either in express terms in the contract or under the rules framed under some such statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work he will have to pay the wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relationship of master and the servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

8. The same view was reiterated by this Court in *T. Cajee Vs. U. Jormanik Siem and Another*, . The rule laid down in the above decisions was followed by this Court in *R.P. Kapur Vs. Union of India (UOI) and Another*, . The law on the subject was exhaustively reviewed in *Balvantray Ratilal Patel Vs. The State of Maharashtra*, . Therein the legal position was stated, thus: The general principle is that an employer can suspend an employee of his pending an enquiry into his misconduct and the only question that can arise in such a suspension will relate to the payment of his wages during the period of such suspension. It is now well settled that the power to suspend, in the sense of a right to forbid an employee to work, is not an implied terms in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such a power either as an express term in the contract or in the rules framed under some statute would mean that an employer would have no power to suspend an employee of his and even if he does so in the sense that he forbids the employee to work, he will have to pay the employee's wages during the period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. It is equally well settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of employment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which, it could be withheld. The distinction between suspending the contract of a service of a servant and suspending him from performing the duties of his office on the basis that the contract is subsisting is important. The suspension in the latter case is always an implied term in every contract of service. When an employee is suspended in this sense, it means that the employer merely issues a direction to him that he should not

do the service required of him during a particular period. In other words, the employer is regarded as issuing an order to the employee which because the contract is subsisting, the employee must obey.

6. In the present case, though the impugned suspension order was purportedly issued by the Executive Officer, Tripura Khadi & Village Industries Board, Agartala, in exercise of power conferred by para. 13 sub-para 4(C) of the Tripura Khadi & Village Industries Board Regulations, 1970, there is nothing in the said para of the said Regulations, 1970, conferring power on the Executive Officer to suspend an employee of the Board in contemplation of an enquiry against the employee. The said para 13 of the said Regulations, 1970, deals with matters relating to termination of service and none of the matters is connected with the subject of suspension of an employee of the Board. The said Regulations, 1970 nowhere provide for suspension of an employee of the Board in contemplation of an enquiry. No provision of the Tripura Khadi Village Industries Board Act, 1966, authorizing any authority including the Board to suspend an employee of the Board in contemplation of an enquiry, is brought to the notice of this Court. Therefore, the impugned order of suspension cannot be considered as an order duly passed by a competent authority suspending the contract of service of the petitioner. There is no basis for thinking that in the absence of any provision regarding suspension of an employee of the Board in contemplation of a departmental enquiry in the said Regulations, 1970, the provisions of CCS(CCA) Rules, 1965 will be applicable. The Board is a body corporate having distinct legal personality and it cannot be considered as a department of the State Government. Merely on the ground that the provisions of CCS(CCA) Rules, 1965 are applicable to State Government employees, the same rules will not have automatic application to the employees of the Board. There is nothing to show that either the said CCS(CCA) Rules, 1965 have been adopted by the Board or the said Rules of 1965 have been made applicable to the employees of the Board under any provision of the Tripura Khadi Village Industries Board Act, 1966 and as such, the provisions of the said Rules of 1965 will not be applicable in respect of employees of the Board. In the absence of anything to show that the impugned order of suspension was passed by the Executive Officer on the basis of any decision of or as authorized by the Board under any relevant Rules or Regulations, it cannot also be considered as one belonging to the last category of suspension, i.e., merely forbidding the petitioner from discharging his duty during the pendency of an enquiry against him, mentioned in the above said decision of the hon'ble Apex Court. There is no basis for thinking that the impugned suspension order was issued as authorized by the Board under the provisions of any relevant Act, Rules or Regulations in respect of its employees.

7. In the light of the above discussions, I am of the opinion that the impugned suspension order was not passed by a competent authority after due application of his mind in exercise of its power under any relevant Act, Rules and Regulations and as such, the impugned order of suspension is illegal and it is hereby quashed. In fact, it is to be considered as having no legal existence from

the date of its issuance, i.e., 6.11.1999. In the facts and circumstances, the impugned memorandum dated 1.2.2001 is also quashed as it was issued on illegal assumption that the suspension of the petitioner was valid and proper. There is no need of considering other issues involved in this case. The petitioner shall be entitled to his due salaries including the amount of his subsistence allowance already withdrawn. The concerned respondents shall take necessary steps for payment of the due salary of the petitioner after making necessary deduction in respect of the subsistence allowance already paid so that the petitioner may get his due salary as expeditiously as possible which should be within period of four months from the date of receipt of a certified copy of this order.

8. This writ petition is allowed to the extent mentioned above and it stands disposed of.