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**(1956) 02 GAU CK 0002**

**In the Gauhati High Court**

**Case No :** Civil Miscellaneous Writ Application No. 11 of 1955

Nikunja Behari Bhattacharjee

APPELLANT

Vs

The State of Tripura and another

RESPONDENT

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**Date of Decision :** 03-02-1956

**Acts Referred:**

Constitution of India, 1950 — Article 19(g), 226, 311, 311(2)

**Citation :** (1956) 02 GAU CK 0002

**Hon'ble Judges :** Brij Narain, J.C.

**Bench :** Single Bench

**Advocate :** N.C. Talapatra, M.R. Choudhury and B.C. Dev Barma, for the Appellant; P.K. Bhattacharjee, Govt. Advocate, for the Respondent

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## **Judgement**

Brij Narain, J.C.

1. This is an application on behalf of Sri Nikunja Behari Bhattacharjee praying for obtaining a Writ of Mandamus or any other Writ of a like nature under Art. 226, Constitution of India with a view to secure a declaration that the notice dated 10-7-1954 Ex. 2 issued to him by the Government of Tripura terminating his services as the clerk to the Government Advocate, Tripura with effect from 13-7-1954 be declared illegal, unconstitutional and ultra vires and the petitioner be declared to be still in government service and entitled to arrears of pay upto date.

2. The petition has been contested by the respondents on the ground that the notice in question is perfectly valid and the petitioner's services were duly terminated after paying him reasonable compensation vide the bill Ex. A-3 and the acquittance roll Ex. A-2, which the petitioner accepted without raising any objection and so the present petition was barred by estoppel as well as by Art. VIII(I) of the agreement between the Ruler of Tripura and the Government of India dated 9-9-1949,

3. The petitioner had been appointed in the year 1935 A.D. by the Chief Minister

of Tripura as clerk to the State Advocate late Devendia Kumar Chatterjee, B. L. and since then it is alleged that he had been serving on the above mentioned post under the Government of Tripura under late P. N. Banerjee, a State Advocate and also under the present Government Advocate Sri P. K. Bhattacharjee and his work was deemed to be satisfactory by his superiors who granted to him certificates appreciating his services.

A few days after the appointment of Sri P. K. Bhattacharjee in the year 1954, the petitioner found that a new man had been appointed by means of the order dated 12-7-1954 Ex. A-1 as clerk to the Government Advocate though no notice had been served on him intimating the termination of his services.

On 10-7-1954 the notice in question was served on the petitioner intimating that his services would be terminated with effect from 13-7-1954 and he would be allowed to draw all his arrears pay upto the date of his termination of service plus usual retrenchment concession i.e. pay for three months more.

The petitioner appealed against this notice to the Chief Commissioner, Tripura on 25-1-1955 vide Ex. 3 and Ex. 4 dated 14-2-1955 but he did not receive any reply. Then he filed an appeal before the Ministry of Home Affairs, Government of India on 22-3-1955 vide Ex. 8 and the receipt of this appeal was acknowledged by means of the letter dated 30-4-1955 Ex. 6.

On 23-9-1955 the petitioner's appeal was rejected by the Ministry of Home Affairs vide the order dated 23-9-1955 Ex. 5. The petitioner then served a notice of demand on 2-11-1955 vide Ex. 7 on the Chief Commissioner, Tripura and as no reply was received, he brought the present Writ petition on 5-12-1955 in this Court.

4. According to the petitioner, the notice Ex. 2 is illegal, unconstitutional and ultra vires as no proceeding had been drawn against him, no explanation had been called for and no opportunity had been granted to him to defend himself and as the post had not been abolished and a new man had been appointed even during the continuance in service of the petitioner, the question of retrenchment could not arise.

As no reason had been given in the notice Ex. 2 why the Government was going to terminate the services of the petitioner, it was alleged that the petitioner's fundamental rights under Arts. 19 (g) and 311, Constitution of India had been infringed.

5. The learned Advocate for the petitioner has urged that the present petitioner was a permanent government employee under Art. VIII(I) of the agreement dated 9-9-1949 which runs as follow:

(1) The Government of India hereby guarantees either the continuance in service of the permanent members of the public services of Tripura on conditions which will be not less advantageous than those on which they were serving before the date on which the administration of Tripura is made over to the Government of

India or the payment of reasonable compensation.

6. The integration of Tripura with the Indian Union took place on 15-11-1949 and the petitioner continued to work till 13-7-1954 and so it is urged that he should be deemed to be a permanent employee of the Government. Reliance has also been placed on the order dated 3-1-1952 Ex. 1 which shows that one clerk had been sanctioned by the President for the office of the Government Advocate, Tripura on 55-3-118-4-130 (E.B. after 12th stage) till the end of February, 1952 or till the finalisation of the re-organisation of the Judicial Department of Tripura, whichever would be earlier.

7. It has been contended by the learned Advocate for the petitioner that as his client was dismissed from service without being given any opportunity to answer any specific charges, the dismissal order was illegal and so this Court should interfere under Art. 226 of the Constitution. There is no doubt that where an order of dismissal of a public servant is found to be wholly unjustified under Art. 311 of the Constitution, the High Court can interfere under Art. 226.

It is imperative on the State to frame specific charges with full particularity, intimate those charges to the Government servant concerned, give him an adequate opportunity to answer those charges and after considering his answers to take its decision vide *Bhugiram Hazarika v. Superintendent of Police, Sibsagar*, 1954 Ass 18 (AIR V 41) (A) and *Tribhuwannath Pandey v. Government of the Union of India*, 1953 Nag 138 (AIR V 40) (B).

8. A public servant under the State or Union has a certain right under Art. 311 of the Constitution to a proper and due enquiry according to the rules prescribed therefor. The right of being heard in a due, proper and prescribed enquiry is one which is cherished by a servant with same avidity or confidence as any citizen of India cherishes his fundamental rights.

Both these rights are provided under the Constitution and even if these rights may not fall within the purview of fundamental rights under Part III, still it is undisputed that it is his constitutional right and is the very essence of his own and his dependants' living. That being so, it is but proper and according to the Constitution that protection under the Constitution should be available to the public servant and in this view the petition under Art. 226 is tenable to enforce a constitutional right and the High Court has power to interfere and set right any infringement of such right in its substance or its enforcement vide *Ramchandra Maheshwari v. The State of Bhopal* reported in 1954 Bhopal 25 (AIR V 41) (C) vide also *Saubhagchand M. Doshi v. State of Saurashtra*, 1954 Sau 146 (AIR V 41) (D) and *Shambhu Dayal v. Patiala and East Punjab States Union*, 1952 Pepsu 152 (AIR V 39) (E).

9. As has already been pointed above the petitioner joined service in the year 1935 as clerk to the State Advocate and after the integration of this State with the Indian Union he was to continue to work till the end of February, 1952 or till the finalisation of the re-organisation of the Judicial Department, Tripura

whichever would be earlier vide Ex. 9. He can, therefore, be deemed to be a public servant.

Even if it is held that he was a temporary servant as appears from the acquittance roll Ex. A-2 he would be entitled to bring the present petition as Art. 311(2) of the Constitution would apply to his case. It has been laid down in 1954 Bhopal 25 (AIR V 41) (C) already referred to above, that in order to terminate the services of even a temporary public servant, either there should be a due and proper enquiry as prescribed, a riding as to his delinquency or fault or defect as to his competency or conduct or one month's notice terminating his service at the last date of the period of such notice.

In the present case the notice served on the petitioner on 10-7-1954 laid down that his services would be terminated with effect from 13-7-1954 vide Ex. 2. The petition would thus be maintainable under Art. 226 of the Constitution:

10. But in the present case the petitioner does not appear to be entitled to take advantage of any defect in the notice Ex. 2 as he appears to have condoned all such defects and he agreed to receive his arrears of pay plus three months pay in lieu of discharge notice vide the bill dated 29-12-1954 Ex. A-3 which is admittedly signed by the petitioner and in which there is a clear entry that three months pay in lieu of discharge notice at Rs. 67 x 3 : 201 was to be paid to the petitioner and the acquittance roll Ex. A-2 shows that this sum was actually received by the petitioner on 30-12-1954.

11. It has been contended by the learned Advocate for the petitioner that his client at the time of receiving the payment through Ex. A-2 could not know that he was being given three months pay in lieu of discharge notice presumably because he could not read the particular portion in the bill which related to three months' pay at the time of signing it but this argument cannot be accepted as correct as no such allegation was made in the petition itself.

If there had been any truth in this contention, allegations would have been made that the authorities got this entry surreptitiously made in the bill and they fraudulently got his signatures both on the bill as well as on the acquittance roll. In the absence of any such allegations in the petition I think the belated argument on this score cannot be deemed to be of any force.

The notice Ex. 2 which was admittedly received by the petitioner clearly shows that he was entitled to usual retrenchment compensation as admissible under the rules and so the fact that he accepted three months pay without raising any objection goes to show that he waived all objections regarding notice and enquiry at the time when he accepted the sum of Rs. 5328-5-0 from the Government by means of the entry Ex. A-2.

12. The fact that the petitioner suppressed the most important fact of his having received three months' salary in lieu of discharge notice is also very material and it goes very much against the petitioner.

It has been held in *Asiatic Engineering Co. v. Achhru Ram*, 1951 All 746 (AIR V 38) (PB) (P) by Malik C.J. that a person obtaining an ex parte order or a rule nisi by means of petition for exercise of the extraordinary powers under Art. 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving incorrect information to the Court.

Courts, for their own protection, should insist that persons invoking these extraordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining ex parte orders by suppression, misrepresentation or misstatement of facts. If the facts are stated in such a way as to mislead and deceive the Court, there is a power inherent in the Court, in order to protect itself and to prevent an abuse of its process, to discharge the interim order and to refuse to proceed further with the examination of the merits "of the application."

13. In *Mohammad Ibrahim v. High Commissioner for India in Pakistan*, 1951 Nag 38 (AIR V 38) (G) it was held that the power which the Court exercises under Art. 226 is discretionary and the Court would certainly bear in mind the conduct of the applicant in exercising the discretion. The Court would refuse to exercise the discretion in favour of an applicant where the application is wanting in bona fides.

In *Narain Dass v. State of Punjab*, 1953 P&H 193 (AIR V 40) (H) it was held that suppression of material fact in affidavit justifies rejection of application and reliance was placed on *U. C. Rekhi v. The income tax Officer, 1st "F" Ward, New Delhi*, 1951 Simla 1 (AIR V 38) (I); vide also *Messrs. Hazari Lal Bhanna Mal v. State of Himachal Pradesh* 1953 HP 41 (AIR V 40) (J) *Dubar Goala v. Union of India* 1952 Cal 496 (AIR V 39) (K); *Sabaru Ram Izardar v. State of Assam*, 1953 Assam 137 (AIR V 40) (L); *Ganesh Das v. State of Uttar Pradesh*, 1952 All 992 (AIR V 39) (M) and *Shiv Narain v. Regional Transport Authority, Jaipur Region*, 1953 Raj 1 (AIR V 40) (N).

14. The petitioner does not appear to have been dismissed on account of any misconduct or misdemeanour but his services have been terminated because, he did not possess the necessary qualification for the post which he aspired to hold. The petitioner at the time of signing the bill Ex. A-3 in Court recorded admission not in English but in Bengali and his signatures show that he is not acquainted with the English language much less with type-writing.

The learned Government Advocate has urged that both these qualifications are absolutely essential for the clerk to the Government Advocate and as the petitioner did not possess the necessary qualifications, his services were duly terminated after giving notice and as the petitioner duly received the retrenchment compensation without raising any objection in full settlement of his claims, I think the contention that he was illegally dismissed cannot prevail.

15. I, therefore, see no force in the present petition which is hereby dismissed.

The parties will bear their own costs.