
(2009) 02 CAL CK 0035
In the Calcutta High Court
Case No : M.A.T. No. 991 of 2008

Nazrul Islam

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 04-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 121 FLR 859

Hon'ble Judges : Subhro Kamal Mukherjee, J; Kalidas Mukherjee, J

Bench : Division Bench

Advocate : Anupam Chattopadhyay and Srimanta Dutta, for the Appellant;
Keshab Bhattacharyya and Mrs. Banani Mukherjee, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.—Mr. Keshab Bhattacharyya, learned advocate, appears of behalf of all the Respondents. Therefore, the appeal becomes ready as regards service.

2. Although, the matter is appearing under the heading "application", we take up the hearing of the appeal itself by treating the same as on day's list, by consent of the learned advocates appearing for the parties.

3. This is an appeal directed against an order dated May 13, 2008 passed by a Hon'ble Single Judge of this Court in connection with W.P. 8182 (W) of 2008, By the order impugned in this appeal, the Hon'ble Single Judge declined to pass any ad interim order of injunction in connection with the application filed under Article 226 of the Constitution of India.

4. The writ Petitioner is an employee of Talsa Samabay Krishi Unnayan Samity Limited. There is a serious allegation against him; it is alleged that he has misappropriated a huge sum of money and, virtually, made the co-operative society defunct. The co-operative society has, already, initiated a disciplinary proceeding against the employee concerned. Moreover, a criminal case has been lodged.

5. We are informed by Mr. Keshab Bhattacharyya, learned advocate appearing for the Respondents that there is, also a dispute case pending before the arbitrator and some orders have been passed in relation thereto.

6. The directors of the co-operative society, contemplating a disciplinary proceeding in terms of paragraph 14 of the conditions of service of the employees co-operative societies being the appendix to Chapter VI of the West Bengal Co-operative Societies Rules, 1987, decided to place the writ Petitioner under pension in its meeting held on January 4, 2008, with effect from January 5, 2008.

7. The aforesaid decision of the Board of Directors of the co-operative society(sic) was communicated to the writ Petitioner/Appellant before us by the secretary of the co-operative society. In the communication, it was clearly stated that(sic) the writ Petitioner/Appellant would be entitled to subsistence grant in accordance with the provisions of law.

8. As the subsistence grant was not released in favour of the employee concerned, the employee approached this Court with a writ petition. The Hon'ble Single Judge, by the order impugned before us, entertained the writ petition, but, declined(sic) to pass any ad interim order of injunction.

9. Mr. Anupam Chattopadhyay, learned senior advocate appearing in support(sic) of the appeal, submits that under the statutory rules, his client is entitled to subsistence grant and the Hon'ble Single Judge erred in law in refusing to direct(sic) the co-operative society to release subsistence grant in favour of the writ Petitioner/Appellant.

10. Mr. Keshab Bhattacharyya, learned advocate appearing for the Respondents, however, submits that the writ Petitioner/Appellant caused serious prejudice to the co-operative society and made it virtually defunct. He has deposited a sum of Rs. 3,00,000/- (rupees three lakh) only. A dispute case has been initiated; he has been placed under suspension; a criminal case is pending, the writ Petitioner/Appellant is a solvent person. Therefore, the Hon'ble Single Judge was justified in declining to pass any interim order directing release of subsistence grant in favour of the Appellant.

11. Admittedly, the conditions of service of the writ Petitioner, who is an employee of a co-operative society, is governed by the conditions of service as delineated in Appendix to Chapter VI of the West Bengal Co-operative Societies Rules, 1987.

12. Paragraph 16(d) of the Appendix to Chapter VI of the said Rules runs as under:-

During the period of suspension, an employee shall be entitled to subsistence grant equal to 50 per cent of his pay on the date of suspension and dearness allowance at the rate at which it was drawn by him on the date of suspension:

Provided that if the period of suspension exceeds one year, the board may enhance the subsistence grant by 50 per cent if in the opinion of the suspending authority the period of suspension has been prolonged for reasons not directly attributable to the employee:

Provided further that such order shall continue to remain in force until it is modified or revoked by the appropriate authority.

13. Therefore, the right to get subsistence grant is a statutory right. It is alleged that a huge sum of money was defalcated by the employee concerned.

14. True it is that there are some delinquent employees, but vindictive employer is, also, not unknown. We cannot deny a statutory right to the Petitioner merely because the employer has alleged that the employee concerned has defalcated a huge sum of money.

15. In the present case, the employer would not suffer any injury if during the pendency of the writ petition, the writ Petitioner/Appellant is granted subsistence grant in terms of paragraph 16(d), as aforesaid. If the employee succeeds in the writ petition, the inconvenience suffered by him would remain irremediable, in the event the prayer for ad-interim order is refused.

16. Therefore, we modify the order passed by the Hon"ble Single Judge, which is impugned in this appeal, and direct the co-operative society to pay subsistence grant to the writ Petitioner/Appellant before us with effect from January 5, 2008, that is the date on which he was placed under suspension, in terms of paragraph 16(d) of the conditions of service as appended in Appendix to Chapter VI of the West Bengal Co-operative Societies Rules, 1987.

17. We, however, request the Hon"ble Single Judge to expedite the hearing of the writ petition.

18. We clarify that any payment to be made to the writ Petitioner shall abide by the result of the writ application as also by the decision of the disciplinary proceeding.

19. The appeal, thus, stands disposed of.

20. In view of disposal of the appeal, no separate order is recorded in the application for injunction filed under CAN 10701 of 2008 on December 17, 2008 and the same is, also, disposed of.

21. The parties are directed to bear their respective costs in the appeal.

22. Xerox certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

Kalidas Mukherjee, J.

23. I agree.