
(2002) 02 CAL CK 0041
In the Calcutta High Court
Case No : Writ Petition No. 18046 (W) of 2001

Gour Gopal Debnath

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 CALLT 384

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Shyamal Sanyal, for the Appellant; Keshab Bhattacharya and Banani Mukherjee and Diptendu Majumdar and Atashi Gupta, for the Respondent

Final Decision : Allowed

Judgement

P.K. Ray, J.—Heard learned advocates appearing for the parties.

2. In the motion stage, this Court inclined to dispose of the matter in view of very peculiar facts and circumstances of the present case, as detailed in the following judgment wherefrom it will appear that there is a gross violation not only of the principles of natural justice but infringement of the statutory provision with reference to the departmental proceeding relating to an employee of a cooperative society.

3. It is the case of the petitioner that a show cause notice was issued on 3.9.2001 by the Secretary of Sree Chaitanya Co-operative Bank Ltd., whereby the petitioner was directed to show cause only on the issue as to why appropriate penal action would not be taken. In this show cause notice nothing has been disclosed about the alleged violation in terms of Rule 14 Appendix to Chapter VI of West Bengal Co-operative Societies Rules, 1987. The petitioner replied on September 8, 2001, denying all the allegations as made and further contending, inter alia, that each and every count of allegations were not legally sustainable in view of the factual matrix of the matter. However, the petitioner,

by his reply, requested the authorities to rescind, cancel or withdraw the show cause notice. Thereafter, no further notice by initiation of departmental proceeding was served upon the petitioner upon specifying the specific charges in terms of Rule 14 of Appendix to Chapter VI under Conditions of Service (hereinafter referred to as Rule 14 for brevity). Under the said Appendix to Chapter VI of West Bengal Co-operative Societies Rules, conditions of service were prescribed and under Rule 14 for misconduct and disciplinary action, acts as would constitute misconduct, are properly enumerated under different heads, which reads as follows:

"14. Misconduct and disciplinary action.-

(1) The following acts shall constitute misconduct of an employee, namely-

(i) willful insubordination or disobedience, whether in alliance with a co-employee or not, of any lawful and reasonable order of superior;

(ii) willful avoidance of work or abetment or instigation thereof;

(iii) theft, fraud, misappropriation or dishonesty in connection with employer's business or property or otherwise;

(iv) habitual absence without leave, everstaying the sanctioned leave without sufficient ground or proper and satisfactory explanation of habitual late attendance;

(v) commission of any act subversive of discipline or good behaviour in any public place such as drunkenness, riotous, disorderly or indecent behaviour, gambling or taking or giving bribes or any illegal gratification of any kind whatsoever;

(vi) gross or habitual negligence of duty;

Explanation.--For the purpose of this clause "gross or habitual negligence of duty shall include, in the case of an employee of a co-operative society whose function or duty" includes recovery of dues, inadequate recovery or such dues unless he can prove that there was no negligence whatsoever in this respect on his part;

(vii) Disclosing to a person any information with regard to the society which may be detrimental to the interest of the society;

(viii) wilful damage to any property of the society;

(ix) indulging scurrilous attacks against the management and other superiors.

4. Under Rule 14(b) penalties as could be imposed for the aforesaid misconduct as enumerated under Rule 14(a), also were enumerated, which reads as follows:

"(b) Any of the following penalties may be imposed on an employee for such misconduct by the Disciplinary Authority, namely-

(i) censure;

- (ii) recovery from a pay of the whole or part of any pecuniary loss caused to the society by negligence or breach of orders;
- (iii) withholding of increments with or without cumulative effect;
- (iv) withholding of promotion;
- (v) reduction to a lower stage in the time scale of pay or reduction to a lower time scale of pay, grade, post or service;
- (vi) removal from service which shall not be disqualification for further employment under the society;
- (vii) dismissal from service which shall ordinarily be a disqualification for future employment under the society;"

5. Under Rule 48 of the West Bengal Co-operative Societies Rules, the Board was vested with the powers to deal with such cases of departmental proceeding. Rule 48 provides that for removal of employees of the cooperative society, an inquiry must be made after proper information of the charges against such employee and on providing reasonable opportunity of being heard. Further, this clause provides that a second show cause notice is also to be issued on the proposed punishment, and after hearing, final punishment is to be imposed. Rule 48 of the West Bengal Co-operative Societies Rules, under Clause (f) provides as follows:

"(f) to appoint, discharge or to dismiss or to remove employees of the society;

Provided that no employee of a co-operative society shall be dismissed or removed from service except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges, and where it is proposed, after such inquiry, to dismiss or remove him, until he has been given a reasonable opportunity of making representation on the penalty proposed."

6. On a bare perusal of the said provision, it appears that there is a total embargo that without initiation of any departmental proceeding informing the employee concerned about the charges of misconduct and hearing him on such charges when the disciplinary authority would consider to remove or discharge or dismiss, then without giving another opportunity on such proposed punishment and hearing the employee concerned, no such punishment could be imposed. In the instant case, from the records it appears that the Secretary of the said Bank issued a show cause notice on issue as to why appropriate proceeding would not be initiated, but after receipt of reply, there was no issuance of any formal charge sheet against the petitioner asking him to show cause as to why appropriate penalty would not be imposed. Furthermore, after holding an inquiry on giving "reasonable opportunity" which stipulates the scope for placement of documents before the inquiring Officer, examination of witnesses concerned and right to be heard, the case was not adjudicated. In the instant case, there was no enquiry proceeding initiated and no enquiry report was submitted in terms of

the statutory Rule 48 as already referred to. It was the mandatory provision to issue a further second show cause notice on the proposed penalty. In the instant case, no such notice has been served and the petitioner has not been heard. Hence, it is clear that there is a clear violation of the statutory provision of law for initiation of a departmental proceeding and final culmination of such proceeding to a penalty of dismissal and/or removal. In that view of the matter, the impugned decision dismissing the petitioner's service in the language that the petitioner was no longer required to serve in the post of Chief Executive, which is in all practical senses means dismissal and/or removal of the petitioner from the said post is de-hors of statutory Rule 48 of the West Bengal Co-operative Societies Rules as already referred to. For effective appreciation of the principle of the law relating to a procedures in a departmental proceeding wherein statutes prescribes a word "reasonable opportunity of hearing", a reference of a judgment of a Special Bench of this Court in the case Arun Kumar Hait v. State of West Bengal and Ors., reported in 1999(1) CHN 521 is profitable. In the said judgment, Special Bench considered the impact of the word "sufficient opportunity" as appearing in the rules relating to the departmental proceeding of a teaching staff of a Secondary and/or Higher Secondary School controlled and guided by rules of Management of Recognised Non-Governmental Institutions (Aided and Un-aided) Rules, 1969. In the said judgment of this Court, it has also been settled that for effective adjudication of a departmental proceeding there will be necessity of an appointment of Enquiring Officer and presenting Officer for effective holding of enquiry. Law has been settled providing procedures for holding a proper departmental enquiry when statute is silent about the procedures. In the Privy Council's decision in University of Ceylon v. Fernando, reported in 1960 All ER 631, the following as has been observed, is quoted hereinbelow:--

"The clause is silent as to the procedure to be followed by the Vice-Chancellor in satisfying himself of the truth of falsity of a given allegation. If the clause contained any special directions in regard to the steps to be taken by the Vice-Chancellor in the process of satisfying himself, he would, of course, be bound to follow those directions. But as no special form of procedure is prescribed, it is for him to determine the procedure to be followed as he thinks best, but to adapt to the present case the language of the judgment of this Board in *Deuerteuil v. Knaggs* (1918) AC 560, subject to the obvious implication that some form of inquiry must be made, such as will enable him fairly to determine whether he should hold himself satisfied that the charge in question has been made out. As was said by Lord Shaw of Dunfermline in *Local Government Board v. Arlidge* (1915) AC 138, of the authority there concerned it "must do its best to act justly, and to reach just ends by just means. If a statute prescribed the means it must employ them. If it is left without express guidance it must still act honestly and by honest means."

7. In the instant case, it appears that no enquiry was held and no proceeding was initiated, hence, on application of the aforesaid settled judgment and

statutory rule as application in the instant case being the aforesaid Rule 48(f). I am of the opinion that departmental proceeding not at all was initiated, no enquiry held, no notice of propose punishment was served and accordingly the impugned decision not only be violative of principal of natural justice but also in violation of statutory Rule 48(f) aforesaid. In that view of the matter, the impugned decision is not legally sustainable and same is accordingly set aside and quashed. It is further held and declared that petitioner is entitled to be reinstated in the service in his post of Chief Executive and for all purpose it will be deemed that his service never was terminated. However, learned advocate for the respondent prayed for filing opposition of this writ application to satisfy the Court that petitioner was heard by the Board of Directors while punishment was imposed as petitioner all through present in the said meeting. Mere presence of the petitioner in the meeting will not exempt the respondents concerned to initiate proper appropriate departmental proceeding in terms of rule 48(f) aforesaid, a statutory rule. Hence, irrespective of the presence of the petitioner in the Board meeting as alleged, there was a violation of statutory rule and principle of natural justice. In that view of the matter, this writ application is decided without any affidavits and the prayer of the respondent to exchange affidavits is rejected.

8. Hence, the writ application is allowed. However, this order will not prevent the respondent concerned Bank to proceed in accordance with law strictly in terms of Rule 48 of the West Bengal Co-operative Societies Rules, 1987, in a manner as has been stated under Clause (f) and after giving proper opportunity of hearing to the petitioner as stipulated in the statute, including the second show cause of the proposed punishment and final hearing, the departmental proceeding is to be concluded. The respondents will be at liberty to proceed in the matter in terms of the aforesaid statutory provision. However, since the petitioner was not at all suspended during pendency of a departmental proceeding and no such proceeding as yet has been initiated, the respondents are directed to allow joining of the petitioner in the post in question, that is Chief Executive, forthwith subject to exercise of their power of suspending him after his joining in the post in terms of the statute if permissible under the law and if so situation arises as per law. Since the order of dismissal has been set aside, the petitioner will be deemed to be in service continuously for the said period as if the service had not been terminated and will be entitled to get all his salaries. Reliance may be placed in the case of Maimoona Khatun and Another Vs. State of Uttar Pradesh and Another, and in the case of Radha Ram v. Municipal Committee, Barnala, reported in 1982 Lab IC 1857. In this context reference of Radha Ram's case (supra) and the observation thereto, which is a case decided by Full Bench of Punjab and Haryana High Court will be profitable to understand the settle law and same is quoted hereinbelow:--

"Once the relief of setting aside or quashing the order of termination has been granted, or a declaratory decree has been passed to the similar effect, it necessarily follows that the employee in the eye of law continues to be in service

and as a necessary consequence thereof would be entitled to all the emoluments flowing from that status. He must be deemed to be in a position identical with that existing prior to the passing of the order of termination of his service. In the felicitous language of their Lordships the emoluments of the post are a logical consequence of setting aside the order of termination."

9. Since the Secretary of the concerned respondent Bank, Provat Kumar Sanyal is present in Court today, no further official communication is necessary. The petitioner will join tomorrow in the post in question, and in the event of any restrain, the petitioner will be provided with all necessary police help by the concerned Police Station, for implementation of the order.

Learned advocate of the petitioner is granted leave to communicate this order immediately.

Urgent xerox certified copy of the order, if applied for, be supplied expeditiously.