
(2002) 04 CAL CK 0018
In the Calcutta High Court
Case No : C.O. No. 7398 (W) of 1996

Santimoy Biswas

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 30-04-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2002) 2 CALLT 258 : (2002) 3 CHN 210

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Sumon Dutta, for the Appellant; A.B. Chatterjee and Joytsna Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Banerjee, J.—The writ petitioner was working in the Nadia Zilla Parishad. In 1977, while he was working, he was implicated in 10 criminal cases. The Nadia Zilla Parishad placed the writ petitioner under suspension. The said suspension order continued till the same was set aside by this Court in 1991 in C.O. No. 10510(W) of 1989 by an order dated 22nd November, 1991. Since the order of suspension was not followed by any disciplinary proceeding, this Court quashed the order of suspension and directed the respondent authority to allow the writ petitioner to Join the service with all consequential benefits in accordance with law. Accordingly, the writ petitioner was allowed to join in the service. The criminal cases brought against the writ petitioner were dropped by the police authority.

2. The writ petitioner joined the Nadia Zilla Parishad again in 1994 and worked there until his superannuation in 1996. All the retiral benefits were extended to the writ petitioner. However, the writ petitioner was not paid his back-wages during the period while he was under suspension. This period of suspension was treated as extra-ordinary leave without pay by the Nadia Zilla Parishad. The decision of the Zilla Parishad has been impugned in the writ petition.

3. From paragraph 3 of the writ petition it appears that immediately after the order of suspension the writ petitioner prayed for permission to engage himself in any other organisation for gainful employment on the undertaking that he would not claim any allowances during the period of suspension. It further appears from the writ petition almost for the entire period of suspension the writ petitioner worked elsewhere. However, he did not disclose his earning during the said period.

4. If an employee is put under suspension, he is entitled to the subsistence allowance to maintain himself so long the suspension order is in force. Here, the writ petitioner himself prayed for permission to work elsewhere during the period of suspension on the specific undertaking that he would not claim any pecuniary benefits during the period of suspension. Hence in my view, the prayer of the writ petitioner for back-wages during the period of suspension is not tenable.

5. Mr. Dutta, learned counsel appearing for the writ petitioner submits that since the order of suspension has been revoked by this Court with a direction to pay all pecuniary benefits available in law, the writ petitioner is entitled to get back-wages specifically when his service was confirmed with retrospective effect prior to the order of suspension being imposed. Such submission is not tenable on two fold grounds:

(I) The writ petitioner is estopped from contending in view of his specific undertaking as contained in his letter for permission to be engaged elsewhere.

(II) During the said period the respondent authority did not and could not avail the service of the writ petitioner and the writ petitioner's service was utilised by some other employer.

If I direct payment of back-wages for the said period, in my view, it would not only be unjust but it would also amount to foisting unnecessary liability on the Nadia Zilla Parishad.

The writ petition is, therefore, dismissed.

There will be no order as to costs.