
(1960) 06 CAL CK 0006
In the Calcutta High Court
Case No : Civil Revn. Case No. 578 of 1960

Nrishingha Murari Chakravarty	Vs	APPELLANT
District Magistrate and Collector, Hooghly		RESPONDENT

Date of Decision : 13-06-1960

Acts Referred:

Constitution of India, 1950 — Article 311
West Bengal Subordinate Civil Services Rules — Rule 7

Citation : AIR 1961 Cal 225 : 65 CWN 129 : (1961) 2 FLR 246 : (1961) 1 LLJ 181

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Arun Kumar Dutt and Bibhuti Bhusan Mukherjee, for the Appellant;
J. Majumdar and Somendra Cnandra Bose for Opposite Party No. 1, for the Respondent

Judgement

Sinha, J.—The facts in this case are shortly as follows: The petitioner was a confidential assistant of the District Magistrate and Collector, Hooghly. According to the petitioner, his appointing authority was the District Magistrate and his services are governed by the Bengal Services Civil Subordinate (Discipline and Appeal) Rules, 1936 (sic). It appears that on or about the 17th January, 1958 a First Information Report was submitted against the petitioner u/s 419/420/114/120B of the Indian Penal Code read with Section 11 of the West Bengal Security Act etc. On the 20th January, 1958 the petitioner was suspended by an order of the District Magistrate. A copy of the order of suspension is annexure "A" to the petition and it is clear there-from that it is based on the F. I. R. mentioned above. Thereafter, he was placed before the Special Court. On or about the 1st December, 1959 the petitioner was discharged, following the decision of the High Court in Criminal Appeal No. 377 of 1958, wherein it had been laid down that a Special Court will only take cognizance on a complaint made in accordance with Section 190(1)(a) of the Code of Criminal Procedure. The very same day, a formal complaint was made in accordance with law and the

proceedings continued. On the 11th December, 1959 the petitioner made a representation that as he had been discharged in the criminal case he should be paid all his dues. On the 23rd December, 1959 the Collector of Hooghly passed an order, copy of which is annexure "D" to the petition. It is stated that on technical grounds the petitioner had been discharged but that it had nothing to do with the merits of the case. The order proceeds to state as follows :

"Complaints have since been filed before the Special Court. Process issued against him. The suspension order should therefore stand. His petition for its vacation is rejected".

2. Thereafter, on the 1st December, 1960 this Rule has been taken out. What is argued is that upon the order of discharge having been made, the original suspension order came to an end, and as there was no new suspension order, the petitioner must be treated as not being under suspension on the date of his discharge. The first question that arises is as to under what provision of law the suspension order was made. Reference has been made to two rules whereby the penalty of suspension can be imposed. In my opinion, we are not dealing here with the "penalty" of suspension. It is true that an employee can be suspended by way of punishment, but in that case it is the suspension which is the substantive punishment and there is no other punishment. Suspension pending a departmental enquiry or a criminal charge is a different matter altogether. There, the petitioner is asked not to associate himself directly with the activities of his employment, because as a result of the pending enquiry or criminal charge it would be embarrassing for all parties concerned, for him to be directly associated with the work of the office. In such a case, some interim arrangement is made for a subsistence allowance and it is implied that if the proceedings enure in his favour, then he would get his full wages. In this case, the petitioner has been suspended because there was a criminal case pending, and not as a substantive punishment.

3. Coming to the Bengal Subordinate Service (Discipline and Appeal) Rules, 1936 (sic) under which the petitioner says that he is governed, we find that Rule 7(v) speaks about suspension as a substantive penalty. Rule 10 lays down that except in the case of an order based on facts which have led to his conviction in a criminal Court, no order shall be passed imposing a penalty specified in Rule 7 without giving an adequate opportunity to the employee for making a representation. It will thus be seen that the rules expressly exclude the case of suspension pending the proceedings. There is nothing else in these rules which could be made applicable to the facts of this case. Coming now to the West Bengal Service Rules, the only rule that could be mentioned as having any application to the present facts is Rule 73 which deals with the right of a Government servant absent from duty by being committed to prison with regard to his pay, leave, salary and allowance. Here again, we do not find any direct assistance. The Central Civil Services (Classification, Control and Appeal) Rules, 1957 must, of course, be excluded because the petitioner is not an employee of

the Central Government. The question therefore is as to under what right he has been suspended at all. That right is the inherent right of Government in respect of its servants to make an order of suspension pending the determination of any criminal proceedings which have been drawn up against the servant concerned. There are numerous cases upon this point, but I shall first cite a Supreme Court case, *Om Prakash Gupta Vs. The State of Uttar Pradesh*, . It is pointed out there, that as between master and servant the law did not allow an implied power of suspension in the master, and there was no such power unless the terms of the contract permitted it or a statute or a rule provided for it. This principle however did not apply to a person in the services of the Crown in India. In the case of *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, , it was held that the Chief Justice of the Calcutta High Court had power of dismissal under Article 229(1) of the Constitution and Section 16(1) of the General Clauses Act clearly provides that the power of appointment included the power to "suspend". In a Divisional Bench judgment of the Patna High Court, in the case of *Gurudeva Narayan Srivastava Vs. State of Bihar and Another*, , the matter has been clearly explained. The learned Chief Justice says as follows:

"I shall assume in favour of the petitioner that there is no statutory rule which empowers the Government to suspend an officer pending an enquiry but I think even in the absence of a statutory rule Government have power to suspend an officer from performing the duties of his office pending an enquiry into the charges levelled against him".

4. In my opinion, such a power clearly exists. My attention has also been drawn to the Fundamental Rules. Since the Bengal Service Rules applied to the petitioner, and they are to be considered as self-contained, it is doubtful whether the Fundamental Rules apply or not. The rule in question is in Appendix No. 3(111) (2). It states that a servant of Government, against whom a criminal charge or a proceeding for arrest for debt is pending, should also be placed under suspension by the issue of specific orders to this effect during periods when he is not actually detained in custody or imprisoned. Even if this rule applies, I do not see why the suspension order is bad. The original suspension order was adequately confirmed by the order dated the 23rd December, 1959 and having been apprised of the fact that there was an order of discharge and ft further complaint, the authorities said that the suspension order "should therefore stand". In my opinion, this is quite as specific as one would desire it to be. However, it is unnecessary to go into the statutory rules because, as I have stated, the power can clearly be implied.

5. Mr. Dutt has cited before me several cases showing that under the law of master and servant, there is no right implied in the master to suspend the servant. I have already pointed out that this aspect had been noticed in the Supreme Court decision cited above, and there it was pointed out that in spite of this limitation, in the law of master and servant, the employees of Government are on a different footing, and such implied authority exists. Lastly, I would refer

to a decision of the Nagpur High Court which has also been noticed by the Supreme Court in *Om Prakash Gupta Vs. The State of Uttar Pradesh*, , namely, *Gopal Krishna Naidu v. State of Madhya Pradesh* AIR 1952 Nag 170. The facts of that case are on all fours with the facts of the present case. There also, the conviction and sentence passed on a person after trial were set aside on the ground that there was want of proper sanction. The question was as to what happened to the suspension order. It was held that where the suspension of a Government servant does not depend on the sanction or upon the fact that there was a trial and is based on the fact that there was an accusation of the commission of a criminal offence, the suspension enures even after the appeal was allowed and the conviction and sentence set aside. The particular rule which came to be applied there was the C. P. and Berar Fundamental Rules, Appendix XXV, Part E, Para 2, which is practically in the same words as the Fundamental Rule referred to above. With great respect, I agree that the word "criminal charge" in such a rule does not necessarily mean a charge as framed by the Court. It refers to the accusation and must have a broader meaning and when the F. I. R. was filed, there was an accusation and the suspension did not depend on any complaint, formal or otherwise, but on the fact that an information had been lodged against the petitioner, which resulted in criminal proceedings. In this case also, the accusation is there and the discharge was due to a technical defect and almost simultaneously with the discharge a fresh complaint has been filed, and a fresh order made to the effect that the suspension order should stand. Under the circumstances, it is not possible to hold that the suspension order had come to an end but, in my opinion, it continues until the determination of the criminal proceedings.

6. For the reasons set forth above, this application must fail. The Rule is discharged. Interim order, if any, is vacated. There will be no order as to costs.