

(1994) 12 CAL CK 0018
In the Calcutta High Court
Case No : Appeal from Matter No. 119 of 1994

Calcutta Municipal Corporation

APPELLANT

Vs

Khondker Masudul Hoque alias K.M. Haque

RESPONDENT

Date of Decision : 20-12-1994

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 21(3)

Citation : (1995) 2 ILR (Cal) 310

Hon'ble Judges : Bhagabati Prasad Banerjee, J;Asok Kumar Chakravarty, J

Bench : Division Bench

Advocate : Arun Prakash Sirkar, for the Appellant;D.N. Adhikary, for the Respondent

Final Decision : Allowed

Judgement

Bhagabati Prasad Banerjee, J.—This appeal is against the judgment dated September 15, 1994 passed by Altamas Kabir J. the trial Judge allowing the writ application with the following directions:

The Respondents are directed to grant retrospective promotional benefits to the Petitioner, as would have been due to him, in keeping with the recommendation made by the Head of the Department on 3rd August, 1993, within a month from date. The Respondents are further directed not to implement the punishment awarded to the Petitioner by the Disciplinary Authority by his order dated 28th June, 1993, in respect of the charge relating to Stall No. Beef 53-54.

2. Two charge-sheets were issued against the Petitioner, one in relation to Stall no Beef 53-54 and another in connection with Stall No. B-89-90 of S.S. Hogg Market. An order of suspension was passed in connection with charge-sheet relating to Stall No. B-89-90. A writ application was moved in Matter No. 1956 of 1987 challenging the charge-sheet, the order of suspension as well as promotion of one of the juniors of the Respondent/writ Petitioner. The Petitioner also moved another writ application in CO. 5742 (W) of 1989 complaining of the manner in

which the enquiry proceedings had been conducted. The writ application was heard and disposed of by the judgment dated December 11, 1992, whereby the order of suspension was quashed and the Appellant was directed to consider the writ Petitioner's case within December 31, 1992, treating the writ petition as the writ Petitioner's representation after giving the writ Petitioner reasonable opportunity of hearing from the stage of the show-cause notice. It was also directed that the Petitioner would be deemed to have been continuing in service and all consequential benefits and payments of dues should be made to the Petitioner by December 31, 1992, by which date the hearing was directed to be completed.

3. An appeal was preferred being No. 944 of 1992 by the Appellant against the said order dated December 11, 1992, and the said appeal was ultimately disposed of on consent of parties, by the Division Bench. The relevant clauses of the said consent order are as follows:

(e) as regards the second charge-sheet, the Corporation authorities are directed to conclude the same in accordance with law within a period of six weeks from the date hereof. In the event, the enquiry report is made available to the Disciplinary Authority, a copy of the enquiry report be made over to the writ Petitioner Respondent and in the event the Disciplinary Authority wants to proceed with the matter any further, an opportunity of hearing be given to the writ Petitioner Respondent as noted above in regard to the second charge-sheet.

(f) Since, the writ Petitioner Respondent has already been allowed to join, the Corporation authorities are directed to pay the current salary, as is admissible under the law, to the writ Petitioner Respondent, but as regards the arrears, the same shall abide by the result of the Enquiry proceedings in terms of this order.

It is clarified that in the event the enquiry proceedings go in favour of the writ Petitioner Respondent, then the entire arrear salary less the subsistence allowance already paid, be made over to the writ Petitioner Respondent within a period of four weeks from the date of completion of the enquiry proceedings.

(g) All promotional opportunities shall stand suspended till after the disposal of the disciplinary proceedings and in the event the disciplinary proceedings go in favour of the writ Petitioner Respondent the writ Petitioner Respondent shall be given all due promotions retrospective as and when it becomes due to him.

4. In respect of the disciplinary proceedings initiated in connection with the Stall No. B-89-90, the Petitioner was exonerated of the charges after holding the departmental enquiry. In respect of the departmental proceedings initiated in connection with the Stali No. B-53-54, the Disciplinary Authority after holding enquiry by the order dated June 28, 1993, inter alia, passed the following order:

I, therefore, hold him guilty of mis-conduct unbecoming of a civic servant and the charge against him as proved.

I, accordingly, award him a punishment stopping his three subsequent annual

increments cumulatively from the stage of pay he is currently enjoying. Subject to this award, he is entitled to enjoy all other benefits as he would have ordinarily enjoyed.

5. After this order was passed in connection with the departmental proceedings, the writ application was filed, inter alia, with the following prayers:

(a) A writ/order in the nature of Mandamus Commanding the Respondents, their agents, servants, sub-ordinates and/or employees to rescind cancel and/or withdraw the impugned order dated 28.6.93 passed by the Disciplinary Authority in respect of the first charge-sheet relating to stalls noted in Annexure "L" to the Petitioner so far relating to stopping three annual increments with effect from 1.4.93 to the Petitioner and further command the Respondents to implement the rest portion of the said order dated 28.6.93 by promoting the Petitioner with retrospective effect even by creating supernumerary posts in terms of recommendation dated 3.8.93 of the Head of the Department to promote the Petitioner retrospectively as and when it fell due to the Petitioner for bear them from enforcing and/or implementing the penal order passed against the Petitioner in any manner and in any form ;

(b) A writ/order in the nature of Certiorari commanding the Respondents to produce the entire original records including the note sheets in File No. Beef 53-54, subletting of and mutation file regarding Stall No. Beef 53-54 S.S. Hogg Market and all other relevant connected papers in respect of the first and second charge-sheet issued against the Petitioner and all other further connected papers relating thereto before this Hon"ble Court and on such production being made administer conscionable justice by quashing the impugned order dated 28.6.93 to far, relating to withholding of the three increments of the Petitioner with effect from 1.4.93.

6. The learned trial Judge heard the matter on affidavit and allowed the writ application with the following observation:

The Disciplinary Authority, however, chose to exonerate the Petitioner of one charge while finding him guilty of the other.

While exonerating the Petitioner in respect of the second charge-sheet, the Disciplinary Authority also made it clear that the period of? his suspension would be treated as on duty. While finding the Petitioner guilty in respect of the first charge-sheet and stopping three of his annual increments with cumulative effect, the Disciplinary Authority also directed that the Petitioner would be entitled to enjoy all other benefits as he would have ordinarily enjoyed.

Taking the two together, I have no hesitation in arriving at the conclusion that the Petitioner is entitled not only to all monetary benefits that have already been given to him, but he is also entitled to the promotional benefits that would have been due to him on 2nd June, 1986 and 25th October, 1990. Even while awarding punishment to the Petitioner in respect of the first charge-sheet, the

Disciplinary Authority directed that subject to the award the Petitioner would be entitled to enjoy all other benefits as he would have ordinarily enjoyed.

The order of the Appeal Court will have to be read along with the intention of the Disciplinary Authority, which appears to be that except for the withholding of three annual increments, the Petitioner should be given all other benefits which he would have ordinarily enjoyed, which must include promotional benefits also.

As far as the other benefits if submissions of Mr. Adhikary regarding the punishment awarded to the Petitioner, is concerned, there can be little doubt that the Disciplinary Authority acted in excess of the authority vested in him, inasmuch as, the Calcutta Municipal Corporation Act, 1980, does not provide for the punishment awarded to the Petitioner. The decision cited by Mr. Sirkar in the case of State of Andhra Pradesh v. C. Venkata Rao (Supra) does not come to the aid of the Respondents, since there appears to be an error apparent on the face of the record and we are not called upon to re-examine and/ or reappraise the evidence available to the Disciplinary Authority.

7. Mr. Arun Prakash Sirkar, learned Counsel appearing on behalf of the Appellant, submitted in the first place is that in view of the consent order particularly Clause (g) thereof, the respondent/writ Petitioner was not entitled to claim promotional benefits when he was found guilty of mis-conduct by the Disciplinary Authority by the order of June 28, 1993, and it was, further, submitted that when punishment had been awarded, in view of the consent order passed by the Division Bench, there is no question of giving any promotional benefits. The promotional benefits could only be given in case the writ Petitioner was exonerated of the charges. It was further submitted by Mr. Sirkar that expression he is entitled to enjoy all other benefits as he would have ordinarily enjoyed" could not be construed for holding that the Disciplinary Authority had directed to confer promotions which were due earlier, but could not be given in view of the consent order passed by the Division Bench. It was submitted that the benefit which was directed to be given was limited to financial and other benefits which the writ Petitioner was entitled to as a matter of right and as a matter of course, in case, the order of suspension was not passed and such expression did not and could not mean that the promotional benefits which the writ Petitioner was entitled to if the order of suspension was not issued in view of the fact that such promotional benefits could only be given in terms of the consent order passed by the Division Bench, in case, he was exonerated of the charges. It was also submitted that because of the use of the present tense in the ordering portion it means benefit prospectively and not retrospective benefit and not for restoring the promotional benefits which were earlier due. Restoration of promotional benefit was not as a matter of right and as a matter of course, but it was only available in terms of the consent order passed by the Division Bench only when he was exonerated of the charges. Next, it was submitted by Mr. Sirkar that the learned trial Judge has held that the Disciplinary Authority "acted in excess of the authority vested in him under the Act which did not provide for the punishment

awarded to the Petitioner" Mr. Sirkar submitted that if the Court finds that the punishment was not awarded by the Disciplinary Authority in accordance with law, in that event, the Court should have remanded the case back to the Disciplinary Authority for passing a fresh order of suspension in accordance with law after setting aside the punishment that was imposed. Section 21(3) of the Calcutta Municipal Corporation Act, 1980, provides that the Disciplinary Authority can pass as a penal measure the punishment of reduction in rank, supersession, removal or dismissal, and that the Act did not confer any power to impose a minor punishment of withholding of three subsequent annual increments. Mr. Sirkar, further, submitted that the learned trial Judge could not direct not to implement the punishment awarded by the Disciplinary Authority unless the Disciplinary Authority finds that the disciplinary proceeding was illegal and bad in law.

8. Mr. D. N. Adhikary, learned Counsel appearing on behalf of the writ Petitioner, submitted that in the facts and the circumstances of this case, in view of the order of the Disciplinary Authority dated, June 213, 1993, the learned trial Judge was right in directing restoration of all promotional benefits. It was further submitted that the Disciplinary Authority had power and/or authority to confer any benefit traveling beyond the said consent order. It was further submitted that if the order of suspension had been set aside and if the order of the Disciplinary Authority in the other departmental proceeding in which he was exonerated, he was directed to be treated as on duty with full pay in that event, the writ Petitioner in this proceeding was entitled to all the benefits including promotional benefits which he was deprived because of the order of suspension. Mr. Adhikary also submitted that the learned trial Judge had directed not to implement the order of punishment awarded to the writ Petitioner by the Disciplinary Authority because of the fact that the learned trial Judge was of the view that the charges failed because of the evidence adduced by the writ Petitioner and disclosed in the writ petition. It was submitted by Mr. Adhikary that reasons for directing the Disciplinary Authority not to implement the punishment was because of the fact that the learned trial Judge accepted that contentions of the writ Petitioner that the charge-sheet and/or finding was not maintainable, and that the learned trial Judge found that there appeared to be an error apparent on the face of the record and that this error was in connection with the disciplinary proceedings and submitted that finding should be taken to be a clear finding made by the learned trial Judge setting aside the order of the Disciplinary Authority on merit. Mr. D. N. Adhikary himself has not filed any affidavit-in-opposition explaining what was meant by the expression "he was entitled to enjoy all other benefits as he was ordinarily enjoyed." But, the Appellant has contended before the learned trial Judge that the writ Petitioner has not been given the promotional benefits which he was entitled to but could not get because of order of suspension. Even though the disciplinary proceeding was challenged in the writ petition as illegal, mala fide, void and with jurisdiction disclosing the ground therefor, but, the learned trial Judge had not made any

clear finding and had not disclosed any reason why the disciplinary proceeding was illegal and/or void on its merit.

9. The learned trial Judge has held that there could be little doubt that the Disciplinary Authority "had acted in excess of the authority vested in him. Presumably on the ground that the Act did not provide for the punishment awarded to the-writ Petitioner." But, the exact reason for such decision has not been disclosed. If it was held that the punishment that has been awarded was not specified in Section 21(3) of the said Act, in that, event, the order of punishment should have been set aside and the Disciplinary Authority should have been directed to consider the question of imposition of penalty afresh in accordance with law. Neither the order of punishment was set aside nor any opportunity was given to the Disciplinary Authority to consider the matter afresh and unless the disciplinary proceeding is quashed, the question of restoration of all benefits could be made and the Appellant could not be restrained from implementing the punishment that has been awarded by the Disciplinary Authority. If the proceeding was valid and the punishment could be validly awarded the same could not be directed not to be implemented. On the contrary, if it is found that the proceeding was void and the punishment was illegally imposed, in that event, it should have been considered whether the matter should be remanded back to the Disciplinary Authority for imposing the punishment afresh in accordance with law. No reason has been disclosed why the matter has not been remanded after setting aside the punishment. Without setting aside the order of punishment on merit the Court cannot direct not to implement punishment awarded in the departmental proceeding.

10. However, in our view, the matter has to be considered whether in view of the consent order passed by the Division Bench, the Disciplinary Authority really intended to confer any benefit traveling beyond the consent order and whether because of the language used in the ordering portion, it could be construed that the Disciplinary Authority really intended, as a matter of course, to restore the promotional benefits that would have been due to him on June 2, 1988, and October 25, 1990. The order of the learned trial Judge could not be sustained because of the reason aforesaid. The order of the learned trial Judge is set aside and the matter is remanded back to the said learned trial Judge consideration of the case afresh on all points available to the parties and to back a fresh decision expeditiously. The appeal is allowed and the case is remanded back to the said learned trial Judge. There will be no order as to costs.

Asok Kumar Chakravarty, J.

11. I agree.

Appeal allowed, case remanded to trial Court.