

(2011) 02 CAL CK 0030
In the Calcutta High Court
Case No : W.P.S.T. 526 of 2009

Dilip Kumar Sahu

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Citation : (2011) 2 CALLT 113

Hon'ble Judges : Pratap Kumar Ray, J; Mrinal Kanti Chaudhuri, J

Bench : Division Bench

Advocate : Pradip Kumar Ray, for the Appellant; Sujit Mittra and Subrata Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—Heard the learned Advocates appearing for the parties.

2. Assailing the order dated 8th May, 2009 passed by the West Bengal Administrative Tribunal in O.A. No. 719 of 2005, this writ application has been filed.

The impugned order reads such.

Case No. OA-719 of 2005

Order No. 08

Dtd: 08-05-09.

We have heard both Mr. Banerjee and Mr. Karim, representing the respective parties in connection with this application filed by one Dilip Kr. Sahu.

The Petitioner filed this application after receipt of second show cause notice which was served on him on receipt of the enquiry report by the disciplinary authority and we further get from the file that Petitioner already replied to the said second show cause notice.

The Petitioner faced the departmental proceeding on a number of charges related to the allegation of acquisition of asset disproportionate to his known source of income. We find from record and papers, produced by the Petitioner himself, that Petitioner participated in the proceeding and the enquiring officer, after considering both oral and documentary evidence, submitted a report holding inter alia that all the three charges, framed against the Petitioner, were proved.

The disciplinary authority, after considering the report of the enquiring officer, decided to impose a punishment to the form of reduction of pension at the rate of 20% for a period of three years without effecting other allowances of the Petitioner and, to comply with mandatory provision of rule, the authority served a second show cause notice before imposition of final order.

We find from record that Petitioner sent his reply to the second show cause and, only thereafter, he came before this Tribunal by filing the present application, challenging the departmental proceeding itself along with the report of the enquiring officer.

We find that Petitioner has already taken all these points in his reply to the second show cause and we do not know, at this stage, what is the present status of the departmental proceeding.

Now, on hearing both Mr. Banerjee and Mr. Karim, we are of the view that, when Petitioner participated in the proceeding and he also sent reply to the second show cause noticed and when this Tribunal did not consider the question of granting of any interim relief to the Petitioner, it will be appropriate to permit the disciplinary authority to record the final order, if not done already. We make it clear that, if final order has not been recorded as yet, the disciplinary authority, after considering all the points taken by the Petitioner in reply to show cause, shall record such final order and intimate the same to the Petitioner immediately, preferably, within a fortnight.

The Petitioner is granted the liberty to exhaust all available remedies against the final order.

With this, we dispose of this application at this stage.

Plain copy to both sides.

Sd/- A.K. Patnaik

Sd/- A.K. Basu

Member (A)

Member(J)

3. In the Original Application moved before the learned Tribunal, the writ Petitioner assailed the continuation of departmental proceeding which reached upto the stage of second show cause notice and also raised grievance on disbursement of revised pension, payments of balance amount of Gratuity,

commuted value of pension and other terminal benefits, as per the revised scale of pay in terms of Career Advancement Scheme. So far as departmental proceeding is concerned, learned Tribunal below directed the Respondents to complete the proceeding and to pass a final order. In pursuance thereof, on 16th October, 2009 an order has been passed by the Hon"ble Governor, imposing penalty by way of withholding 20% of his pension without affecting other allowances. This order of the Hon"ble Governor was communicated by Joint secretary to the Government of West Bengal.

4. The order dated 16th October, 2009 as produced by the writ Petitioner reads such.

Government of West Bengal P.W. (Roads) Department Establishment Branch
Vigilance Cell

ORDER

No. 37- R/V Dated, the 16th October, 2009.

WHEREAS Departmental proceedings was drawn up under Rule 10 of the West Bengal Services (Classification Control & Appeal) Rules, 1971 in terms of P.W. (Roads) Directorate"s Order No. 9 - R/V dated 10.01.2003 against Sri Dilip Kumar Sahu, S.A.E. under P.W. (Roads) Directorate since retired (hereinafter referred to as the Charged Officer) on the charges as set out in details in the article of charges appended with the said order;

AND WHEREAS Sri Ranjit Kumar Maity, Deputy Commissioner of Vigilance Commission, West Bengal being appointed as Inquiring Authority (hereinafter referred to as the Inquiring Authority) inquired into the charges framed against the Charged Officer who was made aware of the charges as well as given fare and reasonable opportunity to defend himself;

AND WHEREAS after completion of the enquiry, the Inquiring Authority found the Charged Officer guilty of the charges and submitted a report accordingly to the competent authority in the Government.

AND WHEREAS upon consideration of the record of the enquiry, and report of the Inquiring Authority the competent/disciplinary authority found the Charged Officer guilty of the charges in agreement with the findings of the Inquiring Authority.

AND WHEREAS upon careful consideration of the record of the enquiry so transmitted, the Disciplinary Authority, has provisionally formed an opinion that the penalty by deducting twenty per centum (20%) of his pension for three years without affecting other allowances under Rule 10(i)(a) of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 be imposed upon the Charged Officer;

AND WHEREAS the Charged Officer was directed by order of the Governor to show cause why the penalty as proposed above should not be imposed upon him;

AND WHEREAS the Charged Officer furnished a reply to the show cause and filed a petition to the Honourable West Bengal Administrative Tribunal with the prayer for squashing the Enquiry report, Notice of show cause as well as to disburse all his pensionary benefits as per his entitlement;

AND WHEREAS the Public Service Commission, West Bengal having considered the nature of gravity of the misconduct committed by the delinquent and all other aspects related to the case recommended that 20% of the pension of the Charged Officer be withheld for a period of 3 (three) years without affecting other allowances under Rule 10(i)(a) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971.

AND WHEREAS Hon"ble W.B.S.A.T. delivered a judgment on 08.05.2009 directing the Disciplinary Authority to record the final order considering all the points taken by the Petitioner in reply to show cause;

NOW THEREFORE, in exercise of the power conferred by Sub-rule 14 of Rule 10 of the West Bengal Services (Classification Control & Appeal) Rules, 1971 read with Rule 10(i)(a) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971, and after considering the reply submitted by the charged officer in response to the 2nd show cause notice, the Governor is pleased to order that penalty by way of withholding 20% of the pension of Shri Dilip Kumar Sahu, Retired Sub-Assistant Engineer, P.W. (Roads) Directorate, for three years without affecting other allowances be imposed with immediate effect.

A copy of letter No. 874 - PSC dated 07.05.2007 of the Public Service Commission, West Bengal containing recommendation of the Commission is enclosed far information.

By order of the Governor

Sd/:

Joint Secretary to the Government of West Bengal.

Let xerox copy of the order dated 16th October, 2009 be kept on record.

5. Having regard to the departmental proceeding impugned, it appears that same reached its finality and we are not finding any merit to disturb the order passed by the learned Tribunal. The learned Tribunal has already granted liberty to the writ Petitioner to exhaust all statutory remedies assailing the final order as to be passed. On that score, we intended to reject the writ application as nothing remains for adjudication, but learned Advocate for the Petitioner has thrashed the point that another prayer, being prayer (d) of the writ application, relating to disbursement of revised pension, balance amount of Gratuity, Commuted value of Pension and other terminal benefits, as prayed for, was not considered by the learned Tribunal below.

6. In that Original Application when the departmental proceeding was under challenge, whether any other prayer could be made relating to separate cause of

action, is a question which was required to be considered by the learned Tribunal below. From the impugned order it appears that there is no whisper to that effect. In the writ application there is no pleading by the writ Petitioner that the writ Petitioner, being the applicant therein before the learned Tribunal below, thrashed the point about prayer (c) of the writ application regarding release of terminal benefits and other revised pension, Commuted value etc. In the absence of such pleading, we are not in a position to understand whether this point at all was thrashed before the learned Tribunal below at the time of final hearing. It may happen that the writ Petitioner/applicant choose not to thrash that point before the learned Tribunal below. Since from the impugned order, we are not finding any whisper that before the learned Tribunal this point was raised and since in the writ application there is no such pleading that this point was raised but the Tribunal failed to consider that issue, we cannot accept the oral submission of the learned Advocate appearing for the Petitioner before us that despite submission of that point, learned Tribunal did not answer it.

7. We are taking that view applying the settled legal position that record of proceeding should be considered as real state of affairs and what is recorded therein should be considered as the real state of affairs and parties will not be allowed to controvert the findings by any affidavit before a Superior Court. Reliance is placed to the judgment passed in the case *Mount Carmel School Society Vs. D.D.A.*, wherein the Apex Court held to this effect "record made by a Judge to be accepted as correct - question whether a particular plea is raised but not dealt with by the Judge concerned cannot be considered by the Superior Court - remedy available in such type of cases to file application for review before the concerned Judge." This principle, namely, that the Superior Court always will consider the records of the proceeding's sacrosanct is a very old principle. Long back in the year 1926 Lord Buck Master held to that effect in the case *Madhusudan v. Chandrabati* reported in 21 CWN 897. Lord Atkinson in the case *Soma Sundaram v. Subramanian* reported in AIR 1926 P.C. 136 held "we are bound to accept the statements of the Judges recorded in their judgments, as to what transpired in Court. We cannot allow the statement of the Judge to be contradicted by statements at the Bar or by affidavit and other evidence. If Judges say in the judgment that something was done, stated or admitted before them, that has to be the last word on the subject and remedy to call attention of the Court on such issue." Sir Ashutosh Mookherjee in the case *Sarat Chandra v. Bibhabati Devi* reported in AIR 1922 Cal. 584 . passed the same view. The same view has been recorded by several judgments of the Apex Court, namely, in the case *State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another*, , *Daman Singh and Others Vs. State of Punjab and Others*, , *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, *Shankar K. Mandal and Others Vs. State of Bihar and Others*, , *Central Bank of India Vs. Vrajlal Kapurchand Gandhi and Another*, , *Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others*, a judgment of 3-Judges Bench and *D.P. Chadha v. Triyugi Narain Mishra* reported in (2001) 2 SCC 221, a judgment of 3-Judges Bench.

8. Having regard to the said legal position of law, we cannot accept the oral submission of the learned Advocate appearing for the Appellant that despite the submission made on prayer (d), learned Tribunal did not consider it.

9. Considering the aforesaid findings as above, the writ application has no merit, it stands dismissed.

Mrinal Kanti Chaudhuri, J.-I agree