

(2019) 08 CAL CK 0066
In the Calcutta High Court

Case No : Writ Petitions (WP) No. 9010, 9011, 9012, 9013, 9014, 10633, 10635
(W) Of 2019

Sajjad Ahamed Others

APPELLANT

Vs

Board Of Trustees, Indian Museum & Ors

RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

Indian Museum Act, 1910 — Section 8, 9, 15A

General Clauses Act, 1897 — Section 16

Indian Museum Rules, 1970 — Rule 2(d)

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 3(1)(e)

Citation : (2019) 08 CAL CK 0066

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Srijib Chakraborty, Pankaj Agarwal, Paramita Maity, Pratik Dhar,
Pradip Roy, Tarunjyoti Tewari, Arpa Chakraborty

Judgement

Amrita Sinha, J

As similar facts and common issues have been raised in the aforesaid cases all the petitions are taken up for consideration simultaneously and disposed of by this common judgment.

The petitioners in all the petitions are permanent Class IV employee of the Indian Museum. They are members of a Society registered under the West Bengal Societies Act, 1961.

The General Secretary of the Society by a letter dated 13th March, 2019 sought for appointment of the respondent no. 3 the Director, allegedly for discussing some serious issues relating to the functioning of the Museum. The prayer for appointment was refused. By another letter dated 10th April, 2019 the General Secretary of the Society renewed the prayer for appointment which was refused once again.

The members of the Society raised their issues and demands by pasting posters on the card board at the parking area in front of the Administrative building on 18th April, 2019. At around 3 p.m. the police was summoned by the Administration. The security personnel of the Museum tore and removed the posters under the supervision of the Director and the Administrative Officer. The Society lodged a police complaint before the New Market Police Station on the same day i.e. 18th April, 2019.

On 19th April, 2019 though the Museum was closed on account of Good Friday but the petitioners were urgently summoned to the office and served with a show cause notice dated 18th April, 2019. The petitioners were directed to reply within 24 hours and were restrained from entering into the Museum premises.

The petitioners challenged the issuance of the show cause notice by filing writ petition before this Court. At the time of consideration of the writ petition it was submitted by the learned advocate appearing for the respondent Museum that a charge sheet has already been issued and a copy of the said charge sheet was handed over to the learned advocate of the petitioner.

In the instant writ petition the said charge sheet issued by the Director, Indian Museum is under challenge.

The primary ground for challenge is that, the Director is not the competent authority to initiate the disciplinary proceeding, far less issue the charge sheet against the petitioner. According to the petitioner the very initiation of the disciplinary proceeding is contrary to the Indian Museum Act 1910, the Indian Museum Rules and the Indian Museum bye-laws. The Director acted mala fide, with bias and a predetermined mind set. The charges are vague. The entire grievance of the petitioner and the Society is against the Director and accordingly the Director ought not to initiate any proceeding as the same will be tainted with bias. The Director should not decide any issue as the same will amount to being a judge of his own cause. The action of the Director is void ab initio.

The learned senior counsel appearing on behalf of the Indian Museum submits that as the Director is the appointing authority of the petitioner accordingly he is competent to initiate the disciplinary proceeding and issue show cause notice and charge sheet against the erring employee. It has been submitted that according to the Schedule, appended to the Indian Museum amended Rules, the Director is the Competent Authority to appoint a Class IV employee and he is also the Competent Authority to impose penalty upon him. He submits that the Director has acted strictly in accordance with the said Rules and issued the show cause notice and charge sheet against the petitioner for his act of misconduct inside the Indian Museum premises. He submits that no legal right of the petitioner has been infringed by the issuance of the show cause notice or the charge sheet. The scope of judicial review in such a case is extremely limited.

Reliance has been placed upon the provision of Section 16 of the General Clauses

Act, 1897 on the proposition that the Appointing Authority can initiate a disciplinary proceeding.

The learned counsel relies upon the following judgments in support of his submissions.

1) Transport Commissioner, Madras-V vs A. Radha Krishna Moorthy reported in (1995) 1 SCC 332 paragraph 8 wherein the Hon'ble Supreme Court held that the initiation of a disciplinary proceeding can be by an officer subordinate to an Appointing Authority. Only the dismissal/removal shall not be by any authority subordinate to the Appointing Authority.

2) Director General, ESI & Ors. vs T. Abdul Razak reported in (1996) 4 SCC 708 paragraph 13 where the Court held that it is not necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings and that the proceedings can be initiated by any superior authority who can be held to be the Controlling Authority and who may be an officer subordinate to the Appointing Authority. He could initiate the disciplinary proceeding even in the absence of any specific conferment of power in that regard.

3) Union of India & Ors. vs Upendra Singh reported in (1994) 3 SCC 357 paragraphs 4, 6 wherein it has been held that the Tribunals cannot take over the functions of the Disciplinary Authority. The Tribunal has no jurisdiction to go into the correctness or truth of the charges. It is a matter for the Disciplinary Authority to go into. The function of the Court is one of judicial review of the decision making process.

4) Capt. M. Paul Anthony vs Bharat Gold Mines Limited & Anr. reported in (1999) 3 SCC 679 paragraph 26 where it has been held that to place an employee under suspension is an unqualified right of an employer. This right is conceded to the employer in service jurisprudence everywhere. Even under Section 16 of the General Clauses Act, 1897 this right is conceded to the employer which provides that the power to appoint includes the power to suspend or dismiss.

5) Pradyat Kumar Bose vs The Hon'ble The Chief Justice of the Calcutta High Court reported in (1955) 2 SCR 1331: AIR 1956 SC 285 paragraph 9 on the proposition that the power of "appointment" includes the power "to suspend or dismiss".

The Court was also posed with the question as to whether the Director, against whom the entire allegations are raised, can initiate the disciplinary proceeding by issuance of a show cause notice followed by a charge sheet? Will the same not amount to being the judge of his own cause? Will the proceeding not suffer from the vice of bias?

The learned senior counsel for the respondents submits that the disciplinary proceeding is at a very preliminary stage. The proceeding has just been initiated and the charges framed. The stage of judging the issue or adjudication of the charges is yet to come. At this stage the Director, by virtue of his designation, is

the Competent Authority for initiation of the disciplinary proceeding, irrespective of the fact that all the allegations are leveled against him.

On the aforesaid proposition the respondents rely upon the following judgments in support of their stand.

(1) Secretary, Ministry of Defense & Ors. vs. Pravash Chandra Mirdha reported in (2012) 11 SCC 565 paragraphs 4, 5, 8, 10, 11 and 12 wherein it has been held that the removal and dismissal of a delinquent on misconduct must be by the authority not below the Appointing Authority. However, it does not mean that disciplinary proceedings may not be initiated against the delinquent by the authority lower than the Appointing Authority. To arrive at the said conclusion the Court relied upon the decision delivered by the Supreme Court in the case of Inspector General of Police vs. Thavasiappan reported in (1996) 2 SCC 145 where it had been held that there is nothing in law which inhibits the authority subordinate to the Appointing Authority to initiate disciplinary proceedings or issue charge memo and it is certainly not necessary that charges should be framed by the authority competent to award the punishment or that the inquiry should be conducted by such an authority.

(2) Union of India & Ors. vs. Kunisetty Satyanarayana reported in (2006) 12 SCC 28 paragraphs 11 to 16 wherein the Court held that in some very rare and exceptional cases the High Court can quash a charge sheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

(3) S.S. Ahmed vs. Union of India & Ors. reported in 2018 SCC Online BOM 854 paragraphs 8 and 11 wherein it has been held that the issuance of charge sheet merely signifies initiation of disciplinary proceedings. The charge sheet is issued on the basis of prima facie evidence. The charge sheeted officer will be provided with full opportunity in the course of the disciplinary proceeding.

(4) Narendra Kumar Tripathi vs. Union of India & Ors. reported in 2019 SCC Online Cal 763 paragraph 10 wherein the Court held that it is only when the charge sheet is wholly without jurisdiction or for some reasons wholly illegal the Court can interfere in judicial review.

The learned senior counsel endeavours to make a distinction between 'initiation of the charge sheet' and 'adjudication of the charges'. It has been submitted that as long as the person against whom the petitioner is making allegation does not adjudicate the disciplinary proceeding the same will not act as a bar in the initiation of the disciplinary proceeding. It has been contended that at this stage none of the rights of the petitioner has been infringed. The issuance of either the show cause or the charge sheet does not give rise to any cause of action for the petitioner to file the instant writ.

Much emphasis has been laid on the expressions 'wholly without jurisdiction' and

'without jurisdiction'. It has been submitted that since as per the Schedule appended to the Indian Museum Rules, as amended, the Director by virtue of his designation is the Appointing Authority and there is no expressed bar in the Rules restraining the Director from initiating any disciplinary proceeding, accordingly the initiation of the disciplinary proceeding by the Director is not wholly without jurisdiction.

I have heard the detailed submissions made on behalf of both the parties and have given my anxious consideration to the issues raised in the instant petition.

Normally a writ petition is not liable to be entertained when it has been filed challenging a show cause notice or a charge sheet as no legal right of the employee is infringed at that stage. As the issue of jurisdiction of the authority to issue the charge sheet has been raised, the writ petition has been entertained and taken up for consideration. The parties submit that the same involves questions of law and affidavit may not be required for deciding the issues raised herein.

The issue which falls for consideration is whether the Director has the power to initiate the disciplinary proceeding against a Class IV staff of the Indian Museum in the absence of a specific provision either in the Act or the amended Rules or the bye-laws?

The employees of the Indian Museum are governed by the Indian Museum Act, 1910 (hereinafter 'the Act'). The Act came into effect on 1st June 1910.

In accordance with the rule making power provided in the Act, the Indian Museum Rules (hereinafter 'the Rules') were promulgated and published in the Indian Gazette on 31st March, 1970. The same was subsequently amended in the year 1982.

In exercise of the powers conferred by Section 8 of the Act, the Trustees of the Indian Museum, Calcutta, with the previous sanction of the Central Government made the Indian Museum bye-laws, 1977 (hereinafter 'the Bye-laws'). The same was published in the Gazette of India on 28th February 1977. It was amended in the year 1981.

The following provisions of the Act will be relevant for deciding the issue.

? According to the Act the Museum is managed by its Trustees. The Trustees of the Indian Museum is a body corporate, with perpetual succession and a common seal. The Trustees have the power to acquire and hold property, to enter into contracts and to do all acts necessary for and consistent with the purpose of the Act. The Trustees, with the previous sanction of the Central Government make by notification in the Official Gazette, bye laws consistent with the Act and the Rules made thereunder, for any purpose, necessary for the execution of their Trust.

? According to Section 9 of the said Act the Trustees may appoint such officers and servants as they may consider necessary or proper for the care or

management of the Trust property and determine their functions. The recruitment and the condition of service of such officers and servants are regulated by the Rules made under the Act.

? According to Section 15A of the Act the Central Government may, in consultation with the Trustees, by notification in the Official Gazette, make Rules to carry out the purposes of the Act. Such Rules may provide for the recruitment and conditions of service of the officers and servants of the Museum. Every Rule which is made under the said Section shall be laid down, as soon as may be after it is made, before each House of the Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Rule, or both the Houses agree that the Rule should not be made, the Rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Rule.

For recruitment to all posts in the Indian Museum the Central Government makes the recruitment Rules and all such recruitment Rules are published in the Gazette of India.

The Indian Museum Rules mentions that:

? Appointments to all posts shall be made on the recommendation of the Selection Committee consisting of: In case of Class IV posts- (i) The Director, Indian Museum; (ii) one Senior Officer of the Indian Museum.

? Every person appointed to a post in the Museum after the commencement of the Rules, whether by promotion or by direct recruitment shall be on probation for a period of one year; provided that the Trustees may, in any individual case, extend the period of probation upto a period not exceeding two years.

? The services of temporary employees may be terminated by the Trustees without assigning any reason, after the period of probation, at any time, by giving him notice of not less than one month in writing, or at any time, without notice, on payment of one month's pay or where such notice falls short of one month by paying the salary for the period by which it falls short of one month.

? The Rule relating to suspension and penalties mentions that the Trustees may place an employee under suspension - (i) where a disciplinary proceeding against him is contemplated or is pending; or (ii) where a case against him in respect of any criminal offence is under investigation or trial.

? An order of suspension may, at any time, be revoked by the Trustees.

? An employee may appeal against an order of suspension or an order imposing upon him any of the penalties specified in sub-Rule (2) to the Authority specified

in this behalf in the Schedule annexed to the Rules.

? The Schedule, as amended, mentions the Director as the Appointing Authority and the Competent Authority to impose penalty upon the Class IV staff. The Appellate Authority is the Chairman.

? The provision for delegation of powers mentions that the Trustees, may by order in writing, delegate any of their powers under the Rules to the Officer-in-Charge of the Museum or to any other Officer in their employment, subject to such conditions as they may specify, and any function performed or act done or deemed to have been performed or done by such officer, in the exercise of powers so delegated to him, shall be deemed to have been done in the exercise of the powers of the Trustees.

? As per Rule 2(d) the class IV posts in the Museum shall be classified into four categories. As per the said Rules, with the previous sanction of the Government and subject to such conditions as may be imposed by it, the Trustees may create such posts as may be necessary for the care and maintenance of the Museum and may fix or alter the scales of pay for such posts and may reclassify such posts.

? With regard to posts reserved for departmental promotion, recourse shall be had to direct recruitment or appointment by transfer of an employee from another organization only if the Trustees certify that none of the candidates eligible for promotion is suitable. Recruitment to all posts in the Museum shall be made subject to the production of a medical certificate of physical fitness in accordance with such standards as may be laid down by the Trustees and subject to verification of the character and antecedents of the person concerned, except in such cases where the Trustees consider a relaxation necessary.

? The Trustees have the power to extend the period of probation of a person appointed to a post in the Museum beyond the probationary period of two years.

? The Trustees have the power to grant extension of service of an employee of the Museum other than Class IV employee.

? An employee may by giving notice to the Trustee resign from the services of the Board.

? The Trustees have the power to retire an employee after he attain the age of 55 years, if they are of the opinion that it is in the public interest so to do.

? The Trustees have the power to reemploy a person who has retired from service.

? The Trustees may place an employee under suspension and the order of suspension may be revoked by the Trustees.

? No order imposing any penalty on an employee shall be passed, except after the employee is informed in writing of the proposal to take action against him

and the employee given an opportunity to make representation and such representation, if any, is taken into consideration by the Trustees. An employee may appeal against the order of suspension or an order imposing penalty to the authority specified in the schedule annexed to the Rules.

? The whole time employee of the Museum shall be at the disposal of the Trustees and he may be employed in any manner required by the Trustees without claim for additional remuneration.

? The service book and a character roll in respect of each employee are maintained by the Trustees.

? The entries in the service book of an employee are made by the Trustees or caused to be made by the Trustee by such authority as may be specified by them. The entry in the character roll of an employee is made by the authority to whom such employee is immediately subordinate and is countersigned by the next higher authority with his remarks.

? The Government may, on its own motion or on the recommendation of the Trustees, relax any of the provisions of these Rules, if it is satisfied that it is necessary so to do in the interest of the Museum or in the public interest or in order to relieve an employee of the Museum from any hardship of financial loss arising from the operation of such provision.

According to the bye-laws the Trustees may meet once in two months as far as practicable. Decisions on matter of urgency may be obtained by circulation of papers to the Trustees.

From a conjoint reading of the Act and the Rules as indicated hereinabove it appears that the appointment of staff in the Museum is made by the Trustees on the recommendation of the Selection Committee. The recommending Authority in respect of a Class IV staff of the Museum is the Director and a senior officer of the Museum. The Schedule of the un-amended Rules mentions the Honorary Secretary as the Appointing Authority, however, the Schedule appended to the Rules, after amendment, mentions the Director as the Appointing Authority.

The Rule is silent about the Disciplinary Authority in respect of the staff of the Museum.

The charge sheet that is under challenge in the instant writ application mentions that the charges have been leveled against the petitioner in accordance with the Indian Museum bye-laws and the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

Rule 3(1)(e) CCS(CCA) Rules, 1965 mentions that the said Rule does not apply to any person for whom special provision is made, in respect of matters covered by the Rules, by or under any law, for the time being in force, or by or under any agreement, entered into by or with the previous approval of the President before or after the commencement of the Rules in regard to matters covered by such

special provisions.

As the employees of the Indian Museum is covered by a Central Act and Rules framed thereunder accordingly the CCS(CCA) Rules, 1965 does not have any manner of application in the instant case. Invoking the aforesaid rules for taking action against the petitioner is bad in law.

From the aforesaid provisions of the Act and the Rules applicable in respect of the employees of the Indian Museum it appears that all the powers in respect of appointment, suspension, termination, imposing penalty, remuneration and extension of probationary period are vested with the Trustees alone. The Director is one of the recommending authorities of a Class IV employee of the Museum. As per the amended schedule the Director is the Appointing Authority and the Authority to impose penalty upon a Class IV employee.

According to Section 9 of the Act the Trustees have the power to appoint the officers and servants as they may consider necessary or proper for the care or management of the Trust property and determine their functions. The Act provides unequivocal power to the Trustees to appoint the employees of the Museum. The recruitment and condition of service of the employees is however, regulated by the Rules.

The primary contention of the petitioner is that the Director does not have the competence to issue the show cause notice and/or to initiate any proceeding against an employee of the Indian Museum. From a combined reading of the provisions of the Act and the corresponding Rules it appears that, in the absence of delegation of power, the Director lacks jurisdiction to initiate any proceeding against an employee of the Museum. All powers with regard to the same are vested with the Trustees.

The respondents have tried to make out a case that as the Trustees consists of several members, starting from the Governor, the Mayor, the Vice Chancellor and a host of other dignitaries it is not always possible for the Trustees to supervise the day to day functioning of the Museum. As the amended Schedule mentions the Director as the Appointing Authority of a Class IV employee accordingly the Director being the officer-in-charge of the Museum is possessed with the power to take prompt action in respect of any matter which have to be dealt with on urgent and emergent basis.

The apprehension of the respondents may not be absolutely out of place. There may be occasions where immediate action is required to be taken by the officer-in-charge of an institution for dealing with a situation on emergent basis. The Act, Rules and the bye laws provide with the remedy in such a situation. According to the Rules the Trustees are entitled to delegate any of their powers to the officer-in-charge of the Museum. In the absence of such delegation, the Director is not empowered to suo motu initiate any disciplinary proceeding against an employee of the Museum.

The decision that was relied upon by the respondents in the case of Pradyat Kumar Bose (*supra*) takes into account the provisions of Section 16 of the General Clauses Act which clearly provides that the power of appointment includes the power to suspend or dismiss.

For proper appreciation of the case let me now refer to Section 16 of the General Clauses Act. The same reads as follows:

16. Power to appoint to include power to suspend or dismiss - Where by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have the power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.

The expression 'unless a different intention appears' imply, that in the absence of any specific provision/rule to suspend or dismiss, the appointing authority shall exercise the said power.

Under the Act in question the Trustees are vested with the power to suspend and terminate an employee. As the Act mentions a particular Authority to perform the duty to appoint, suspend and terminate accordingly the general provision under the General Clauses Act will not be applicable in the instant case. A special provision always overshadows a general provision. A general provision can never substitute or replace a special provision. Similarly, if there is a conflict or an apparent contradiction between the provisions of the Act and the corresponding Rules, it is the Act that prevails over the Rules.

The respondents have tried to impress that the Act and the Rules have to be read harmoniously so that a provision may not become nugatory or redundant.

It is settled law, that when a Statute mentions a thing to be done in a particular manner, the same has to be done in that manner and in no other manner. As the Statute gives the power to the Trustees to take steps against an erring employee, accordingly, in the absence of delegation, nobody else can take up the said step.

The proposition that an officer subordinate to the Appointing Authority can initiate a disciplinary proceeding is well settled, but in the instant case, the Act specifically vests the power of appointment, suspension and termination upon the Trustees. Had the Act been silent with regard to the appropriate authority to take steps regarding appointment, suspension, termination etc. then the officer who is in charge of the institution could have initiated the said proceedings, but as long as the Trustees hold all the powers according to the Act and the Rules made thereunder and until and unless the Trustees delegate the said power to the Director, in my considered opinion, the Director cannot, on his own accord, initiate proceedings against an employee.

The submission of the respondent, that in that case, the Director will be denuded

of the power to act against an erring employee will not hold good in the facts and circumstances of the instant case, inasmuch as, the Statute never vested upon the Director the power to take any step against any employee, accordingly the question of taking away or divesting the Director of such power does not arise at all. On the contrary, it can be said that the Director illegally and arbitrarily tried to usurp jurisdiction to initiate disciplinary proceeding against the employee by issuing the impugned charge sheet.

The decisions delivered by the Hon'ble Supreme Court in the matter of Kunisetty Satyanarayana (supra) and Narendra Kumar Tripathi (supra) support the case of the petitioner.

The respondents derive the power of the Director from the Schedule of the amended Rules. According to the dictionary, 'Schedule' means a sheet of paper or parchment annexed to a statute, deed, answer in equity, deposition, or other instrument, exhibiting in detail the matters mentioned or referred to in the principal document. The same is an addition, a supplement to the statute.

The Schedule being an addition, a supplement to the Act has to be read conjointly with the Act. The same cannot be read in segregation.

The petitioner has made a prayer to read down the Schedule of the Indian Museum Rules, 1970 as inconsistent with the substantive provisions of the Rules. It is settled law that the object of interpreting a statute or any statutory provision is to ascertain the intention of the legislature or the authority enacting it. The intention of the maker is to be gathered from the language used. A construction which results in rejection of words as meaningless has to be avoided.

A harmonious reading of the Act and the Rules along with the Schedule indicate that though the appointing authority of a Class IV employee of the Museum is the Trustees the same function can be performed by the Director upon delegation by the Trustees. The Director derives the power from the Trustees, upon delegation. The irregular act can be regularized the moment the Trustees delegate their power upon the Director. But as long as the said power is not delegated, the Director cannot assume jurisdiction and proceed with the same. The same cannot be a post facto approval/delegation. Proceedings can be initiated by the Director only after the power is delegated and not otherwise.

Accordingly the prayer of the petitioner to water down the Schedule, being inconsistent, lacks merit and is accordingly rejected.

The proceeding initiated by the Director may not be wholly without jurisdiction, but in the absence of the delegation, the same is certainly without jurisdiction.

Since the allegation of the petitioner was solely against the Director and it is the Director who initiated the disciplinary proceeding, the Court invited both the parties to address the issue as to whether it would be appropriate on the part of the Director to frame the charges. The parties have advanced arguments on the point of 'bias' as well as on the issue that 'a person cannot be a judge of his own

cause'.

As I have already come to a considered opinion, that the Director lacks jurisdiction to initiate a disciplinary proceeding suo motu, accordingly I refrain from discussing the next issue and reserve my comments with regard to the same.

Since the writ petition is liable to succeed on the point of incompetence of the Director to issue the charge sheet, the Court does not express any opinion with regard to the other issues raised.

The Hon'ble Supreme Court in the matter of Pravash Chandra Mirdha (supra) specifically held that ordinarily the Court does not allow a writ application against a charge sheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceeding. From the facts and the law relating to this case, in my considered opinion, the Director is not the competent person to suo motu initiate any disciplinary proceeding against an employee of the Museum, unless, powers have been delegated upon the Director by the Trustees.

In view of the discussions made herein above the writ applications are liable to succeed. The charge sheets issued against the petitioners are set aside and quashed. The concerned authority will however, be at liberty, to take appropriate steps against the employee(s), in accordance with law, if so advised.

No order as to costs.

Urgent Photostat certified copy of this order be given to the parties, if applied for, upon compliance of necessary formalities.