

(2014) 01 TP CK 0041

In the Tripura High Court

Case No : Writ Petition (C) 349 of 2007

Sri Kartik Mohan Jamatia VsThe State of Tripura

Date of Decision : 31-01-2014

Acts Referred:

Arms Act, 1959 — Section 27
Civil Procedure Code, 1908 (CPC) — Section 80(1)
Penal Code, 1860 (IPC) — Section 364(A)

Citation : (2014) 01 TP CK 0041

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : Sekhar Datta, for the Appellant; T.D. Majumdar, Govt. Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

U.B. Saha, J.—This writ petition is filed by the petitioner, Sri Kartik Mohan Jamatia, a Kokbork Teacher, challenging the order of dies non for the period from 15.04.2000 to 07.02.2001 and also for cancellation of the entries in the Service book relating to increment, salary and pay scale etc. for the period from 15.04.2000 to 07.02.2001 as well as the order of recovery of the amount of Rs. 64,580/- allegedly overdrawn by him due to wrong fixation of pay (Annexure-10 and 11 to the writ petition, respectively). Heard Mr. Sekhar Datta, learned counsel for the petitioner as well as Mr. TD Majumdar, learned GA for the State.

2. Pleded case of the petitioner is as follows:--

The petitioner was arrested on 08.10.1998 on suspicion in connection with R.K. Pur P.S. Case No. 250/1998 and subsequently he was discharged on 09.08.1999 from the said police case due to non-availability of evidence and a final report was also submitted by the police which was accepted by the learned Chief Judicial Magistrate, South Tripura. Thereafter, the petitioner was provided all financial benefits vide order dated 17.11.1999 by the respondent No. 2 for the period of suspension in connection with the aforesaid police case.

3. The petitioner was again implicated in a criminal case in connection with Killa

PS case No. 27/2000, under Sections 364(A) IPC and 27 of the Arms Act and consequent thereto he was arrested on 19.09.2000 and was in custody. As a result, he was absent from his duties w.e.f. 15.04.2000 to 07.02.2001 and subsequently he had to face criminal trial in connection with the aforesaid PS case corresponding to case No. Sessions Trial No. 02 (ST/U) of 2002 and on completion of trial he was acquitted by the learned Sessions Judge, South Tripura vide order dated 21.05.2002 in the aforesaid case. On 05.12.2002, he through proper channel, made a prayer for regularization of his services from 15.04.2000 to 07.02.2001.

4. Thereafter, the petitioner served a notice on 27.06.2006 u/s 80(1) of CPC to the State respondents praying for unpaid salary for the said period. On receipt of the notice, the respondent No. 2, Director of School Education, Government of Tripura, issued a memo on 03.10.2006 asking the petitioner to show cause as to why the period of absence from 15.04.2000 to 07.04.2001 should not be treated as dies non for all purposes. The petitioner received the said notice on 23.10.2006 and submitted reply on 30.10.2006 to the Director of School Education, respondent No. 2 herein. Upon receipt of the reply, the respondent No. 2, issued the impugned order of dies non. Thereafter, respondent No. 4, Inspector of Schools, Education Inspectorate, Udaipur vide Annexure-11 to the writ petition asked the petitioner to deposit Rs. 64,580/- as overdrawn by him due to wrong fixation of pay. Hence, the writ petition.

5. The State respondents, by filing affidavit, admitted that before issuance of the order relating to dies non, no disciplinary proceeding was initiated though in the show cause it was mentioned as to why a disciplinary proceeding should not be initiated. They also stated that petitioner though resumed his duty on 08.02.2000 but did not inform the reasons for his willful and deliberate absence for the period from 15.04.2000 to 07.04.2001.

6. It is further stated that the dies non order has been passed after affording opportunity to the petitioner and further case of the respondents is that though the petitioner was not supposed to get his salary for the period of his absence unless the same is regularized by the appropriate authority but he was paid salary for the period of his absence due to wrong fixation and he had received the pay and allowances for the absence period without the same being ordered for release. As the petitioner was the beneficiary of the unauthorized receipt of salary and allowances for his absence period due to wrong fixation, the same is liable to be recovered in view of the decision of the Apex Court, as the pay and salary which he had received unauthorizedly was not his own money.

7. Mr. Datta, learned counsel for the petitioner while urging for cancelling/setting aside the impugned orders dated 17.02.2007 and 10.07.2007 (Annexure-10 and 11 to the writ petition respectively) would contend that admittedly a show cause notice was issued but no disciplinary proceeding was initiated before issuance of the order of dies non vide Annexure-10 to the writ petition. Not only that, respondent No. 4 not being the appointing authority, issued the order of recovery

vide Annexure-11 to the writ petition, which is beyond his jurisdiction.

8. Mr. Datta also submits that after the order of dies non as well as the order of recovery the petitioner did not submit any representation to the appropriate authority raising his grievances. He finally contended that in view of the judgment of the Gauhati High Court, Agartala Bench in Arunangsho Roy Vs. State of Tripura and Others, an order of dies non cannot be passed without initiating disciplinary proceeding. He has also submitted that the same principle has been laid down in another decision of the Division Bench of the Gauhati High Court, Agartala Bench in Tapan Majumdar v. State of Tripura and 3 Ors., reported in (2007) 3 GLR 444.

9. Mr. Datta again contended that there is no doubt that the petitioner is not entitled to any salary and other financial benefits for the period of his absence but in the instant case, there is no fault of the petitioner since the pay was fixed by the authority concerned. He has further relied upon a decision of the Apex Court in Krushnakant B. Parmar Vs. Union of India (UOI) and Another, wherein the Apex Court noted that "the question whether "unauthorized absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances." According to him, in the instant case, absence is not willful. Thus, an order of dies non cannot be passed for such an absence.

10. Mr. Datta Majumdar while countering the submission of Mr. Datta pointed out that the petitioner willfully did not inform the authority the reasons for his absence as it was in his mind that if he informed the real reasons for his absence then authority would have initiated a disciplinary proceeding against him. He further submits that a government employee like the petitioner was in custody and it was his duty to inform the authority after resuming his duties, but in the instant case, he not only suppressed the reasons but also mis-directed the authority by stating that he was not able to attend his duties for a long time w.e.f. 15.04.2000 for the "varieties problems and dis-advantage of my family" which itself is a mis-conduct and a ground for initiating a disciplinary proceeding. He again contended that admittedly no disciplinary proceeding was initiated before passing the order relating to dies non. Thus, Annexure-10 to the writ petition is no longer a legal order in view of the judgment of the Gauhati High Court, Agartala Bench in Arunangsho Roy (supra) and Tapan Majumdar (supra).

11. Mr. Datta Majumdar though accepted the contention that the petitioner was not provided any opportunity before passing the impugned order of deduction vide memo dated 10.07.2007 (Annexure-11 to the writ petition) but according to him no such opportunity is required as the money which is to be deducted from his salary is not his money rather that was paid to him due to wrong fixation.

12. This Court has gone through the contention made by the parties in their respective pleadings and also taken into consideration the submission of the

learned counsel for the parties. Upon going through the relevant records, this Court is of the considered opinion that Mr. Datta Majumdar in his usual fairness submits that the impugned order dated 17th February, 2007 (Annexure-10 to the writ petition) is no longer a good order which can be sustained in the eye of law. Thus, there is no other option before this Court except to set aside the aforesaid order dated 17th February, 2007 as the order of *dies non* cannot be passed without initiating disciplinary proceeding and admittedly in the instant case no disciplinary proceeding was initiated. Thus, the impugned order dated 17th February, 2007 is hereby quashed. However, mere quashing of this order would not debar the authority from initiating a disciplinary proceeding, if so advised, and consequent thereto pass appropriate order, in accordance with law.

13. Now let us come to the memorandum dated 10.07.2007 (Annexure-11 to the writ petition) issued by the Inspector of Schools, respondent No. 4, wherein the respondent No. 4 asked the petitioner to deposit an amount of Rs. 64,580/- overdrawn by him due to wrong fixation. It appears from the record that before issuance of such order the authority did not provide him any opportunity to place his case before them. Now question is this whether any show cause is required for recovery of an amount paid wrongly. Mr. Datta Majumdar very rightly said that when such an amount is provided to a person wrongly, though he is not entitled to, in that case no show cause is required as the amount that was given to him was not his own money. There is no quarrel that for the period for which an employee did not work or remained absent unauthorizedly, he would not be entitled to any salary or financial benefit for the said period and not only that, show cause, as asked for by the petitioner, is also not required as the money which is to be recovered, in view of Annexure-11 to the writ petition, is the money received by the petitioner as over drawn and on such money he has no right.

14. As the petitioner before approaching this Court admittedly did not approach the authority raising his grievances, this Court is of the considered opinion that it would meet justice if the petitioner is asked to make a representation regarding the order dated 10.07.2007 within a particular period and the authority should consider his representation, if any filed and pass a reasoned order on the said representation.

15. Accordingly, it is ordered that the petitioner shall file a representation to the Director of School Education, respondent No. 2 herein, narrating his grievances within a period of three weeks from today and the same should be considered and disposed of by a reasoned order within a period of one month from the date of receipt of the same. Till disposal of the representation, if any filed, the impugned order dated 10.07.2007 (Annexure-11 to the writ petition) shall not be given effect to. With the aforesaid observations and directions, the instant writ petition is disposed of. No order as to costs.

Copy of this order be furnished to the learned counsel for the parties.