

(1969) 09 GAU CK 0002
In the Gauhati High Court
Case No : Writ Petition No. 12 of 1964

Shri Manmatha Bhattacharjee

APPELLANT

Vs

Union Territory of Tripura, now known as Government of
India, Agartala and another

RESPONDENT

Date of Decision : 01-09-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (1969) 09 GAU CK 0002

Hon'ble Judges : R.S. Bindra, J.C.

Bench : Single Bench

Advocate : B.C. Dev Barma and Mr. R.L. Chakraborty, for the Appellant; H.C. Nath, Government Advocate, for the Respondent

Judgement

R.S. Bindra, J.C.

1. In this writ petition, filed under Article 226 of the Constitution, the petitioner Manmatha Bhattacharjee, who was employed as Lower Division clerk in the Education Directorate of the Tripura Administration, challenges the validity of his removal from service.

2. Manmatha Bhattacharjee was recruited on 30th of December, 1952, as primary teacher and joined on 1-1-1953 under the Tripura Administration in the Education Department, Relief and Rehabilitation, and from there he was transferred to the Education Department, Tripura, wherein he was absorbed as Lower Division clerk. In the year 1958 his services were placed at the disposal of the Territorial Council. He was upgraded in course of time as Upper Division clerk and transferred to the office of the Inspector of Schools, Sadar. By an order dated 14-3-1962, he was transferred from there to the office of the Inspector of Schools at Dharmanagar, where he took over on 1-5-1962 after having been released on 24-4-1962 by the Inspector of Schools at Sadar. On 2-5-1962, he applied for 6 days' casual leave for bringing his family from Agartala to Dharmanagar. On reaching Agartala on 3-5-1962, he found his wife gravely ill.

Consequently, he applied for 2 months' earned leave, with effect from 2-5-1962, to the Inspector of Schools at Dharmanagar. The relevant application was accompanied by a medical certificate respecting his wife's illness. However, that application fetched no reply. He then submitted an application on 22-6-1962 for payment of his salary. Thereafter, he submitted another application praying for extension by one month of the earned leave effective from 2-7-1962. That too remained unresponded. Faced with critical situation arising out of his wife's continued illness and non-response to his applications for leave and payment of salary already earned, in sheer frustration the petitioner tendered his resignation on 6-7-1962 per registered cover addressed to the Inspector of Schools, Dharmanagar.

By a letter dated 11-7-1962, he was informed by the Inspector of Schools that his resignation may not be accepted as he had not resumed duty in compliance with the direction contained in letter dated 29th of June/3rd of July, 1962, sent to him. The petitioner wrote back stating that he had not received any such letter. Some more correspondence was exchanged between him and the Inspector of Schools until 30th of November, 1962, when the petitioner addressed a communication to the Chief Executive Officer of the Tripura Territorial Council, praying for acceptance of his resignation earlier submitted and claiming leave salary due to him. Some dispute was also pending between the petitioner and the Department respecting his T.A. bill in connection with his transfer to Dharmanagar. He had drawn Rs. 175/- in advance before proceeding to that station. The Principal Officer of the Tripura Territorial Council directed the petitioner, by a communication dated 8-2-1963, that unless "the final T. A. bill" was submitted, his representation dated 30th of November, 1962, addressed to the Chief Executive Officer shall not be considered. The petitioner sent a reminder on 17-5-1963 for acceptance of his resignation and payment of arrears of salary, and also submitted a duplicate T. A. bill on 6-3-1963.

Having received no further communication from any quarter, he was forced to make a representation on 22-8-1963 to the Director of Education Department. That Director communicated to him, by a letter dated 3rd/9th September, 1963, that the order regarding his service had been communicated to the Inspector of Schools, Dharmanagar. A copy of that order was also sent to the petitioner. That order was to the effect that Manmatha Bhattacharjee having remained absent from duty for a period exceeding 90 days with effect from 2-5-1965, his services stood automatically terminated from the forenoon of 21-7-1963 in terms of Rule 14 (c) of the Revised Leave Rules of 1933.

3. The petitioner filed an appeal with the Chief Commissioner of Tripura on 16-9-1963 against the order terminating his services. It is alleged that no reply was received by him from the Chief Commissioner.

4. It was claimed in the writ petition that the termination of the petitioner's service is in violation of Article 311 of the Constitution for it is obviously in the nature of penalty. It was also emphasised that though the petitioner had

submitted his resignation, on 6-7-1962, no attention was paid to it and he was discharged from service on a different ground.

5. The respondents traversed in their written statement the contention of the petitioner that his removal from service offends the constitutional provisions. It was pleaded that it is a case of automatic termination of service in accordance with Rule 14 (c) of the Revised Leave Rules, 1933, and not a case of dismissal, removal or reduction in rank by way of punishment, and that, as such, the applicability of Article 311 is not attracted. Another point urged was that since the petitioner had resigned from his post on 5-7-1962 with one month's notice, his service came to an end on 5-8-1962.

6. Shri Dev Barma, appearing for the petitioner, submitted on the authority of *Jai Shanker Vs. State of Rajasthan*, that the removal of a Government servant from service for overstaying his leave is illegal even though the Service Regulations by which he is governed contain a provision to that effect. *Jai Shanker* (of the cited authority) had challenged the validity of termination of his service, which termination, it was claimed on behalf of the Government, had come about in terms of Regulation 13 of Jodhpur Service Regulations. The Regulation runs as under:

An individual who absents himself without permission or who remains absent without permission for one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the competent authority.

Note:- The submission of an application for extension of leave already granted does not entitle an individual to absent himself without permission.

Rule 14 (c) of the Revised Leave Rules of 1933 relied upon by the respondents in our case is in the following terms:

Where a Government servant, who is not in permanent employ or quasi-permanent employ, fails to resume duty on the expiry of the maximum period of extraordinary leave granted to him, or; where such a Government servant who is granted a lesser amount of extraordinary leave than the maximum amount admissible, remains absent from duty for any period which together with the extraordinary leave granted exceeds the limit upto which he could have been granted such leave under sub-rule (b), he shall, unless the President in view of the exceptional circumstances of the case otherwise determine, be deemed to have resigned his appointment and shall, accordingly, cease to be in Government employ.

This Rule and Regulation No. 13 appear to be almost identical in nature and effect though they are differently worded.

7. The Supreme Court posed the question, in *Jai Shanker Vs. State of Rajasthan*, whether Regulation 13 is sufficient to enable the Government to remove a person from service without giving him an opportunity of showing

cause against that punishment. It was represented before the Supreme Court by the counsel for the Government that the Government does not order removal of the employee under Regulation no. 13 because the incumbent himself gives up the employment. Repelling the contention, the Supreme Court held:

We do not think that the constitutional protection can be taken away in this manner by a side wind. While, on the one hand, there is no compulsion on the part of the Government to retain a person in service if he is unfit and deserves dismissal or removal, on the other, a person is entitled to continue in service if he wants until his service is terminated in accordance with law. One circumstance deserving removal may be over-staying one's leave. This is a fault which may entitle Government, in a suitable case, to consider a man as unfit to continue in service. But even if a regulation is made, it is necessary that Government should give the person an opportunity of showing cause why he should not be removed.

At another place in the judgment the Supreme Court observed:

Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. The Regulation involves a punishment for overstaying one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause. It is true that the Government may visit the punishment of discharge or removal from service on a person who has absented himself by over-staying his leave, but we do not think that Government can order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise.

Yet another relevant observation made by the Supreme Court was:

A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no opportunity is to go against Art. 311 and this is what has happened here.

8. I think these observations of the Supreme Court are decisive of the matter debated before this Court. Admittedly the petitioner was never called upon to show cause against his proposed termination of service on account of his absence from duty for a period exceeding 90 days from 2-5-1962. It is really tragic that the Director of Education should make an order on 26th of August, 1963, to the effect that the service of the petitioner stood automatically terminated with effect from 31-7-1962 forenoon, when the petitioner had submitted his resignation as long ago as 6th of July, 1962. It is obvious that the Department was out to smite the petitioner for having enjoyed leave without getting the same first sanctioned. In fairness to the petitioner, the Department should have referred the matter to the President of India in terms of Rule 14 (c) asking instructions whether the resignation of the petitioner should be accepted

or his service considered terminated. In face of the peculiar situation created by the resignation of the petitioner, the Education Department would have been well advised to place the relevant papers before the President for his necessary directions. It reflects on the efficiency of the Department that an application for earned leave should remain unattended for a period of more than two months. According to para 7 of the written statement of the respondents, the petitioner was addressed a letter on 3rd of July, 1962, communicating rejection of his leave and directing him to resume duty by 5th of July, 1962. The petitioner has denied the receipt of that letter and his denial is supported by affidavit. There is no counter-affidavit that such a letter had actually been posted to the address of the petitioner. A copy of that letter was supplied to the petitioner at his request on or about 31st of July, 1962 vide para 8 of the written statement. It follows that the petitioner did not receive any official communication earlier than 31st of July, 1962, that his leave application had been rejected. Anyway, in view of the Supreme Court authority cited above it is not open to the respondents to contend that the petitioner's discharge from service does not offend the provisions of Article 311 inasmuch as admittedly he was not afforded an opportunity of showing cause against his proposed removal or discharge from service.

9. I am also not satisfied that the case of the petitioner is covered by R. 14 (c). A plain reading of the rule would bring out that it applies to a Government servant who overstays the extraordinary leave granted to him, and not to one who absents himself from duty without taking any leave or who overstays leave other than extraordinary. Rule 14 (a) provides that the extraordinary leave may be granted to an officer in special circumstances-

(i) where no other leave is by rule admissible, or

(ii) when other leave is admissible, but the officer concerned applies in writing for the grant of extraordinary leave.

It is not the contention of the respondents that no variety of leave was due to the petitioner when on 3rd of May, 1962, he applied for two months' earned leave. Nor it can be urged that the petitioner had ever moved the authority concerned in writing for grant of extraordinary leave to him. The entire correspondence exchanged between the parties has been placed on the record by the petitioner. That correspondence shows that he had applied only for earned leave and not for extraordinary leave. Therefore, I fail to see how could the Government dispense with petitioner's services under rule 14 (c). If the petitioner had remained absent from duty without earned leave applied for having been sanctioned, he was guilty, none may seriously dispute, of misconduct but for such misconduct he could be removed from service only on compliance with the constitutional requirements enshrined in Art. 311. That, of course, never happened. The removal or discharge from service under Rule 14 (c) is clearly unsustainable because in terms that rule does not apply to the instant case. The petitioner had remained absent without earned leave having been granted to him, and it cannot be the charge against him that he had

overstayed extraordinary leave.

10. Shri H.C. Nath, the learned Government Advocate appearing for the respondents, submitted, towards the close of his arguments, that in view of the resignation tendered by the petitioner on 6-7-1962, his service terminated on the expiry of period of one month mentioned in the letter of resignation, and that as such he is not entitled to claim the declaration that he is still in service. Shri Dev Barma, on the other hand, urged that since the Government has never accepted the resignation of the petitioner, though the latter had requested repeatedly for its acceptance, the submission made by Shri H.C. Nath has no foundation to rest upon. He, therefore, prayed that the petitioner is entitled to the declaration that he is still in service. The matter at issue does not appear to be free from difficulty. It can be looked at from three angles. Firstly, it can be said that the resignation became effective from 6-8-1962 on the expiry of one month's notice given per letter of resignation itself. In the second place, it may be legitimately contended that the resignation having not been accepted thus far, despite petitioner's repeated requests to accept it, the Government may not see its way in accepting it even at present. Lastly, the resignation having admittedly not been accepted so far the petitioner may have the right to withdraw it and he may withdraw it. It is also conceivable that the Government may accept the resignation before it is withdrawn by the petitioner. All these matters require serious scrutiny and consideration. I have decided not to adjudicate on that aspect of the dispute between the parties in the present writ petition. I may now set out in a few words what has weighed with me in reaching that conclusion.

11. The petitioner came to the Court to challenge his discharge or removal from service, which the Director of Education, Tripura, declared on 26-8-1963 to have come about on the basis of R. 14 (c), as being unconstitutional. That relief, as held above, he is clearly entitled to claim. Another two reliefs asked for by him were the declaration that he still continues to be in service and that he is entitled to all benefits of pay and allowances from 1-5-62 to date. It is these reliefs that I am not inclined to grant in this petition because of the complication created by the resignation submitted by the petitioner on 6-7-1962. The petitioner did not solicit this Court to determine his rights in the context of his resignation; he only prayed that his removal from service on the footing of Rule 14 (c) be quashed and his consequential rights determined. It were the respondents who pleaded, alternatively, that the petitioner's service had terminated on the basis of resignation submitted by him. The respondents did not aver, however, in their written statement, nor did their counsel say so during the course of arguments in this Court, that the petitioner's resignation had been accepted. The only plea adopted by the respondents in the written statement was that the resignation had become operative by its own force on the expiry of one month's notice given by the petitioner. If such were the factual and legal consequence of the language in which the resignation was couched, the Principal Officer of the Tripura Territorial Council would not have mentioned in the letter dated 8th February, 1963, (copy marked "T"), that unless the final T.A. bill were adjusted no action

on the representation dated 30th of November, 1962, made by the petitioner could be taken. A copy of that representation of the petitioner is marked "S". Therein he had prayed that his resignation dated 6th of July, 1962, should be accepted and its acceptance communicated to him.

After the petitioner had submitted the final T. A. bill in duplicate along with his letter dated 6-3-1963 (marked "U"), and that had fetched no reply, he addressed the application dated 17-5-1963 (Marked "U-1") to the Principal Officer of the Education Department, Tripura Territorial Council, repeating the request for acceptance of his resignation at an early date with the remark "this is long overdue". It was on 26th of August, 1963, that the curtain was drawn on the extensive correspondence between the parties when the Directorate of Education, Tripura, addressed a letter to Education Inspectorate, Dharmanagar, that since the petitioner had absented himself from duty for a period exceeding 90 days from 2-5-1962, his service stood automatically terminated with effect from 21-7-1963 (forenoon) in terms of Rule 14 (c). The correspondence exchanged between the parties, thus brings out clearly that even until 26th of August, 1963, the Department had not taken into consideration the resignation of the petitioner. Nor was it evidently of the view that the resignation had become effective from 6-8-1962.

12. As against the petitioner, it can be urged quite plausibly that since he had submitted his resignation on 6-7-1962 with one month's notice and since he had not thereafter offered to work in his post, he cannot contend that he is still in service or that he is entitled to his salary right upto this date. All through his correspondence he insisted on his resignation being accepted and never prayed in the alternative that he should be permitted to resume duty. In such circumstances, it passes comprehension how can he claim salary etc. right upto this day.

13. Further, the salary of the petitioner will depend on the nature of the leave due to him from 2-5-1962. There is no data on the present record to enable the Court to give a finding on that point. Obviously, some evidence is required for determination of that dispute between the parties.

14. Taking all these factors into consideration, I have come to the conclusion that I should grant the petitioner only this declaration against the respondents that his removal from service on the basis of Rule 14 (c) is illegal and inoperative, being violative of Article 311 of the Constitution, and that declaration is hereby made. The other disputes between the parties, namely, (i) whether he still continues in service, (ii) what is the effect of the resignation tendered by him, and (iii) to what salary, if any, the petitioner is entitled, are left open between them. They should better be resolved amicably, else the aggrieved party may seek relief in the Civil Court. I feel clear that those disputes can best be settled after a regular trial in a Civil Court and not in a writ Court.

15. I direct that the respondents shall pay one-half costs of this petition to

Manmatha Bhattacharjee, the petitioner. Advocate"s fee Rs. 50/-.