
(1979) 06 CAL CK 0013
In the Calcutta High Court

Krishnatosh Das Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-06-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (1979) 06 CAL CK 0013

Hon'ble Judges : Padma Khastgir, J

Bench : Single Bench

Judgement

Padma Khastgir, J.—This Writ petition has been taken out by 125 employees of the National Test House, Calcutta for necessary reliefs against the six respondents.

2. In the month of April, 1978 because of issuance of orders of suspension on three employees and for taking of disciplinary proceedings against them, according to the petitioners, without any valid reasons and with a view to coerce and intimidate the said employees, it created great dissatisfaction, amongst the employees at large and besides holding some meetings, the employees demonstrated their dissatisfaction in lawful and peaceful manner and requested the withdrawal of the suspension order. A letter was sent on the 9th May, 1978 by Sri Dipen Ghose, General Secretary, Central Co-ordination Committee of Central Government Employees" and Workers" Union and Association, West Bengal to which the respondent No. 5 is affiliated for settlement of the dispute. After a long discussion the Joint Director agreed to come to a settlement on the issue of withdrawal of the said suspension order. Thereafter on the 10th of May, 1978 a Circular No. DTH/MISC/78 was issued by the Joint Director stating that number of groups III and IV employees of National Test House, Calcutta have done no work for some days since 27 the April, 1978 though they attended office and signed the Attendance Register; as such by the said circular it was threatened that there would be deduction from the pay and allowances of staff, A protest was made as there was no stay-in-strike as wrongly alleged in the said

circular. By another circular dated 15th of May, 1978 bearing No. DTH/MISC/78 the Joint Director informed that employees who did not attend their normal duties but merely came to the office and signed in the attendance register would be considered as "not on duty" It is the case of the petitioners that none of the employees were in stay-in-strike as it is the case of the petitioners that they were not in strike but only were compelled to stage demonstrations in a democratic manner and peaceful manner to fulfill their grievances. By a circular bearing No. DTH/MISC/78 dated 12/15th of May, 1978 the Joint Director, National Test House, notified that the Cabinet decision contained in the Department of Personnel and Administrative Reforms Office Memorandum No. 33011/1/77 "B" dated 25th of April, 1978 regarding payment for the period of strike by Central Government employees, in respect of the Central Government employees who participated in a strike in the month of May, 1971 the circular directed that all ministries must observe the principles of "no work no pay" and this should not be circumvented in any way including by grant of leave for the period of a strike. Relying on the said circular, the management and authorities of the National Test House effected a mass scale pay cut from the pay and allowance of the employees of the National Test House for the month of May, 1978. The Secretary of the Association wrote to the Director demanding a list of members whose pay was being deducted but" no reply was given to the said letter nor any list was furnished to the Secretary. According to the petitioners, such deductions have been made arbitrarily and without any basis. The petitioners contended that the said memorandum and/or circulars mentioned above were illegal, unconstitutional, ultra vires and in excess of jurisdiction as said principle of "No work no pay" has no application in the case of employees of the Central Government holding posts carrying monthly rate of pay as the terms and conditions of employment of the petitioners are governed by Statutory rules framed under Art. 309 of the Constitution of India and the principle "No work no pay" has no place or foundation in the said rules. As there is a comprehensive code containing disciplinary procedure applicable to the employees of the Central Government embodied in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the Fundamental Rules, an employee of the Central Government can be dealt with under the said rules for any act of misconduct or misbehaviors; as such any alleged absence from duty or alleged dereliction or negligence of duty can only dealt with under the said rules for the purpose of inflicting any penalty on any employee of the Central Government and in any such proceeding under the said rules the employee has an opportunity to show cause and to present his case according to the procedure established thereunder. But in the instant case the procedure of arbitrary pay cut on the principle of "No work no pay" is completely violative of the protection under the said rules and this new circular or procedure is made to circumvent or by pass the said rules and disciplinary proceeding and cannot be sustained in law. Deduction of pay and allowances visit a Government servant which 1 consequences and is a penalty and no such penalty can be imposed on any Government servant without following the procedure established by law and without adherence to the rules of

natural justice; as such the purported application of the principle of "No work no pay" in this particular case is in gross violation of the legal and constitutional provisions protecting the rights and interests of the Government servants. Hence the present petition has been taken out against the said impugned circulars dated 10th/15th of May, 1978 as also 12/15th of May, 1978 on ground that, the same is violative of the provisions of the Constitution of India and the (sic) framed thereunder and the Central Services (Classification, Control and Appeal) Rules, 1965. In fact, the petitioners were neither in strike nor in "stay-in-strike". As such any allegation to that effect is without any justification and basis.

3. Mr. N. Chakraborty appeared in support of the petition and submitted that, in view of the specific rules applicable in the case of permanent Central Government employees, no such circular introducing new rule of "No work no pay" can be exercised by the respondents without first amending the rules applicable to the employees. Second, he submitted that even assuming for the sake of argument that those notification and regulation of "No work no pay" are applicable in the case of the petitioner but those rules were framed for meeting the situation when the employees are either in strike or "stay-in-strike" as such on facts alone the said rule can never be made applicable in the case of the petitioners. As such he prayed that the Rule must be made absolute.

4. Mr. P.K. Sen appeared with Mrs. Archana Sen Gupta on behalf of the respondents and submitted that the respondents were justified in applying the said rules of "No work no pay" in the case of the petitioners as not only the petitioners were guilty of extreme misbehaviour but also attended office and only signed the Register but rendered no work at all.

5. Mr. Sen further submitted that this application is not maintainable as this application is made in the Original Side of the High Court instead of moving the application before the Appellate Jurisdiction of this Court and in that respect he craved reference to the rules relating to matters under Article 226 of the Constitution of India and submitted that as the respondents are either in Delhi or at Airport outside the jurisdiction of this Court. I sitting in the Original Side of this High Court, have no jurisdiction to entertain this application. Secondly, he has taken the point that the petition has been made by 125 employees which is not permissible in law; as such no order should be passed on this application. Thirdly, he submitted that under Fundamental Rules being Rule 24 a person is only entitled to pay provided the person performs its duties and no payment can be made in favour of a person who does not discharge the work with responsibility in consideration of which a special pay was sanctioned. He also referred to Rule 7 of the Central Services (leave) Rules, 1972 and submitted that there were specific rules as indicated above whereunder the deduction of pay has been made in respect of 125 petitioners before me. He referred to a case reported in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and submitted that even where there are no rules it is not irregular and illegal for the department to give directives by circulars for the purpose of recruitment of

officers.

6. As to the first point of Mr. P.K. Sen that this application is not maintainable reference may be made to a case, *United Province Electric Supply Co. and Others Vs. Industrial Tribunal (III) Allahabad and Others*, , where a Division Bench of this High Court presided over by the Hon"ble Chief Justice held that "an application under Article 226 of the Constitution of India can be maintained in the original side of the High Court where all the persons and authorities against whom relief is asked for are outside such jurisdiction but where part of the cause of action is alleged to have arisen within the original jurisdiction of the High Court. This Court in entertaining a writ petition and dealing with the same derives its jurisdiction not from the Rules framed by this Court but from Article 226 of the Constitution. It is the Constitution which has conferred upon this Court the jurisdiction to entertain and deal with the writ petitions. In any event in a case in which the cause of action either wholly or in part arises within the territorial jurisdiction of the High Court at Calcutta, a writ petition may be filed either in the original Side or in the Appellate Side according to the choice and convenience of the petitioner".

7. So far Mr. Sen's second point that the petitioners could not combine their cause of action and bring one application for necessary reliefs is not correct in view of the fact that for the same cause of action against the same parties arising out of the same act complained of the petitioners have combined together and brought this application. Applying the principle as contained in O.I.R.I. of the CPC and considering that the Rules do not debar joinder of causes of action where questions of common law and fact is involved I am not inclined to accept the said contention of Mr. Sen that the application is not maintainable as jointly made by 125 employees of National Test House. Thirdly, Mr. Sen's contention that the respondents have applied Fundamental Rules Rule 24 is not correct as it would appear from the facts and circumstances of the case as well as from the circulars and the order passed by the respondents. The deduction in pay scale has been made by the authorities not under the Fundamental Rule but pursuant to the notification dated 12/15th of May, 1978 which does not refer to any Fundamental Rules but only refers to a Cabinet decision. Fundamental Rules which govern the service conditions of the permanent employees of the Central Government of India do not contain any such provisions. Rules framed under 309 of the Constitution of India does not provide for such reduction of salary. So far Rule 7 of the Central Civil Services (leave) Rules, 1972 is concerned that relates to various provisions in cases of leave obtained by the Central Government employees. There is no provision under the said rules for deductions of salary of persons who attended office but do not perform the work within the office hours. Moreover, circulars which have been referred to and pursuant to which such steps have been taken by the respondents are not binding on the Central Government employees because although such circulars refer to the said decision as the Cabinet decision yet nowhere it has been stated that the said order was passed by the President under the Constitution of India. In the case *Mono Kami*

Basu v. Bank of India (1976) II L.L.J. 427, A.N. Sen, J. held that "in the absence of any specific provisions in the contract of employment or in any statute, the Bank has no power or authority to deduct any part of the salary of the staff who are permanent employees of the Bank on the basis of monthly salaries payable to them under the contract of employment. The monthly pay of an employee is his property and no employee can be deprived of his pay except in due process of law. Any diminution in the monthly pay of an employee affects his rights and interest prejudicially and no order can be made by the Bank reducing monthly salary under the contract or deducting any part therefrom without giving the employee concerned a reasonable opportunity of making his representation. If the Bank being a statutory body makes any order in excess of its power and authority or in violation of the principles of natural justice, such an order can be questioned in a writ proceeding. An employee is entitled to monthly salary on the basis of his scale of pay under the terms of his employment. The monthly salary payable to the employee is a fixed sum. Under the contract of employment, an employee is required to work during fixed working hours. Although an employee is required under the contract to work during the fixed hours it cannot be said that the employee is paid on the basis of the number of hours put by the employee in course of any month. The contract of employment is not a divisible one. The consideration for payment of salary to the employee may be the service to be rendered by him. The consideration is not related to any fixed period of work for any month. The consideration is one and indivisible and is not entirely dependent on the particular hours of work put in. The failure or refusal on the part of one employee to do the fixed period of work on any particular day results in a partial failure of the consideration; but that would not entitle or give the employer the right to deduct any part of the salary on any pro rata basis. An act of refusal or failure on the part of the employee to carry on with their work during working hours by holding mass demonstration during working hours instead of engaging themselves in their work may constitute misconduct and suitable disciplinary action may be taken against such employees in accordance with laws but such an act of the employees, though it may amount to misconduct and may be dealt with accordingly does not authorise or empower the employer to deduct any part of their salary. In order to deduct any amount from the salary there must be specific rules relating to the contract of service of the person concerned.

8. In the instant case neither the contract of employment nor the Rules framed thereunder authorise the respondents to deduct any part of the salary from the salary payable to the petitioners. As such I am of the opinion and hold that the deduction made from the salary of the petitioners is without jurisdiction, unlawful, violative and in excess of the powers conferred on the National Test House. As a result I make the Rule absolute.