

(1979) 04 CAL CK 0012
In the Calcutta High Court

Chitta Ranjan Ghose

APPELLANT

Vs

I.G. Police, West Bengal and Others

RESPONDENT

Date of Decision : 02-04-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Police Act, 1949 — Section 7

Citation : (1979) 04 CAL CK 0012

Hon'ble Judges : Bimal Chandra Basak, J

Bench : Single Bench

Advocate : Prasanta Kumar Bandopadhyya, for the Appellant; T.K. Sen Gupta, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice Bimal Chandra Basak

1. In this application under Article 226 of the Constitution of India the petitioner I challenging the orders passed by the respondents directing him to attend the roll call during his period of suspension. According to the petitioner, he is employed in the West Bengal Police Department. At the relevant time he was posted in the Sealdah Government Rly. Police Station as an Assistant Sub-Inspector of Police. As a sequel to an incident on 2nd of August 1974 a charge sheet was issued calling upon the petitioner to show cause. By an order dated 12th of August 1974 he was placed under suspension. By this order he was further directed to attend usual roll calls during the period under suspension at Police lines, Sealdah. Thereafter by a notice dated 22nd of November 1974 it was stated that if persons specified therein, including the petitioner herein, do not attend the Roll Calls, their subsistence allowance will be kept "held over" and the period of non-reporting will be dealt with according to W.B.S.R. Regulations. This was followed by an order dated 9th April 1975 by the Deputy Inspector-General of Police, Traffic & Railways, Government of West Bengal, wherein it was stated that the decision of this Court in case of (1) Bhabesh Kumar Paul Vs. The State,

does not prevent the authority concerned to direct the police officers under suspension to attend the rolls calls. The extract of this letter was forwarded to the Police personnel specified therein including the petitioner for compliance. They were directed to attend the Roll calls. I should point out that in the case of Bhabesh Kumar Pal (*supra*) this Court held that the order under Rule 881 making it obligatory on the police officer under suspension to reside on the police lines for an indefinite period amounts to confinement within the meaning of sec. 7 (b) of the Police Act and it amounts to punishment without holding enquiry and it is bad.

2. On behalf of the petitioner it is contended that direction to attend roll call is without jurisdiction. The learned Advocate appearing for the State submits that the petitioner has merely been asked to attend the roll call to ascertain whether he has joined service elsewhere or not.

3. In my opinion these orders directing the petitioner, who is under suspension pending enquiry, to attend the roll call is illegal and without any authority whatsoever. In the present case there is a subsisting order of suspension pending enquiry. In my opinion in a case of suspension of this nature the employee concerned is not liable to render any service. He is prevented from performing the duties of his office. It amounts to a direction to the person concerned that he should not do service required of him during a particular period. In this context reference may be made to a decision of the Supreme Court in the case of (2) V.P. Gindroniya v. State of Madhya Pradesh & Anr., AIR 1970 SC 1495.

4. If that is the effect of the order of suspension in this case then the petitioner cannot be called upon to attend the roll call during his period of suspension. During the period of suspension he cannot be asked to render any service or perform any duty. Attending roll call by a police personnel is a part of his duty. If he has been suspended from performing his duty the authority concerned cannot, at the same breath call upon him to attend the roll call.

5. In this context I may point out that though I called upon the learned Advocate appearing for the State to show me any provision anywhere which authorizes the authority concerned to pass any such order during the pendency of such an order of suspension, he has failed to do so.

6. If the intention of the authority is to ascertain whether, during the period of suspension, the petitioner is employed elsewhere or not as sought to be contended by the learned Advocate for the State, that they can do by adopting any other measure. As a matter of fact it appears from these orders themselves that the petitioner was required to submit declarations to that effect.

7. In that view of the matter I am of the opinion that these orders directing the petitioner to attend during the period of his suspension pending enquiry is illegal and without jurisdiction.

8. In that view of the matter I allow this application and make the Rule absolute.

There will be a Writ of Mandamus directing the respondents not to give effect or any further effect to the orders directing the petitioner to attend the roll call during the period of his suspension pending enquiry.

9. In this connection my attention has also been drawn to the fact that in spite of the fact that this charge sheet was issued as long back as on the 12th August, 1974, upto now no such enquiry has been held. As a matter of fact no step has been taken in conducting such enquiry though there is no order of any Court restraining the respondents from proceeding with such enquiry. It is to be pointed out that in this case by an order of injunction the respondents were only restrained from giving effect to the impugned orders that is, the orders directing the petitioner to attend the roll call only. Accordingly, there is no justification for delaying such enquiry proceedings. Unnecessarily for more than four years the petitioner has been kept under suspension without holding any enquiry and thereby unduly harassed.

10. Accordingly I also give the following directions:

11. I direct the authorities concerned to expedite disciplinary proceedings against the petitioner. I further direct that if the enquiry proceeding is not commenced within a period of three months from the date of service of a copy of this order then the suspension order will stand terminated.

12. This application is allowed and the Rule is made absolute to the extent indicated above.

Interim order, if any, is vacated.

There will be no order as to costs.

Let a copy of this order be sent by the Registrar, Appellate Side of this Court to the I.G. of Police, West Bengal.