

(2008) 02 CAL CK 0089

In the Calcutta High Court

Case No : M.A.T. No. 2515 of 2007 and C.A.N. No. 8857 of 2007

Palash Banerjee

APPELLANT

Vs

Chandanbati Samabay Krishi Unnayan Samity Ltd. and
Others

RESPONDENT

Date of Decision : 02-02-2008

Acts Referred:

Citation : (2008) 2 CALLT 549

Hon'ble Judges : Sadhan Kumar Gupta, J;Pratap Kumar Ray, J

Bench : Division Bench

Advocate : Keshab Bhattacharya and Banani Mukherjee, Subhabrata Dutta, for the Appellant;Abdul Alim, for the Respondent

Judgement

1. Heard the learned advocates appearing for the parties.
2. Challenging the judgment and order dated 26th June, 2007 passed by the learned trial Judge in WP 8431(W) of 2007, this appeal has been preferred by the writ petitioner/appellant.
3. The application for stay, being C.A.N. 8857 of 2007, has been moved today. From the very nature of the stay application, we are of the view that in deciding the stay application the entire appeal could be considered and disposed of on merit. Hence the appeal is also taken up as on day's list for final hearing.
4. All formalities stand dispensed with as all parties are appearing before us.
5. In the writ application the factual matrix is to this effect.
6. The petitioner admittedly suffered an order of suspension issued under Clause 16(b) of the West Bengal Co-operative Society Rules, 1987 in terms of the appendix to chapter VII relating to conditions of service due to his implication in a criminal offence which at the material time was at the investigation stage and now at the trial stage.

7. Under Clause 17 of the said rules, an employee of a co-operative society could be removed from service on conviction by a competent criminal Court with reference to the criminal offence. The relevant provision of Clause 16(b) and Clause 17 of the said Rules read such.

16. Suspension-

(b) An employee of a co-operative society may be placed under suspension where a case against him in respect of any criminal offence is under investigation or trial.

17. Removal from service on criminal conviction. -

An employee of a co-operative society shall be removed from service on criminal conviction by a competent Court.

8. After the petitioner released on bail, the co-operative society considered about Joining of the petitioner in service and/or other further steps. On 28th, March, 2007 a resolution was taken that due to the implication of the petitioner in the criminal case and due to filing of different complaints against him as well as his appointment being a defective one, his service should be terminated and accordingly he was dismissed from service.

9. It appears that dismissal from service is a major punishment in terms of Clause 14 of the said rules, but it requires to be imposed following the in departmental proceeding in terms of the regulation as laid down therein with a right to prefer an appeal before the appropriate appellate authority. Admittedly no departmental proceeding was initiated on the charge of misconduct in terms of Clause 14 of the said rules in respect of the allegations which were considered in the meeting dated 28th March, 2007. Dismissal order as such was not a follow up action following the departmental proceeding by framing a charge under Clause 14 and thereafter following the procedure in terms of the rules to complete the departmental proceeding. Furthermore dismissal order cannot be said as removal under Clause 17 of the said rules as already quoted above in view of the fact that a criminal case is still pending and is in the trial stage.

10. So far the defective appointment letter, as no approval was given by the appropriate authority, the same has been dealt with in the resolution dated 28th March, 2007.

11. Having regard to all these, we are of the view that dismissal order as passed without following any departmental proceeding by framing a charge in terms of Clause 14 of the said rules and without fulfilling the statutory condition in terms of Clause 17 thereof was itself bad in law. The learned trial judge, however, quashed the impugned dismissal order but directed initiation of departmental proceeding by directing the co-operative society to issue the charge sheet on keeping him under suspension. The writ petitioner/appellant is aggrieved by the said order. It is submitted by the learned advocate for the appellant that once the suspension order culminated to an order of dismissal rightly or wrongly, in the

eye of law it would be deemed that suspension order merged with the order of dismissal and since the dismissal order was quashed, there was no question of revival of suspension order. However, in the facts of the instant case the said principle of doctrine of merger has no applicability since the said principle is applicable where on a full fledged departmental proceeding dismissal order is passed after the order of suspension as issued prior to filing of charge sheet or after issuance of the charge sheet. In the instant case at no point of time any charge sheet has been issued and no departmental proceeding has been initiated. So dismissal order was de-hors of the statutory provision of law and accordingly doctrine of merger, as has been submitted, has no applicability in the instant case. In the instant case Clause 16(b) of the said rule was applied to suspend the writ petitioner/appellant but the condition as stipulated thereof, namely, pendency of a criminal offence in the investigation or in the trial stage, still now existing as because the criminal offence is still in the trial stage which is an admitted position. In view of such admitted position that the criminal offence is in the trial stage, original suspension order which was issued in exercise of Clause 16(b) aforesaid will not merge with the order of dismissal as dismissal order never was the outcome of the power in terms of Clause 17 whereby and whereunder an employee could be removed on a criminal conviction.

12. Considering all the aspects of the matter, we are of the view that suspension order cannot be merged as prayed for and suspension order will remain in force in terms of Clause 16(b) of the said rules and a follow up action could be considered by the society in terms of Clause 17 of the said Rules as and when situation would arise.

13. So far as other allegations which have been taken as a ground by the resolution dated 28th March, 2007, those are not sufficient to issue any dismissal order as no full-fledged departmental proceeding has been initiated by identifying the misconduct in terms of Clause 14 of the said rules. Clause 14 of the said rules reads such.

14. Misconduct and disciplinary action - (a) The following acts shall constitute misconduct of an employee, namely:

(i) wilful insubordination or disobedience, whether in alliance with a co-employee or not, of any lawful and reasonable order of superior;

(ii) wilful avoidance of work or abetment or instigation thereof;

(iii) theft, fraud, misappropriation or dishonesty in connection with employer's business or property or otherwise;

(iv) habitual absence without leave, overstaying the sanctioned leave without sufficient ground or proper and satisfactory explanation of habitual late attendance;

(v) commission of any act subversive of discipline good behaviour in any public place such as drunkenness, riotous, disorderly or indecent behaviour, gambling

or taking or giving bribes or any illegal gratification of any kind whatsoever;

(vi) gross or habitual negligence of duty,

Explanation-For the purpose of this clause "gross or habitual negligence of duty shall include, in the case of an employee of a co-operative society whose function or duty" includes recovery of dues, inadequate recovery or such dues unless he can prove that there was no negligence whatsoever in this respect on his part;

(vii) disclosing to person any information with regard to the society which may be detrimental to the interest of the society;

(viii) wilful damage to any property of the society;

(ix) indulging in scurrilous attacks against the management and other superiors.

(b) Any of the following penalties may be imposed on an employee for such misconduct by the Disciplinary Authority, namely-

(i) censure;

(ii) recovery from a pay of the whole or part of any pecuniary loss caused to the society by negligence or breach of orders;

(iii) withholding of increments with or without cumulative effect;

(iv) withholding of promotion;

(v) reduction to a lower stage in the time scale of pay or reduction to a lower time scale of pay, grade, post or service;

(vi) removal from service which shall not be a disqualification for future employment under the society;

(vii) dismissal from service which shall ordinarily be a disqualification for future employment under the society;

Explanation : The following shall not amount to penalty within the meaning of this rule, namely:

(i) reversion to lower grade or post of an employee officiating in a higher grade or post for want of vacancy or on administrative grounds unconnected with his conduct;

(ii) reversion to permanent service, grade or post of an employee appointed on deputation to another service, grade or post during or at the end of the period of deputation;

(iii) termination of service-

(a) of an employee appointed on probation during or at the end of period of the probation; or

(b) of any employee employed temporarily or under an agreement in accordance

with the terms of such agreement or at one month's notice, for abolition of the post of or otherwise.

14. Having regard to the allegation as made in the resolution, we are of the view that the appellate authority will be at liberty to proceed if they intend to, but they must proceed following the rules and regulations by initiation of appropriate departmental proceeding if such situation arise.

15. So far the defective appointment letter due to lack of approval by the appropriate authority, we are of the view that it is within the domain of the appropriate authority to consider that for the lack of any approval whether appointment letter is defective and if so, the same very well could be recalled by the appropriate authority who has issued the appointment letter; but for such purpose only a notice is required to be served intimating the writ petitioner about the state of affairs so that opportunity is afforded to the writ petitioner/appellant on that score justifying as to whether approval was at all necessary or not.

16. Having regard to the above findings, we modify the impugned judgment under appeal to that effect by quashing and setting aside the portion of the order whereby and whereunder the learned trial judge directed initiation of a departmental proceeding by issuing a time limit directing completion of such departmental proceeding.

17. There is no doubt that the petitioner/appellant would be entitled to get subsistence allowance in accordance with law as per Clause 16(d) of the said rules whereby provision of subsistence allowance has been made.

18. With the aforesaid findings and observation we thus modify the impugned judgement under appeal to that extent as indicated above.

19. The appeal is allowed partly with reference to the quashing of the direction of the learned trial judge for initiation of the departmental proceeding by granting liberty to the respondent authorities to initiate a proceeding as per their choice if they consider it fit and proper and by rejecting the appeal partly to that effect so far as grievance on continuation of order of suspension.

20. The appeal and the application, being CAN 8857 of 2007, both accordingly stand disposed of.