
(2004) 02 GAU CK 0019
In the Gauhati High Court
Case No : W.A. No. 118 of 2002

Dilip Choudhury

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 10-02-2004

Acts Referred:

Citation : (2005) 3 GLR 753 : (2004) 2 GLT 192 : (2004) 3 LLJ 1072

Hon'ble Judges : Tinlianhang Vaiphei, J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : R. Dutta, for the Appellant; U.B. Saha and A. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

1. By means of this appeal, the appellant has impugned the order dated August 12, 2002, passed in W.P.(C) No. 596 of 2001, whereby the learned single Judge dismissed the writ petition.

2. The appellant, herein, was appointed as a Helper in Sabroom Primary Marketing Co-operative Society Limited (hereinafter referred to as "the Society") on fixed remuneration of Rs. 400/- per month. The order of appointment of the appellant stipulated given of a notice of one month before terminating his service. However, by order, dated June 24, 1997, (Annexure-3 to the Writ Petition) the appellant was discharged from service on the ground that he had failed to deposit the amount, which he had, according to the respondents, defalcated. The appellant remained silent for about 4 years and, then, approached this Court, with the help of the writ petition, challenging his discharge from service on two grounds, viz. (i) that no notice, as stipulated in his appointment order, was served on him before he was discharged from service; and (ii) that he was also not given opportunity of showing cause against the alleged defalcation of the amount belonging to the Society.

3. The respondents herein resisted the claim of the writ appellant by filing their

affidavit in-opposition, wherein they contended, inter alia, that the writ petitioner had, on various dates, while serving as a helper in the Society. Defalcated a huge amount of money belonging to the Society and the total amount, so misappropriated, came to the tune of Rs. 1,26,818.72 and though the petitioner was asked by the Society to repay the said defalcated amount and though the petitioner had, vide his letters, which are laid at Annexure-C series, undertook to make the repayment, he failed to do so. This apart, the petitioner had himself, according to respondents, sought for being relieved from service and it was in such circumstances that the petitioner was discharged from service.

4. We have heard Mr. R. Dutta, learned counsel for the appellant, and Mr. U.B. Saha, Senior counsel assisted by Mr. A. Ghosh, appearing for the State respondents. We have also perused the materials on record.

5. Admittedly, the appellant-petitioner was not served with notice as was stipulated in his appointment order. For such termination of service, the petitioner is at best, entitled to the emoluments, which he was drawing at the time of his discharge from service. The second leg of submission made on behalf of the appellant, is that he had not been served with any notice of showing cause before his discharge from service and that his discharge was not on account of the appellant's own request for being relieved from service, but due to his alleged defalcation of money belonging to the Society. The order of discharge, dated June 24, 1997 (Annexure-3), shows, we notice, that the appellant was discharged due to failure to deposit the alleged defalcated amount. The appellant cannot, therefore, be held to have been relieved in consequence of his own request made in this regard.

6. The question, which, now, arises is as to whether, for the omission, on the part of the respondents, to give any notice of showing cause to the appellant before his discharge from service, the impugned order requires any interference by this Court. A writ Court essentially exercises the powers of a Court of equity. The notice to show cause is served on a person, if his service is to be terminated for some disciplinary action in order to meet the ends of the principles of natural justice. The principles of natural justice ensure that no prejudice is caused to any person. Not to be condemned before being heard is the basic principle of natural justice and this ensures that no prejudice is caused to the person, who is sought to be condemned.

7. In the case at hand, we are required to examine if any prejudice has been caused to the appellant, on account of failure on the part of the respondents, to serve any notice on the appellant to show cause against his proposed discharge from service. While considering this aspect of the matter, it is of paramount importance to note that the respondents, in their affidavit-in-opposition, clearly alleged that the appellant had defalcated, as indicated hereinabove, a sum of Rs. 1,26,818.72 and despite having undertaken to repay the same, the appellant had failed to do so. The appellant did not controvert these assertions made by the respondents. The assertions made, having remained undisputed, must be treated

by the Court as admitted statement of facts between the parties. This apart, the appellant's letters, placed at Annexure-E series, reveal that the appellant did undertake to repay the alleged defalcated amount. In the face of the materials on record showing that the appellant admitted to have defalcated the money belonging to the Society, the termination of service on the ground that the appellant had failed to repay the money belonging to the society which the appellant had defalcated cannot be said to have caused any prejudice to the appellant. In the face of the above facts and circumstances of the case, even if we interfere with the order of discharge, the end result of serving any notice of showing cause on the appellant would not be able to improve his case, inasmuch as the allegation of defalcation stands admitted by the appellant.

8. Coupled with the above, the appellant approached this Court after a gap of 4 years and allowing his prayer for reinstatement in service would have unsettled the settled position in the Society. This apart, on account of the admitted conduct of the appellant, he could not have been imposed on a Society, which works as a trustee of public money.

9. Considering, therefore, the matter in its entirety, we are firmly of the view that the appellant is entitled to receive, at best, a sum of Rs. 1200/-, which he was drawing at the time of his discharge from service. We accordingly direct the respondents to pay, within three months from today, a sum of Rs. 1,200/- to the writ appellant as his unpaid dues. Except for such modification, the appellant is, in our firm view, not entitled to any other relief.

10. In the result and for the foregoing reasons, the appeal shall stand dismissed except to the extent as indicated above.