
(2003) 09 CAL CK 0033
In the Calcutta High Court
Case No : Writ Petition No. 16566 (W) of 2002

Sirajul Mirza

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Panchayat Act, 1973 — Section 168

Citation : (2004) 1 CHN 35

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Chandra Sekhar Bag, for the Appellant; S. Dasgupta, for the Respondent

Judgement

Amitava Lala, J.—It appears to this Court that the petitioner is working as Chowkidar under the concerned Zilla Parishad, About last 8 years he was allowed to receive a subsistence allowance without any intimation whatsoever. Only one intimation which has been given to the local Member of Parliament in 1995, is that as because a criminal case is pending before the appropriate Criminal Court being 77 of 1994 filed on 20.4.1994, he was kept under suspension. The date of aforesaid information to the Member of the Parliament is 6.7.1995. However, from a communication dated 3.4.1997 it appears that the petitioner was allowed to stay in the concerned Zilla Parishad quarter. But till date no information, no show cause, nothing of such nature was given to the petitioner. He ran from pillar to post and upon being dissatisfied filed this writ petition. None appears on behalf of the Zilla Parishad. The learned Counsel appearing for the State himself is astonished about the conduct of the authority concerned.

2. The learned Counsel appearing for the petitioner has shown Section 168 of the West Bengal Panchayat Act, 1973 whereunder I find that the Executive Officer of the Zilla Parishad shall have general control over all officers and other employees of the Zilla Parishad to the extent of awarding punishment other than dismissal,

removal or reduction in rank. In case the question of dismissal, removal or reduction in rank appears, then a recommendation will be made to the Zilla Parishad or to the respective Sthayee Samiti for the purpose of taking appropriate steps by way of resolution at a meeting. According to me, the authority of the Zilla Parishad cannot pass an order of suspension without due sanction of the authority and keep it pending for long 8 years on the plea that the criminal proceeding is pending. I am bound by a Division Bench judgment reported in 2001(3) CHN 688 (Akhilendu Ghosh v. State of W.B. and Ors.) whereunder such Division Bench held that whether an employee can be allowed to be kept under suspension for unduly a long period upon payment of subsistence allowance and also without initiating a departmental proceeding in that regard--in absence of statutory rules, an employee cannot be placed under suspension for reasons of pendency of criminal investigation or contemplation of a departmental proceeding and go on paying subsistence allowance. Although the Division Bench decided the issue about the Government service, but the principle as laid down will be similarly applicable in the cases like the same. No departmental proceeding had been initiated by the authority concerned.

3. Therefore, taking into totality of the matter, I hold that the action taken by the authority is wholly illegal and without jurisdiction. Therefore, the order of suspension, if any, stands quashed. The petitioner will be entitled for arrear service benefit within a period of three months from the date of communication of this order and get the current service benefit from the next month of the communication of the order to the authority concerned.

4. Thus, the writ petition stands disposed of. There will be no order as to costs.

5. Let urgent xeroxed certified copy of this order, if applied for, be given to the learned Counsel for the parties within a week from the date of putting the requisites.