

(1992) 12 CAL CK 0019
In the Calcutta High Court
Case No : Civil Order No. 10317 (W) of 92

Rama Shankar Sharma

APPELLANT

Vs

Coal India Ltd.

RESPONDENT

Date of Decision : 04-12-1992

Acts Referred:

Constitution of India, 1950 — Article 314
General Clauses Act, 1897 — Section 16
Police Act, 1861 — Section 29, 7(8)
Police Rules — Rule 881

Citation : (1993) 1 ILR (Cal) 197

Hon'ble Judges : Paritosh K. Mukherjee, J

Bench : Single Bench

Advocate : L.C. Bihani, Suchanda Mukherjee and Raja Tarafdar, for the Appellant; Balai Roy, P.S. Sengupta and K.K. Bandyopadhyay, for the Respondent

Final Decision : Allowed

Judgement

Paritosh K. Mukherjee, J.—This matter has come up "for orders" pursuant to my earlier direction dated December 1, 1992, when this Court has given liberty to the Petitioner to annex the office order "dated October 23, 1992", issued by Mr. N.K. Jha, General Manager (Constn.), B.C.C.L.

2. By the said order, the Petitioner, Rama Shankar Sharma, Senior Store-keeper, who was placed Under/Order of suspension" dated August 24/26, 1992, was shifted from Bhuli Stores to Regional Stores at Koyla Nagar with immediate effect by the said order dated October 23, 1992, and also to mark his attendance in a register which would be kept separately by the Deputy Materials Manager, Koyla Nagar Regional Stores.

3. The said office order has been annexed as Annexure "R" to the supplementary affidavit.

4. At the resume of the hearing of this writ petition, the Petitioner initially prays

for an appropriate order of injunction restraining the Respondents from giving effect to the said impugned "order of suspension" dated August 24/26, 1992, which was issued along with the charge-sheet on the same date.

5. Mr. L.C. Bihani along with Mr. Raja Tarafdar, learned Advocates appearing for the Petitioner, submits that this Court having been moved on September 25, 1992, challenging the composite order of charge-sheet and the order of suspension dated August 24/26, 1992, and this Court on September 25, 1992, not having interfered with the enquiry and allowing the proceeding to continue, but not to pass any final order, the General Manager (Constn.), B.C.C.L., having passed the subsequent order on October 23, 1992, and thereby transferred the Petitioner to Koyla Nagar, with immediate effect, and directing the Petitioner to sign his attendance register have given go-bye to the earlier order of suspension.

6. In the second place, Mr. Bihani further submits that the Court having given leave to proceed with the enquiry and the enquiry having been abandoned on the basis of the impugned charge-sheet, it should be presumed that the Respondents authorities have no right to proceed against the Petitioner, on the basis of the flimsy charge-sheet, referred to above.

7. Lastly, Mr. Bihani the learned Advocate for the Petitioner, submits that the Petitioner having been transferred "during the period of suspension" at a place 16 Kms. from the original posting and the Petitioner having been directed to sign his attendance register in the said transferred post, the Respondents authorities, in fact, allowed the Petitioner to resume his work by giving go-bye to the earlier order of suspension.

8. In this connection, Mr. L.C. Bihani has placed a Single Bench judgment of this Court, in the case of Bhabesh Kumar Paul Vs. The State, wherein it was held that in terms of the provisions of Section 7(8) of the Police Act, 1861, the suspension order passed pending enquiry into the charges is liable to be set aside, if the Petitioner is allowed to remain in the "Police line" as, according to the. learned Judge, that would amount to "confinement."

9. It was further held that restriction so placed is nothing but punishment as during enquiry and there can be no punishment before the Officer is found guilty and, as such, Rule 881 of the Police Act, of Police Regulation Bengal, 1943, having declared, ultra vires, being inconsistent with the provisions of Section 7(8) of the Police Act and the conviction u/s 29 of the said Police Act.

10. The said view of R.M. Dutta J. has been followed by a later judgment delivered by B.C. Basak J. (as his lordship then was) in the case of Chittaranjan Ghosh v. I.G.P.1979 (2) S.L.R. 194

11. Mr. Bihani, learned Advocate for the Petitioner, has also referred to other judgment of the Supreme Court in the case of The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers" Union, In the said case the Supreme Court observed as follows:

The power of the employer to suspend an employee under the ordinary law of master and servant in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and such a power can only be the creature either of a statute governing the contract or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and, even if he does so, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

12. Mr. Bihani, learned Advocate for the Petitioner, also referred to the observations of the Supreme Court in the case of R.P. Kapur Vs. Union of India (UOI) and Another, which is as follows:

On general principles the Government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings: this may be called interim suspension. Or the Government may proceed to hold a departmental enquiry and after his being found guilty order of suspension as punishment if the rules so permit. This will be suspension as a penalty. These general principles will apply to all public servants, but they will be subject to the provisions of Article 314. The authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act which is in consonance with the general law of master and servant. But what amount should be paid to the public servant during interim suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as a punishment which is a different matter altogether depending upon the rule in that behalf.

13. Mr. Balai Chandra Roy, along with Mr. Partha Sarathi Sengupta and Mr. K.K. Bandopadhyay appearing for the Respondents, submits that by no stretch of imagination it should be presumed that the "office order" dated October 23, 1992, is an order of transfer, during the suspension period, and as such, by no stretch of imagination this Court can direct the Respondents to allow the Petitioner any duties to the transferred post, although the Petitioner was asked to sign his attendance register, which will be kept separately by the Deputy Materials Manager, Koyla Nagar Regional Stores.

14. Mr. Roy, learned Advocate, frankly admits that if there is any infirmity in the said transfer order dated October 23, 1992, this Court may give leave to the Respondents "to withdraw" the said office order dated October 23, 1992.

15. Thereafter, Mr. Roy submits that having regard to the nature of charge, as contained in the charge-sheet dated August 24/26, 1992, the Respondents authorities were of the opinion that the Petitioner should not be allowed to continue in the post of "Senior Store-keeper" pending enquiry of the proceeding.

16. Mr. Roy, learned Advocate for the Respondents, further admits that although in the order of suspension, no reason for issuing the order of suspension has been indicated by the said authority, that can be supplemented by the affidavit at a future stage.

17. Having heard the rival submissions of both parties, this Court is of the view that by issuing of the. subsequent office order dated October 23, 1992, the Respondents authorities not only transferred the Petitioner during the period of suspension, but also asked to sign his signature in the attendance register, although the Petitioner had not allotted any work.

18. Further, this Court has also examined the nature of charge, in the charge-sheet dated August 24/26, 1992, and it has been found that the Petitioner Rama Shankar Sharma, who is a Senior Store-keeper, is responsible for putting his signature against the said D.T.S in connivance with the others and this Court is not aware as to what steps have been taken against the others, as mentioned in the charge-sheet.

19. this Court is also of the view that the propriety of the charge-sheet and the order of suspension, being the subject-matter of the main writ petition and the enquiry having been allowed to continue by my earlier order dated September 25, 1992, this Court should not make "any comment" regarding the validity or otherwise of the charges at this stage.

20. The writ Petitioner is also directed to co-operate with the enquiry and will not apply for unnecessary adjournments.

21. The Respondents authorities are also directed to supply all relevant papers and documents they want to rely upon against the Petitioner and thereby comply with the principle of natural justice.

22. In the meantime, the Respondents are directed to pay full salaries to the Petitioner as the Respondents have already posted the Petitioner at Koyla Nagar Regional Stores which is 16 Kms. away from his present posting at Bhuli Stores.

23. As the Respondents have not paid any subsistence allowance till the date of issuance of charge-sheet dated August 24/26, 1992, as asserted by the Petitioner, the Respondents are directed to pay full salaries from the date of issuance of charge-sheet, that is, August 24/26, 1992, till this date within a period of one week from the date of communication of the Xerox copy of this

order.

24. Time to file affidavit-in-opposition is extended by another period of fortnight from date and reply thereto, if any, by one week thereafter.

25. The writ petition will be set down for hearing one week after the re-opening of the Court after X"mas vacation, and I treat the same as heard in part.

26. Let Xerox copies of this order be given to the learned Advocates appearing for the parties on usual undertaking.