
(1968) 12 CAL CK 0008
In the Calcutta High Court
Case No : C.R. No. 1075 (W) of 1966

Jatindra Nath Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-12-1968

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : AIR 1969 Cal 461 : (1969) 18 FLR 87

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : K.K. Maitra, A.K. Sinha, Samir Kr. Dasgupta and D.N. Trivedi, for the Appellant; P.K. Banerjee, for the Respondent

Judgement

D. Basu, J.—The petitioner was a Revenue Officer at Malda at the material date. It is alleged that he made a complaint for undue interference against another officer Sri. Brahmachari, and out of grudge for that the latter instituted a criminal case against the Petitioner, complaining of breach of trust, cheating etc. on 5-4-1960. On the same date, the Petitioner was suspended by the order of the Collector, Malda, which is at Ann. A to the Petition (p. 19). It was followed by another order of the Secretary, Board of Revenue to the same effect, dated 6-5-1960 (p. 20). During the pendency of the said criminal case, departmental proceedings were also instituted against the Petitioner by the charge-sheet, which is at p. 21 of the Petition, charging the Petitioner with misappropriation. On 6-11-1962. the Board gave sanction for the prosecution of the petitioner under the Prevention of Corruption Act on the same charge.

2. The Petitioner alleges that as a result of the representation of the petitioner that the Government should choose between the two forums, the Respondents dropped the departmental proceedings. Eventually on 22-9-1965 the petitioner was discharged in the criminal case, with the finding that there was no prima facie case against him (Ann. B. p. 43).

3. The petitioner's case is that with his discharge in the criminal case, the said

order of suspension spent its force on 22-9-1965, but that the Respondents have failed to reinstate him, on demand, and are continuing to pay him subsistence allowance, as if he is continuing to be on suspension. The petitioner obtained this Rule on 20-5-1966, claiming-

(a) that the Respondents be restrained from giving effect to the impugned order of suspension;

(b) that the Respondents be directed to allow the petitioner to resume his duties as Revenue Officer;

(c) that the Respondents do pay to the petitioner the arrears of his full salaries and allowances from 13-5-1960 onwards.

4. The main plea taken in the counter-affidavit of the Respondents (para 9) is that the departmental proceedings brought against the petitioner have not been dropped but were stayed at the instance of the petitioner himself by his petition of 23-9-1960, till the disposal of the Criminal case. After the disposal of the Criminal case, the said proceedings have been resumed under orders of the Board of Revenue dated 1-12-1966, and the petitioner has been asked to submit his explanation to the charge-sheet (Ann. A to the counter-affidavit).

5. I. The first question to be determined in this case is whether the departmental proceedings against the petitioner are still pending. It is true that orders for the resumption of the departmental proceedings were not passed immediately after the disposal of the criminal case, and the order at Ann. A to the counter-affidavit was passed only after the Rule in the instant proceeding was served upon the Respondents. This does not speak well of the efficiency of the Officers who are conducting the departmental proceedings.

6. That, however, does not alter the legal situation if the departmental proceedings were stayed at the instance of the petitioner himself. The letter of 23-9-60, on which the Respondents rely has been annexed by the Petitioner himself. It is clearly stated therein (p. 32) that in view of a Supreme Court decision, cited, the Respondents should stay the departmental proceeding till the disposal of the criminal case and the Respondents obviously stayed the departmental proceedings in pursuance of that request of the Petitioner.

7. II. But the continuance of the departmental proceedings does not ipso facto answer the contention of the Petitioner that the impugned order of suspension has lapsed.

(a) The first thing to be seen is on what account the suspension order of 5-4-60 was made.

8. The order of suspension itself does not recite the ground upon which the order was issued. The averment in paras. 5-6 of the Petition is that it was issued on the very date when Brahmachari made his complaint against the Petitioner and on the ground of institution of a criminal case on that complaint. From pp. 66-68,

it appears that on 5-4-60. the said Brahamachari requested the S. D. O. to institute criminal proceedings against the Petitioner on a charge of misappropriation and in that letter reference to a discovery of a Receipt Book bearing the number 270482 and several other papers from the Petitioner's custody was made, and that First Information was registered by the Police in pursuance thereof. It also appears from pp. 21-23 that the departmental proceedings had not been started earlier than 25-8-1960. The averments in paras. 5-6 are also not effectively contradicted in the affidavit-in-opposition.

9. In the circumstances, there is no other alternative than to accept the petitioner's case that-

(i) On the date of suspension, there was no departmental proceeding pending against the petitioner;

(ii) The order of suspension was made simultaneously with, and on account of, the institution of the criminal case on a charge of misappropriation.

(iii) Ann. B shows that the said criminal case ended with the discharge of the petitioner on 22-9-1965.

(b) What then should be the effect of the termination of the criminal case upon the impugned order of suspension?

10. The answer has been clearly given by the Supreme Court in cases such as Om Prakash Gupta Vs. The State of Uttar Pradesh, and other cases, as follows:

(a) Where a Government servant has been suspended pending a criminal investigation or trial, the order of suspension automatically ceases to be operative as soon as the criminal proceedings terminate by an acquittal or discharge of the Government servant

(b) Immediately after such acquittal or discharge in the criminal case, therefore, the delinquent should be deemed to have been reinstated and is accordingly entitled to recover his full salary and allowances since the date of suspension. In such a case, no question of application of F. Rule 54 of the Fundamental Rules (or any other similar Rule) also does arise because that Rule applies when a Government servant is acquitted in a Departmental proceeding (Raghava Rajagopala v. State of Assam AIR 1905 Assam 109; Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, .

(c) Of course, notwithstanding the acquittal or discharge of the delinquent Government may initiate or continue departmental proceedings against the delinquent on the same charges upon which the criminal case had been brought (S. Pratap Singh Vs. The State of Punjab, .

(d) But the Initiation or continuance of departmental proceedings on the same allegations cannot revive the old order of suspension which had expired, by operation of law. with the termination of the criminal proceedings; hence, if the Government intended to keep the delinquent under suspension pending the

disposal of the departmental proceedings, after the termination of the criminal case, a fresh order of suspension has to be made by the Government, (Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, ,) except where there are statutory Rules providing for an automatic revival and continuance of the old order of suspension (ibid; Khem Chand Vs. Union of India (UOI), .

11. But in the absence of any specific Rule authorising the revival of the defunct order of suspension, if no fresh order of suspension is made after termination of the criminal case, the delinquent must be deemed to have been reinstated, with the necessary benefit of salaries and allowances since the date of the original order of suspension, notwithstanding the fact that a departmental proceeding may still be hanging upon the petitioner.

12. I, therefore, gave opportunity to the Respondents to find out if this Department has got any Rule corresponding to Rule 12 (3) (4) of the Central Civil Services (Classification, Control and Appeal) Rules, to authorise the automatic revival of the old order of suspension by reason of resumption of departmental proceedings but the Respondents have failed to point out any such Rules applicable to the Petitioner.

13. (i) The result is that the petitioner shall be deemed to be reinstated as soon as the order of discharge in the criminal case was made on 22-9-1965, so that he is entitled to his full salary and allowances since 22-9-1965 onwards, so long as another valid order of suspension is not made.

14. (ii) As regards the period intervening 5-4-1960 and 22-9-1965 learned Advocate for the Respondents has referred me to Rule 73 of the West Bengal Service Rules, which says-

" If a Government servant Is absent from duty by reason of being committed to prison either for a debt or on a criminal charge, he shall not be allowed to draw any pay.....for the period of such absence until the termination of the proceedings against him, when an adjustment of emoluments shall be made according to the circumstances of the case"

15. But there is nothing on the records to show that the petitioner was ever committed to prison; hence, the Rule referred to has no prima facie application and the reliance thereupon cannot but be called "irresponsible". The absence of the petitioner during the period in question was not due to imprisonment, but to the order of suspension, which became defunct, as it never existed, according to the decision in Om Prakash Gupta Vs. The State of Uttar Pradesh, referred to by me earlier.

16. (iii) The petitioner is also entitled to be reinstated in his original post, unless this judgment is immediately followed by a fresh order of suspension, pending the departmental proceeding which has been resumed.

17. As a last resort, the learned Advocate for the Respondents contended that no order of suspension is necessary because Government has an implied power to

suspend an employee when departmental proceedings are pending, according to the decision in Balvantray Ratilal Patel Vs. The State of Maharashtra, . Here is another decision which has been wrongly relied upon. The only point which has been decided by this case is that where departmental or criminal proceedings are pending, the Government has an implied power to suspend the employee, that is to say, to keep him off from the work, provided such allowances as are permissible under the Rules are paid to the employee during the period of such suspension. This decision does not, however, say that no express order of suspension need be made and that the employee will remain under suspension under some fiction or operation of law. What is implied is the "power" to suspend not an "order" of suspension in exercise of the power.

18. Another argument advanced on behalf of the Respondents was that though the impugned order of suspension was made simultaneously with the criminal case, it was in fact made in anticipation of departmental proceedings which were, in fact, instituted later on. Unfortunately, no such case is pleaded even in the counter-affidavit, not to speak of the Impugned order of suspension. On the question of fact, I have no doubt, as held by me already, that the order of suspension in question was made because of the institution of the criminal case and not in view of any departmental proceeding, pending or contemplated.

19. I have repeatedly observed that a number of fruitless litigations have come up before me during the last few years owing to the failure to appreciate the legal position applicable to the case before the authorities. No Government servant, however highly placed he may be, in a democratic system, has any right to drag to Court the popular Government unnecessarily, causing loss of prestige to the Government as well as waste of public money. Somebody should be there to explain the law as soon as a judgment is passed against which no appeal is contemplated or against which there is no further appeal. It is a pity that the decisions in Om Prakash Gupta Vs. The State of Uttar Pradesh, on Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, have not so far been brought to the notice of the administration. In my opinion, it is the duty of a Govt. Advocate not only to defend the Govt. with all the vigour at his command but also to advise the Govt. through the Legal Remembrancer as to the law which is applicable to such cases and to advise a settlement in cases where the law is clearly against the Government. But it has been represented to me by Mr. Banerjee the present senior Government Advocate that under the existing Rules, a Government Advocate has no obligation to tender advice to the Government after the disposal of a case. It is for the Legal Remembrancer to look into this matter having regard to the observations made herein.

20. In my opinion, this Rule should be and is made absolute, and Respondents must pay a cost of ten gold mohurs to the petitioner. Respondents be directed-

(a) to pay, to the petitioner all arrears of salary and allowances at the full rate since 13-5-1960 (as prayed for) until a fresh order of suspension is made, if at all, deducting the amounts already paid as subsistence allowance;

(b) to allow the petitioner to resume his office, unless another order of suspension is made against him within seven days from this date.

21. The operation of this order is stayed for six weeks from the date hereof.

22. Let a copy of this judgment be forwarded by the Registrar (A. S.) to the Legal Remembrancer.