
(2013) 07 CAL CK 0035
In the Calcutta High Court
Case No : Writ Petition No. 3088 (W) of 2005

Ranjit Kumar Das

APPELLANT

Vs

Katwa Municipality and Others

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2013) 3 CALLT 470 : (2013) 4 CHN 542 : (2013) 5 LLN 228

Hon'ble Judges : J. Bhattacharya, J

Bench : Single Bench

Advocate : Partha Sarathi Bhattacharyya and Mr. Raju Bhattacharyya, for the Appellant; Tapas Bhattacharya and Mr. Saumyadeep Biswas for the Municipality, for the Respondent

Judgement

J. Bhattacharya, J.—A dismissed employee of Katwa Municipality has filed the instant writ petition challenging the order of his dismissal from service on the ground that he having been acquitted of charge u/s 409 of Indian Penal Code by the Criminal Court u/s 235(1) of Criminal Procedure Code, the departmental proceeding which was initiated against him on identical charge ought to have been dropped by the disciplinary authority and no punishment should have been awarded upon him. The said dismissed employee was initially appointed as a clerk in the said Municipality. Subsequently he was transferred to the post of a cashier. On 15th June 1992, he prepared two deposit challans; one for depositing a sum of Rs. 10,000.00 and another for depositing a sum of Rs. 2,981.69P, in the current account of the said Municipality with the State bank of India, Katwa Branch. Two separate bundles of money were created. In one of such bundles a sum of Rs. 10,000.00 was kept and in the other bundle a sum of Rs. 2,981.69P was kept. The challans and those two bundles of money were kept in a bag and the same was handed over to a peon namely Sri Gopi Krishna Chatterjee for depositing the said money with the bank in the account of the said Municipality. The said peon, without verifying the contents of the said bag, went to deposit the said money to the bank and it was detected in the cash counter of the bank that the bundle containing ten thousand rupees was not available in the bag. The said

money could not be recovered and/or traced out subsequently. Under this circumstances, departmental proceeding was initiated against both the aforesaid employees by the Municipality. On a complaint made by the Municipal Authority, criminal cases were also initiated against both of them on the charge of breach of trust u/s 409 of Indian Penal Code. Both of them were ultimately acquitted in the said criminal proceeding primarily on the following two grounds:-

1. Materials on record were insufficient to prove that the said amount of money was sent to the bank for deposit on the relevant date.
2. There was no whisper in the evidence of the prosecution to suggest that the accused persons misappropriated the said amount.
2. Thus, it was held that the prosecution has failed to prove the charge u/s 409 of Indian Penal Code against the accused persons beyond all reasonable doubts.
3. Subsequently, a criminal revisional case was filed by the Municipal Authority challenging the order of acquittal of one of such employees who is the petitioner before this court in this writ petition. The said revisional application has already been dismissed on the ground of limitation. Thus, the order of acquittal which was passed by the Learned Additional Session Court at Burdwan in special case No. 1 of 2001 attained its finality.
4. In the departmental proceeding, the petitioner herein was found guilty of major misconduct and as such he was dismissed from service. The departmental proceeding, initiated against the other employee namely the said peon, had to be dropped as the proceeding against him could not be completed during the tenure of his service and thus he was allowed to enjoy the service benefit and the post retrial benefit.
5. Since the petitioner was dismissed from his service, he filed the instant writ petition challenging the order of his dismissal.
6. In course of hearing of this writ petition, several decisions were cited at the bar on the proposition of the law that if a delinquent employee is proceeded against both in a criminal proceeding as well as in departmental proceeding on identical charge, the said delinquent employee cannot be punished in the departmental proceeding, if he is honorably acquitted in the criminal proceeding.
7. Law has now been settled in this regard. Settled position is that both the criminal proceeding and the departmental proceeding involving identical charge therein can be proceeded against the delinquent employee simultaneously and different conclusion may also be arrived at in those proceedings, as the principles of trial in those proceedings are different from each other. In criminal proceeding principle of proof beyond reasonable doubt is followed while in departmental proceeding doctrine of preponderance of probabilities is followed. It has also now been settled that even after acquittal in the criminal proceeding, the delinquent employee can be awarded punishment in the departmental proceeding, if he is found guilty of misconduct on a different charge. Again punishment can be

awarded to him on identical charge on proof thereof by additional evidence. Even departmental proceeding can also be initiated after a delinquent employee is acquitted in the criminal trial. There is uniformity in the decisions of the Hon'ble Supreme Court in this regard. As such, this court does not feel it necessary either to mention those cited decisions herein or to discuss those decisions individually.

8. Suffice it to mention a very recent judgment wherein the law in this regard was crystallized by the Hon'ble Supreme Court in the case of The Divisional Controller, KSRTC Vs. M.G. Vittal Rao, wherein it was held as follows:-

Paragraph 24 "Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in a criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in Capt M. Paul Anthony does not lay down the law of universal application. Facts, charges and nature of evidence, etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in domestic enquiry.

9. Let me consider the present case in the light of the aforesaid decision of the Hon'ble Supreme Court. Facts leading to initiation of the departmental proceeding and criminal case against the petitioner have already been narrated above. As such for avoiding repetition this court without reiterating the said facts, simply put on record the charges which were framed against the petitioner in the departmental proceeding as well as in the criminal proceeding.

Following charges were framed against the petitioner:-

(i) That the said Sri Das while working as cashier, received a sum of Rs. 10,000.00 from Sri Tapan Chaudhury vide M.R. No. 9939 dated 13th June 1992 which was due to be deposited with S.B.I., Katwa in the Municipal account at the earliest opportunity.

(ii) That on 15th June 1992 (14th June being Sunday) Sri Das after coming to office at 10.30 hours handed over a bag to Sri Gopi Krishna Chatterjee, Peon, Katwa Municipality said to content Rs. 2,981.69P and two challans for depositing of Rs. 10,000.00 to one head and Rs. 2981.69 in another head to S.B.I., Katwa without showing the contents in the bag to Sri Chatterjee nor asked Sri Chatterjee to get himself satisfied about the contents in the bag. The shortfall in the cash was only detected at the cash counter of S.B.I., Katwa while depositing the money by Sri Chatterjee as reported. Thereby the Municipality has to sustain a considerable loss money due to his acts of offences in the eye of law.

(iii) That during the day in question that is on 15th June 1992 while working in Municipal Office the said Sri Das not only neglectfully perform his duty by way of

not going personally to S.B.I., Katwa for depositing the money but also assigned the job to Sri Chatterjee without the permission of the concerned Authority which ultimately caused the loss of Rs. 10,000.00 of the Municipal fund.

10. In the criminal case he was tried on the charge of commission of offence of criminal breach of trust u/s 409 of the Criminal Procedure Code in respect of the said lost fund of Rs. 10,000.00 of the Municipality. In the said criminal case the following points were framed for determination:-

(i) Whether the accused person committed the offence of criminal breach of trust in respect of the amount of Rs. 10,000.00 on 15th June 1992 in the capacity of the public servant.

(ii) Whether the amount of Rs. 10,000.00 of Katwa Municipality was actually handed over to the accused Gopi Krishna Chatterjee and Ranjit Kumar Das on 15th June 1992 for depositing the same to S.B.I., Katwa Branch?

(iii) Whether the prosecution has been able to prove the charge u/s 409 I.P.C. against the accused person by evidence on record beyond all reasonable doubts?

(iv) Whether the accused persons are liable to be convicted and punished or entitled to be acquitted of the charge u/s 409 of I.P.C.

11. On perusal of the charges levelled against the petitioner in both the aforesaid proceedings, it can be held unhesitatingly that the petitioner was tried both in the criminal proceeding as well as in the departmental proceeding on identical charges. Thus, when the petitioner has already been acquitted in the criminal trial on identical charge, this Court does not find any justification in dismissing the petitioner on an identical charge mostly on similar set of evidence particularly when no definite conclusion could be arrived at by the enquiry officer either with regard to defalcation of the employer's fund by the petitioner himself in the capacity of a public servant or he made wrongful gain by misappropriation of Municipal fund. From whose custody the Municipal fund was lost, is yet to be ascertained with certainty. It is true that the petitioner ought not to have entrusted the peon to deposit the said money with the Bank but it is equally true that while accepting the said money bag, the peon ought to have verified its content. Having not done so, he cannot avoid his liability for loss of Municipal fund. But fact remains that the said peon was exonerated of his liability, may be for technical reason, then why the other employee will be punished for an identical offence, which could not be established against the petitioner definitely.

12. However, dereliction in duty for shifting his responsibility as a cashier to deposit the said money with the bank to the peon Sri Chatterjee, who was entrusted by him to deposit the said money with the bank without seeking permission from the employer, was not an issue for consideration in the criminal proceeding. As such his acquittal in the criminal proceeding cannot stand in the way of awarding punishment upon him by the employer in the departmental proceeding, if he is found guilty of dereliction in duty resulting loss of Municipal

fund, in the departmental proceeding. There was no such charge against the peon, viz, Sri Chatterjee. Such a charge was special to the petitioner. As such, dropping of the departmental proceeding against the said peon cannot be a ground for dropping the departmental proceeding against the petitioner.

13. Thus, on examination of the totality of the facts and circumstances of this case, this Court has no hesitation to hold that the petitioner was guilty of misconduct as he not only failed to discharge his duties assigned to him by virtue of his post but also was guilty of dereliction in duty as he shifted his responsibility to deposit the said money with the Bank to the peon without obtaining permission from his employer.

14. However, awarding of punishment by way of his dismissal from service, in my view, will be inappropriate in the instant case, inasmuch as, such punishment is disproportionate to the offence committed by him in the instant case. In this regard reference may be made to the decision of the Hon''ble Supreme Court in the case of S.K. Giri Vs. Home Secretary, Ministry of Home Affairs and others,

15. Thus the order of dismissal which was awarded to the petitioner by his disciplinary authority which was affirmed in appeal by the appellate forum on 6th December 2004 appearing at page 265 (Annexure - P48), cannot be retained on record. Thus, the said impugned order stands set aside.

16. However, since the employer has lost confidence in him, he cannot be reinstated in service. In my view, justice will be sub-served if, instead of dismissing him from service, he is treated as voluntarily retired from service with effect from the date when he was dismissed from service so that he is not deprived of his service benefits upto the date of his voluntary retirement and/or his post retiral benefit which is admissible to him, as per law.

17. Accordingly, this Court disposes of the writ petition by directing the Municipal Authority to treat him as voluntarily retired with effect from the date when he was dismissed from service and give him all service benefits upto the date of his retirement and pay him all post retiral benefit which is admissible to him as per law. Such exercise should be completed within 12 weeks from the date of communication of this order. The writ petition is, thus, allowed.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties as expeditiously as possible.