
(2014) 06 CAL CK 0046
In the Calcutta High Court
Case No : W.P. No. 6052 (W) of 2014

Bodhisatta Ghosh

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 09-06-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34, 498A

Citation : (2014) 2 CALLT 627

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Anjan Bhattacharya, Advocate for the Appellant; Chaitali Bhattacharya, Subrata Das Gupta, Ekramul Bari and Sambhunath De, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Biswanath Somadder, J.—The petitioner has approached this Court by filing the instant writ petition praying, inter alia, for issuance of a writ in the nature of mandamus for setting aside of the order of suspension dated 22nd January, 2014, issued by the Chairman, District Primary School Council, North 24-Parganas. The writ petitioner was appointed as a primary teacher of Mukundakati Free Primary School under Basirhat New Circle on 1st March, 2004. Being in custody for around 93 days in connection with Basirhat P.S. Case No. 144 of 2008 dated 11th March, 2008, under sections 498A/302/201/34 of the Indian Penal Code, he was placed under deemed suspension by the Chairman of the District Primary School Council, North 24-Parganas, with effect from the time he was taken into custody.

2. Initially, he moved this Court by filing a writ petition, being W.P. No. 419 (W) of 2009, challenging the order of suspension. This Court, by an order passed by Dipankar Datta, J., was pleased to direct the then Chairman of the Council to consider the petitioner's representation. Such representation of the petitioner was considered, but the prayer of the petitioner was rejected. The petitioner

once again approached this Court by filing a writ petition, being W.P. 8832 (W) of 2010, again seeking revocation of the order of suspension as well as enhancement of subsistence allowance as per R.O.P.A. 2009. On 14th February, 2011, this Court rejected the prayer of the petitioner for revocation of the order of suspension but allowed enhancement of subsistence allowance as per ROPA 2009. Thereafter, the writ petitioner again approached this Court by filing a writ petition, being W.P. No. 1411 (W) of 2012, praying for revocation of the order of suspension. On 22nd February, 2012, this Court was pleased to reject the prayer of the petitioner. The petitioner subsequently made a prayer before the Council on 28th September, 2012 (through the Sub-Inspector of Schools, Basirhat New Circle) for allowing him to resume his duty as a primary school teacher. The Chairman of the District Primary School Council, North 24-Parganas, sympathetically allowed the petitioner to resume his duty as an assistant primary school teacher with the existing subsistence allowance on the basis of an order as contained under memo dated 6th November, 2012, issued by the Chairman, District Primary School Council, North 24-Parganas, addressed to the Sub-Inspector of Schools, Basirhat New Circle, District - North 24-Parganas. The petitioner accepted the said order of the Chairman of the Council without any demur or protest and started working as a primary school teacher drawing only subsistence allowance. After lapse of around thirteen months, he made a prayer before the authority concerned for payment of full salary, which was rejected by an order dated 15th March, 2013.

3. In the meanwhile, the petitioner had again approached this Court by filing a writ petition, being W.P. No. 14390 (W) of 2013, this time challenging the legality and validity of the said memo dated 6th November, 2012, issued by the Chairman, District Primary School Council, North 24-Parganas, addressed to the Sub-Inspector of Schools, Basirhat New Circle, District - North 24-Parganas, permitting the writ petitioner to join Mukundakati Free Primary School with his existing subsistence allowance. It was the specific case of the petitioner that having once been allowed to resume his duties, all entitlements ought to have been released in his favour. However, the concerned authority had chosen to give permission to the petitioner to withdraw only the subsistence allowance, which was impermissible in law. A report in the form of an affidavit was called for from the District Primary School Council, North 24-Parganas. Such report revealed that the petitioner had made a representation before the Chairman of the concerned Council on 28th September, 2012, which he had not disclosed in his writ petition, being W.P. No. 14390 (W) of 2013. After considering all aspect of the matter, this Court dismissed the said writ petition on 9th September, 2013, with the following observations:

"In the report in the form of an affidavit filed earlier on behalf of the District Primary School Council, North 24 Parganas, it has been stated that the petitioner made a representation before the Chairman of the said Council on 28th September 2012, which he has not disclosed in the present writ petition.

Perusing the said representation dated 28th September 2012, it appears that the petitioner was essentially seeking re-engagement in spite of being under deemed suspension.

The District Primary School Council, North 24 Parganas, has further stated in the report that after receiving a copy of the instant writ petition, the Chairperson came to know from the learned Counsel about the order/direction of this Court in an earlier writ petition which had been moved by the petitioner. Since the Chairperson has no personal knowledge of earlier order/direction of this Court, the writ petitioner was allowed to join his duty, with his existing subsistence allowance on 6th November 2012, on the basis of his representation.

It is submitted by the learned advocate representing the District Primary School Council, North 24 Parganas that the petitioner joined the concerned school on the basis of the memo dated 6th November, 2012, without any demur or protest, which will be clear from the joining report annexed to the writ petition being Annexure-P 3 at page 24. As such, he submits that the petitioner accepted the contents of the memo dated 6th November, 2012 and is, therefore, estopped from contending otherwise, at this belated stage. He further submits, that apart, the petitioner did not disclose his representation dated 28th September 2012 in the present writ petition. He also never brought to the notice of this Court the material fact of moving an earlier writ petition being W.P. 8832 (W) of 2010, which culminated in an order dated 14th February 2011, which has been quoted in details in an earlier order of this Court dated 19th June, 2013 passed in the instant matter. He finally submits that discretionary jurisdiction of the writ Court cannot be taken for granted by a litigant.

From the records it transpires that the order passed by this Court on 19th June 2013 was appealed against by the writ petitioner before a Division Bench of this Court, being MAT 992 of 2013. The said appeal together with a connected application being CAN 6530 of 2013 was disposed of on 19th July 2013 by a Division Bench setting aside the order dated 19th June 2013 and allowing the writ petitioner to adduce evidence by filing an affidavit in reply with a certain time frame. The District Primary School Council, North 24 Parganas was also granted liberty to file a rejoinder.

The pleadings which have been filed by the petitioner after the order of the Division Bench dated 19th July 2013 does not disclose any such material which will controvert the facts that are already on record. It is patently clear that the petitioner accepted the content of the memo dated 6th November 2012 issued by the Chairman, District Primary School Council, North 24 Parganas without any demur or protest, which is manifest from his joining report.

The learned advocate representing the District Primary School Council, North 24 Parganas has also prayed for leave to allow his client to withdraw the memo dated 6th November 2012, which the petitioner seeks to rely on in the present proceeding.

Although it has been submitted by the learned advocate for the petitioner that the joining report is merely a printed document, which is required to be signed by the petitioner, there is no contemporaneous evidence adduced by the petitioner, which would reflect that he had protested in respect of the contents of the memo dated 6th November 2012, as soon as he joined the concerned school.

The learned advocate for the petitioner has drawn this Court's attention to paragraph 12 of this writ petition, which is a vague averment and does not even provided the exact date of the purported letter written by the petitioner to the Sub-Inspector of Schools, Basirhat New Circle, requesting for pay benefit under the latest ROPA Rule. The memo dated 15th March 2013 issued by the Chairman, District Primary School Council, North 24 Parganas, which has been referred to by the learned advocate for the petitioner also does not give the exact date of the letter petitioner containing his prayer for pay benefit to be given to him. In the absence of contemporaneous evidence in that respect, it can be safely held that the petitioner is estopped from challenging the contents of the memo dated 6th November 2012.

The other aspect of the matter is in respect of suppression of material facts and documents as submitted by the learned advocate for the Council. As observed earlier, it is evident from the report in the form of an affidavit filed on behalf of the District Primary School Council, North 24 Parganas, that the writ petitioner made a representation to the Chairman, District Primary School Council, North 24 Parganas on 28th September 2012, which has never been disclosed in the writ petition. It appears from the said representation that the petitioner was essentially seeking re-engagement in spite of being under deemed suspension. Failure on the part of the petitioner to disclose the contents of the representation dated 28th September 2012, in the backdrop of the plea of the petitioner as raised in the instant writ petition, tantamounts to an abuse of process of this Court.

Taking into consideration the observation made by the Division Bench in its order dated 19th July 2013, the writ petition is liable to be dismissed with cost.

The learned advocate appearing for the petitioner, however, prays before this Court to refrain from imposing any cost.

Considering the prayer made by the learned advocate for the petitioner, the writ petition stands dismissed, without order as to costs."

4. Against the above order, the writ petitioner preferred an appeal, being MAT 1663 of 2013, which was heard and disposed of on 4th March, 2014, by a Division Bench of this Court, with the following observations:

"After hearing the learned Advocates of the parties and after considering the materials on record and also without making any effort for finding out the justifiability of the order passed by the Learned Single Judge, we feel that the appeal can be disposed of by directing the concerned authority to pay the

appellant/petitioner his salary and/or his other entitlement which is admissible to an Assistant Teacher of a primary school for the period during which the school authority allowed him to render his service after he was permitted to join the school in terms of the order of the Chairman of the said Council dated 6th November, 2012 till the said permission order was revoked by the Chairman of the said Council on 22nd January, 2014; for the simple reason that the school authority utilised his service during the said period and as such his entitlement to full salary during the said period cannot be denied.

We, however, make it clear that since the permission order passed by the Chairman of the said Council on 6th November, 2012 was subsequently revoked on 22nd January, 2014, reimposing the order of suspension, we are not considering the appellant's/petitioner's claim for his full salary for the period during which he was placed under suspension or until he resumed his duties after withdrawal of his suspension.

Mr. Bari, learned Advocate, appearing for the Council submits that since the appellant/petitioner was paid his subsistence allowance during the said period, the salary which was so paid on account of his subsistence allowance during the said period should be adjusted against his salary and/or entitlement which was admissible to him during the said period.

We find that such submission of Mr. Bari is fair enough.

Accordingly, we direct the concerned authority to pay his salary and other entitlement after adjusting the amount which was paid to him on account of his subsistence allowance during the said period. Such payment should be made within eight weeks from date.

It is made clear that this order is passed without prejudice to the rights and contention of the parties in the subsequent writ petition being W.P. No. 6052 (W) of 2014 filed by the petitioner.

The impugned order is, thus, modified accordingly."

5. The issue that has now been raised by the learned advocate for the petitioner in the instant matter is whether a suspension order which has been revoked once - could be re-imposed by the same authority in terms of Rule 7 of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001. The said Rule, in its entirety, was reproduced by this Court on 14th February, 2011, while disposing of one of the earlier writ petitions, being W.P. No. 8832 (W) of 2010. As such, to avoid prolixity, this Court refrains from setting out the same Rule once again.

6. The facts of the present case reveal that the petitioner was permitted to join the concerned school by the Chairman, District Primary School Council, North 24-Parganas, in terms of a memo dated 6th November, 2012, with his existing subsistence allowance. The petitioner accepted the contents of the said memo dated 6th November, 2012, without any demur or protest, which is manifest from

his joining report that is on record. It has been elaborately discussed by this Court in its judgment and order dated 9th September, 2013, passed in W.P. No. 14390 (W) of 2013, that the writ petitioner had made a representation to the Chairman, District Primary School Council, North 24- Parganas, on 28th September, 2012, essentially seeking his re-engagement in spite of being under deemed suspension. This representation dated 28th September, 2012, was never disclosed by the petitioner before this Court when he moved W.P. No. 14390 (W) of 2013. As such, this Court in its judgment and order dated 9th September, 2013, held, inter alia, that failure on the part of the petitioner to disclose the contents of the representation dated 28th September, 2012, in the backdrop of the plea of the petitioner as raised in that writ petition, tantamounted to an abuse of process of this Court.

7. Subsequently, the Chairman, District Primary School Council, North 24- Parganas, while issuing the impugned order dated 22nd January, 2014, has given cogent reasons as to why the earlier memo dated 6th November, 2012, was required to be withdrawn and/or recalled.

8. The impugned memo dated 22nd January, 2014, in its entirety, is reproduced hereinbelow:

"Very much sorry to inform you that you were in jail custody for 93 days in connection with Basirhat P.S. Case No. 144 of 2008 dated 11.02.2008 (sic) [11.03.2008] u/s 498A/302/201/34 I.P.C. Thereafter you were released on bail. Accordingly as per Rule suspension order was issued suspending you from your service on and with effect from 10.03.2008.

That thereafter you moved a Writ Petition No. 413 (W) of 2009 (sic) [Writ Petition No. 419 (W) of 2009] before the Hon''ble Justice Dipankar Dutta. After hearing the said application His Lordship was pleased to direct the then Chairman of the Council to consider your representation. Accordingly the then Chairman of the Council considered your representation and rejected your prayer.

Thereafter you again moved another writ petition being No. 8832 (W) of 2010 before the Hon''ble Justice Biswanath Somadder for revocation of your suspension as well as enhancement of your subsistence allowance as per R.O.P.A. 1990 (sic) [2009], After hearing on 14.02.2011 His Lordship was pleased to outright reject your prayer for revocation of your suspension but allowed to enhance your subsistence allowance. Accordingly your subsistence allowances has been enhanced by the concerned authority per R.O.P.A. 1990 (sic) [2009].

Thereafter you again moved another writ petition No. 1411 (W) of 2012 before the Hon''ble Justice Nadira Patherya for revocation of your suspension. After hearing on 22.02.2012, Her Lordship was pleased to reject your prayer for revocation of your suspension.

That by suppressing all the aforesaid solemn orders of the High Court you made

a prayer on 28.09.2012 before the Council through the Sub-Inspector of Schools, Basirhat New Circle for allowing you to resume your duty as the Assistant Primary teacher of Mukunda Kati F.P. School. Accordingly on sympathy you were allowed to resume your duty as Assistant primary teacher at the said School with your existing subsistence allowance. You accepted the said order without any protest and/or objection and started working as primary teacher of the said School. Subsequently after lapse of 13 months you made a prayer before the authority concerned for payment of your full salary which was rejected by order dated 15.03.2013.

Thereafter you filed another Writ Petition No. 14390 (W) of 2013 before the Hon"ble Justice Biswanath Somadder challenging the legality and validity at the last part of my order dated 06.11.2012. Subsequently when the said petition was handed over to the Learned Advocate of the Council, he reported about the aforesaid solemn orders of the Hon"ble High Court rejecting your prayer for allowing you to resume your duty as Assistant Primary teacher. Accordingly the Chairperson of the Council submitted a Report in the form of Affidavit before the Hon"ble Justice Biswanath Somadder stating inter alia that the Chairperson of the Council had no personal knowledge about the aforesaid solemn orders of the Hon"ble High Court and for that reason you were allowed to resume your duty as Assistant primary teacher with your existing subsistence allowance. The Chairperson of the Council further stated in the said Report that if the Chairperson of the Council was aware about the aforesaid solemn orders of the Hon"ble High Court then ought not to allow you to resume your duty as Assistant primary teacher. Accordingly the Chairperson of the Council prayed for a leave to recall the aforesaid order dated 06.11.2012. After hearing the said writ petition on 09.09.2013, His Lordship was pleased to dismiss the said writ petition.

In view of the aforesaid facts and circumstances, it is quite clear that you suppressed about the aforesaid orders of the Hon"ble High Court at the time of making your representation for allowing you to join your duty as Assistant primary teacher. Therefore the Council have no other alternatives but to recall the aforesaid order dated 06.11.2012.

Accordingly the aforesaid order dated 06.11.2012 is hereby withdrawn and/or recalled. On and with effect from the date of receiving this order you are not allowed to resume your duty as an Assistant primary teacher, with immediate effect."

9. A plain reading of the above-quoted impugned order, as contained under memo dated 22nd January, 2014, issued by the Chairman, District Primary School Council, North 24-Parganas, reveals that the petitioner was permitted to rejoin his service on the basis of a representation made by him on 28th September, 2012, wherein, admittedly, he had suppressed material facts including the orders passed by this Court. This was not a case where the Chairman of the concerned District Primary School Council had exercised suo motu authority and directed revocation of an order of suspension issued under

Rule 7. In fact, it was only at the behest of the writ petitioner and on the basis of his representation that he was allowed to rejoin his service in terms of the memo dated 6th November, 2012. There is no specific provision under the scheme of Rule 7 for a suspended employee to make any representation seeking revocation of an order of suspension for the purpose of the same being considered by the concerned authority. As such, the petitioner cannot contend that once the order of suspension has been revoked, it cannot be re-imposed. This contention of the petitioner would have had some force had it been a case where the Chairman of the District Primary School Council, North 24-Parganas, revoked the order of suspension suo motu and then re-imposed it, suo motu. The fact remains that the petitioner's representation dated 28th September, 2012, did not contain all material facts which were required to be placed before the Chairman of the Council for the purpose of consideration of his prayer for being allowed to resume his duties. It was, therefore, not possible for the Chairman of the concerned Council to objectively assess the petitioner's case, prior to revoking the order of suspension. It is this aspect of the matter that has been elaborately dealt with by the Chairman of the District Primary School Council, North 24-Parganas, in the impugned memo dated 22nd January, 2014, which, for reasons stated above, cannot be interfered with.

10. The writ petition is, therefore, liable to be dismissed and is accordingly dismissed. The writ petitioner, however, is at liberty to make a fresh representation before the Chairman, District Primary School Council, North 24-Parganas, disclosing all material facts, seeking revocation of the order of suspension.