

(1952) 03 CAL CK 0022
In the Calcutta High Court
Case No : Civil Revn. Case No. 1549 of 1951

Bibhuti Bhusan Ghosh

APPELLANT

Vs

Damodar Valley Corporation and Others

RESPONDENT

Date of Decision : 07-03-1952

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)
Damodar Valley Corporation Act, 1948 — Section 60(2), 7

Citation : AIR 1953 Cal 581

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Nirmal Chandra Sen, Rabindra Narayan Chakravarty and Rash Behary Goswami, for the Appellant; S.M. Bose, Advocate-General, D.K. Sen and Satyendra Nath Sen, for the Respondent

Judgement

Bose, J.—This is an application under Article 226 of the Constitution for the issue of a writ of certiorari and a writ of mandamus or any other appropriate writ for quashing of an order of dismissal passed against the petitioner in certain departmental proceedings taken against the petitioner for misconduct in the discharge of his duties as an Engineer employed under the Damodar Valley Corporation and for prohibiting the opposite parties from giving effect to the said order of dismissal.

2. The petitioner who is a Bachelor of Science in Engineering of the University of Glasgow, was appointed as an Assistant Civil Engineer by the respondent Corporation for a term, of three years commencing from 22-8-1950 under an Agreement of Service entered into on 9-12-1950 on terms and conditions contained in the said Agreement. It is a term, of the said Agreement that the service of the petitioner might be terminated by the Corporation without previous notice if the Corporation was satisfied that the employee was unfit and was likely to continue as such for a considerable period by reason of ill-health, or if the Corporation or its officers having proper authority, found the petitioner to be guilty of insubordination, intemperance or other misconduct or breach or non-

performance of any of the provisions of the agreement. It is a further term of the said agreement that in respect of any matter for which no provision has been made in the agreement the provisions of the relevant rules or regulations of the Corporation would apply. In course of his employment as such Assistant Engineer the petitioner on or about 6-1-1951 was entrusted with the work of laying galvanised iron pipe lines for over a distance of about 5,000 running feet from the Barakar river to the Kumardhubi Power House & he was directed to complete the work within ten days from date. As the work was an urgent one the petitioner had to engage sufficient number of labourers who were paid from the Muster Roll at the usual rates of wages allowed by the respondent Corporation. It appears, however, that the petitioner succeeded in completing the work by 14-1-1951.

3. Some time thereafter the respondent had reason to suspect that the petitioner had not engaged all the labourers whose names had been entered in the Muster Roll and false entries were made in the Muster Roll with a view to misappropriate some money out of the amount that might be received from the Corporation on account of wages paid to the labourers engaged in such work and On or about 21-2-1951 the Executive Engineer who is respondent 4 threatened to report against the petitioner for the alleged misconduct to the Authorities concerned. On 7-3-1951 the petitioner showed cause against the allegations and charges made by the Executive Engineer in his said letter of 21-2-1951. On 21-3-1951 respondent 4 purporting to act under the order of the Corporation suspended the petitioner from service and served upon him a charge-sheet containing four heads of charges as set out in the petition and the petitioner was called upon to show cause why he should not be dismissed from service or why a lesser punishment should not be inflicted upon him on the said charges. On 28-3-1951, the petitioner by a letter of that date denied the charges levelled against him and showed cause against the said charges. As the Authorities did not accept the explanation offered by the petitioner, a departmental inquiry was directed by the Superintending Engineer who is respondent 3. Certain correspondence thereafter passed between the petitioner and the Authorities concerned in relation to the said enquiry and in course of such correspondence certain Questionnaire was submitted to the petitioner which is in Annexure "H" of the petition. This Questionnaire indicates that it was contemplated that the petitioner would be entitled to put in a written statement of his defence and an oral enquiry would be held by the Authorities in respect of the charges and the petitioner would be allowed to attend such enquiry, engage the service; of a lawyer and would be afforded an opportunity of examining and cross-examining the witnesses tendered at such enquiry.

4. It may be pointed out at this stage that no regulations have yet been framed by the Damodar Valley Corporation in respect of disciplinary or departmental proceedings likely to be taken against its officers, although the framing of regulations is contemplated u/s 7 read with Section 60, Damodar Valley Corporation Act, 1948 (Act 14 of 1948), The affidavit of Mr. Murty the

Superintending Engineer of the Damodar Valley Corporation indicates in para. 32 thereof that in respect of departmental enquiry the respondent Corporation is following Government rules pending introduction of its own rules. In order that a writ of certiorari may issue for quashing the departmental proceedings and the order of dismissal which followed as a result of such proceedings it must be shown that an obligation or duty has been imposed by Statute upon the respondent Corporation to act judicially or quasi-judicially in relation to such inquiry. It was contended by Mr. Nirmal Chandra Sen the learned Advocate for the petitioner that as the petitioner must be treated as an officer holding a civil post under the Union and/or the State Government there is such a duty to act judicially imposed by Article 311(2) of the Constitution of India and in the event of this Court holding that the petitioner is not an officer of the Union or State Government there is a duty to act judicially or quasi-judicially under the conditions of service as embodied in the service agreement and also under the procedure contemplated by the Questionnaire. It appears to me that the petitioner cannot be regarded as an officer holding a civil post under the Union or State Government. The agreement of service by which he was employed as an Assistant Engineer shows that the appointment was made by and under an order of the respondent Corporation. The different provisions of the Damodar Valley Corporation Act 1948 indicate that the Corporation has a separate and independent existence and is a different entity from the Union or State Government. This Corporation has properties vested in it under the Act, it has its own fund and its functions and duties are denned in the Act. Section 49 of the Act shows that if there is any dispute between the Corporation and the Participating Governments regarding any matter covered by the Act the same has to be referred to an Arbitrator for decision and the decision of the Arbitrator shall be final and binding on the parties. It may be that this Corporation has been set up by the Government for the purpose of discharging certain functions of the Union or the State Governments, but there can be no doubt that it has a separate existence and cannot be considered as a part of the Union or State Government. Just as the Corporation of Calcutta discharges certain duties and functions which are to be performed by the State Government so also certain functions and duties of the Union and the State Governments have been allocated to the Damodar Valley Corporation, but the Corporation performs these duties and functions as a separate entity.

5. The Agreement of Service of the petitioner is not in the form in which Government contracts are entered into and does not comply with the requirements of Section 175, Government of India Act, 1935 or Article 299 of the Constitution. This shows that the petitioner is not an employee of the Government. I am unable to hold that the petitioner is an officer holding a civil post under the State or the Union Government.

6. There can be no doubt however that the Respondent Corporation is a statutory and public body entrusted with, the discharge of public duties. But the question is whether in holding a departmental enquiry into the conduct of one of its

officers it is under any duty to act judicially or quasi-judicially. The Damodar Valley Corporation Act has not expressly imposed any such duty. It is only in the case of dismissal of members of the Corporation that an obligation of such a nature has been cast upon the Central Government by Section 51 of the Act. The Act however contemplates making of regulations u/s 60 of the Act but no regulation has been framed as yet although about 4 years have elapsed since the commencement of the Act. It is clear from the terms and conditions of Service of the petitioner that it was contemplated by the petitioner and the Corporation at the time the Agreement of Service was entered into, that regulations framed would govern matters which were not provided for in the Contract of Service. But there is nothing in the Act which makes it incumbent upon the Corporation to make regulations imposing a duty on the Corporation to hold a judicial or quasi-judicial enquiry into the charges of misconduct of its officers. The Regulation if framed might have provided for an enquiry of a very summary nature or might not have provided for any enquiry at all or might have provided for an enquiry merely for informing the minds of the Authorities of the Corporation concerned. It is true that the Corporation, is at the present moment following the procedure analogous to that provided by the Government rules but there is no obligation on it created by Statute to do so. It may refuse to do so at any time.

7. Clause 4 of the Agreement of Service shows that the petitioner can be dismissed summarily for misconduct without any notice being given to him beforehand. Clause (6) no doubt suggests that some investigation may be made but the nature of the investigation is not indicated. It may be an investigation by the Corporation to inform its own mind and it may not be a judicial enquiry. (See --"Franklin v. Minister of Town and Country Planning" (1948) A C 87 and -- Province of Bombay Vs. Kusaldas S. Advani and Others, (B).

8. I am unable to hold that there is any duty either express or implied in the Corporation to act judicially or quasi-judicially in matters of dismissal of its employees. It appears to me therefore that a Writ of Certiorari cannot issue.

9. Now so far as the prayer for issue of a Writ of mandamus is concerned it appears that the present application was not preceded by a specific demand of justice and refusal. It has been held by the Court of Appeal in the case of -- Union of India (UOI) and Another Vs. Elbridge Watson, (C) that before a writ of mandamus can issue it must be shown that there is a distinct demand of that which the party seeking the mandamus desires to enforce and that such demand was met by a refusal. It has been pointed, out in that case that this is not merely a technical point but a point of substance.

10. In. the present case there is no specific pleading or any evidence to show that any such demand was made and the demand was refused. So no relief can be granted to the petitioner by the issue of a writ of mandamus in this case.

11. Assuming a writ of certiorari could issue in this case and the respondent Corporation was under a duty to act judicially or quasi-judicially in the matter of

disciplinary or departmental proceedings against its officers, I would not be inclined to grant a writ in. the present case inasmuch as there is a good deal of controversy as to what actually took place at the departmental proceedings held in respect of the charges against the petitioner. It is the case of the petitioner that he was not afforded an opportunity to take the assistance of his lawyer nor to cross-examine witnesses and tender his own witnesses for examination. This is however disputed by the respondents. A good deal of evidence has to be taken before any satisfactory conclusion can be arrived at on the points. As observed by G.N. Das J. in the case of -- D. Parraju Vs. General Manager, B.N. Railway and Others, (D) the remedy by way of an application under Article 226 of the Constitution is not a proper substitute for a remedy by way of a suit, especially where facts are in dispute and in order to get at the truth it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct.

12. So in any event this is not a case where the Court will in the exercise of its discretion under Article 226 of the Constitution grant a writ of certiorari or mandamus when there is a more convenient and effective remedy open to the petitioner by way of a suit.

13. A point was raised by Mr. Sen that the Authority that passed the order of dismissal of the petitioner is not the appointing authority but it is the Director of Personnel of the Corporation who has made the order. This fact has been denied in the counter-affidavits and at the hearing the learned Advocate-General has produced the order of dismissal and it appears that the order was approved or sanctioned by all the members who compose the Corporation. The .approval was given on 12-6-1951 and the order was communicated to the petitioner by the Director of Personnel on 16-6-1951. So there is no force in this contention of Mr. Sen.

14. In my view this petition fails and the Rule is accordingly discharged. I make no order as to costs.