
(2005) 06 CAL CK 0012
In the Calcutta High Court
Case No : Writ Petition No. 8134 (W) of 1998

Shymapada Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-06-2005

Acts Referred:

Citation : 109 CWN 729

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : A.N. Dhole and P. Dhole, for the Appellant; Anjan Chakraborty, for the Respondent

Judgement

Ashim Kumar Banerjee. J.

1. On November 17, 1971, the writ petitioner was appointed as primary teacher in Rahimtola Primary School in the district of Malda. Subsequently, he was transferred to Dharampur Primary School under the same district. On June 01, 1974, a criminal case was initiated at the instance of the District Inspector of School (Primary Education), Malda as against the writ petitioner on the allegation that he obtained employment by producing fake certificate. On April 21, 1976, he was placed under suspension. Ultimately, he was discharged from service on June 22, 1977. However, no regular departmental proceeding was held against the writ petitioner by the Primary School Council.

2. On January 28, 1998, after about 22 years of initiation of the said criminal proceeding, the writ petitioner was acquitted by the Chief Judicial Magistrate, Malda from the said criminal case on the ground that the prosecution failed to produce any witness in support of the complaint case. The concerned Magistrate expressed grave concern as to how the writ petitioner was harassed by the prosecution. After the order of acquittal the writ petitioner approached the Primary School Council for giving back his job, The Primary School Council remained silent. Hence, this writ petition.

3. On behalf of the petitioner, the following decisions have been cited :

- (i) Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, ;
- (ii) Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others,
- (iii) AIR 1959 SC 1204 (Paras Nath Thakur. vs. Smt. Mohani Dasi (deceased) & Ors.)
- (iv) Director General of Police and others Vs. Mrityunjay Sarkar and others,
- (v) Director General of Police and others Vs. Mrityunjay Sarkar and others,
- (vi) Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, .
- (vii) (2002) 1 CLJ 203 (Sanjoy Kumar Singh vs. Union of India & Ors.).
- (viii) (2002) 1 CLJ 541 (Rafikul Islam vs. Union of India & Ors.).

4. Citing the aforesaid decisions, it. has been contended on behalf of the petitioner that once the authority initiated criminal case on the self-same charge and dismissed him from service, it was incumbent upon them to have the said criminal case decided in a logical conclusion on merits. It has also been contended that once an allegation had been made with regard to production of fake certificate, it was the duty of the Primary School Council to prove such allegation as the burden of proof was heavily cast upon the prosecution. The prosecution failed to discharge such onus. Hence, the writ petitioner was entitled to get back his service. Reliance has also been placed in the case of Bharat Coal Mines (Supra) wherein on the self-same charge the incumbent was dismissed from the service and the Apex Court observed that once the appellant was acquitted by a judicial pronouncement, it would be unjust and unfair and rather oppressive to allow the findings recorded at the. ex parte departmental proceedings to stand. In the said case, the departmental proceeding although ex parte, was bad. In the case before me no proceeding at all was conducted before dismissing the writ petitioner from service. In fact, the writ petitioner was dismissed from service on the basis of a certificate given by Bihar School Board certifying that the certificate produced by the petitioner was a fake one. If the State relied upon such certificate issued by the Bihar School Board, it was incumbent upon the State to call the relevant official as witness in the criminal proceeding to prove such allegation.

5. Mr. Anjan Chakraborty, learned Counsel appearing for the Primary School Council contends that the writ petitioner has approached this Court at a much belated stage and the writ petition is hopelessly barred by gross laches and delay. The writ petitioner should have contemporaneously approached this Court when he was dismissed from service. He did not do so, and as such, he should be denied any relief. In support of his contention, Mr. Chakraborty has relied upon the following decisions :

- (i) P.S. Sadasivaswamy Vs. State of Tamil Nadu,
- (ii) P.S. Sadasivaswamy Vs. State of Tamil Nadu, .
- (iii) Union of India (UOI) and Another Vs. S.S. Kothiyal and Others,
- (iv) Scooters India and Others Vs. Vijai E.V. Eldred,
- (v) (1985)1 SLR 573 (Rashiklal Vaghajibhai vs. Ahmedabad Municipal Corporation & Anr.
- (vi) Govind Das v. State of Bihar and Ors., (1997) 11 SCC 361
- (vii) Govind Das v. State of Bihar and Ors., (1997) 11 SCC 361

6. Mr. Chakraborty has also contended that once the writ petitioner obtained employment by production of a certificate, it was incumbent upon him to prove that the same was a genuine one. The writ petitioner failed to do so and as such, he was dismissed from service. Such contention of Mr. Chakraborty is totally untenable in view of the fact that the writ petitioner never got any opportunity to dispel the doubt of the Council. He was never asked to appear in an enquiry to defend himself. He was summarily dismissed after keeping him under suspension for two years. The contention of Mr. Chakraborty on the ground of delay, is also not tenable. The writ petitioner was dismissed from service because of the certificate issued by the Bihar State Board. The same became subject matter of a criminal proceeding. The writ petitioner waited for years together to have a logical conclusion in the criminal proceedings. The judgment has now come in his favour after 22 years. It is true that the criminal proceeding was discharged on the ground of non-production of witness and there was no acquittal on merit. For that the petitioner cannot be blamed. A person has every right to defend himself against any stigma attached to his character. A person has every right to protect his means of livelihood. In the instant case, neither of such right was protected. It might be true that the writ petitioner's certificate was a fake one. It might be other way round also. The writ petitioner lost his employment only on the basis of a letter issued by the Bihar School Board, which was never proved in the Court of law. Nobody came forward to assume responsibility of the statement contained in the said letter. The writ petitioner waited for so many years. The authority was much too callous and the criminal proceeding had to be concluded in acquittal, as has been done by the learned Magistrate.

7. In my view, the writ petitioner must get back his employment with all his back wages. It would have been proper for this Court to adequately compensate the writ petitioner for the mental agony he suffered for all these years. However, it may not be possible as such misery of the petitioner cannot be compensated by money. The Council is directed to take back the writ petitioner in service. From the day he was dismissed he must get all his back wages as well as all service benefits.

8. The writ petition is disposed of accordingly without, however, no order as to

costs. There would be stay of operation of this judgment and order for a period of three weeks from date.

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