
(1997) 05 CAL CK 0011
In the Calcutta High Court
Case No : Matter No. 1277 of 1994

Sri Ram Ayodhyay Rai and Another

APPELLANT

Vs

Calcutta Dock Labour Board and Others

RESPONDENT

Date of Decision : 23-05-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302

Citation : (1997) 2 CALLT 382

Hon'ble Judges : Vinod Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Kumar Gupta, J.—An order of suspension was passed on 16th April, 1993 by the respondents, whereby both the petitioners were placed under suspensions in exercise of the powers vested in the respondents under Clause 48(3) (a) of the Calcutta Dock Workers (regulation of Employment) Scheme, 1970 (1970 Scheme for short). The text of the suspension order reads as under:

"With reference to charge-sheet No. LO/8AB/8/93 dated 16.4.1993, you are placed under suspension with immediate effect under Clause 48(3)(a) of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970, pending further orders."

2. Since a reference has been made to the charge-sheet dated 16.4.1993, it shall be worthwhile to reproduce the same. The text of the charge-sheet reads as under:

"It has been reported that you have been sentenced to Rule 1 for life u/s 302/149 IPC by the learned IVth Additional Sessions Judge, Saran at Chapra, Bihar on 20.3.93;

Your act, as above, amounts to misconduct.

You are, therefore, directed to submit your explanation within 4(four) days from

the date of receipt of this charge-sheet, failing which the case will be disposed of ex-parte."

3. Since the suspension has been ordered in purported exercise of the power referable to Clause 48(3)(a) of the 1970 Scheme, it is worthwhile to reproduce this clause which reads thus:

"Where in a case reported to him under Sub Clause (2) the Labour Officer is of opinion that the act of indiscipline or misconduct is so serious that the worker should not be allowed to work any longer, the labour Officer may, pending investigation of the matter, suspend the worker and report immediately to the deputy Chairman, who after preliminary investigation of the matter shall pass orders thereon whether the worker should, pending final orders remain suspended or not."

4. The petitioners apparently were involved in a criminal case and were convicted by the court of IVth Additional Sessions Judge, Saran at Chapra (Bihar). The petitioners preferred an appeal against their conviction before the Patna High Court. It appears that a Division Bench of the Patna High Court, vide its order dated 12th April, 1993 released the petitioners on bail on their furnishing bail bond of Rs. 10,000/- each with two sureties of the like amount.

5. After they were enlarged on bail, as noted above, the petitioners represented to the respondents for revocation of the suspension order and for their reinstatement in service. Because of the refusal on the part of the respondents to reinstate the petitioners, they have come up with this writ petition for a Mandamus for directions upon the respondents to reinstate them in service and for issuance of a writ of Certiorari directing the respondents to revoke and quash the impugned suspension order.

6. Clauses 48 of the 1970 Scheme relates to certain disciplinary matters. Sub Clause (3) of Clause 48 empowers the Labour Officer to suspend and worker, if he is of the opinion that the worker is to be charged for an act of indiscipline or misconduct which is so serious that the worker should not be allowed to work any longer.

7. Clause 5 of para 48 stipulates that if a worker has been charged for indulging in an act of indiscipline or misconduct and who has consistently failed to produce the standard out put and so on and so forth, the Deputy Chairman may make or cause to be made such further investigations as he may deem fit, and thereafter impose upon the worker any one of the penalties specified in Clauses (a) to (e) of sub Clauses 5 of para 48 of the 1970 Scheme.

8. Termination of service, after giving 14 days notice and dismissal from service are two of such penalties.

9. A cursory look at the charge-sheet dated 16.4.1993 will reveal that the only allegation which has been levelled against the petitioners in the charge-sheet is that they have been sentenced to life imprisonment in a case u/s 302/149 of the

Indian Penal Code and, therefore, this amounts to misconduct on their part. The suspension order is undoubtedly based upon the said charge-sheet and is referable to the same. It is not the case of the respondents that the petitioners have been placed under suspension for any act of misconduct, serious or grave, which is otherwise than referred to in the aforesaid charge sheet dated 16.4.93. The admitted case of the respondents before this court is that the petitioners have been suspended because of their conviction by the Criminal Court, in the aforesaid murder case and they are sentenced to life imprisonment.

10. In my view, the 1970 Scheme is not applicable to a case where a worker has been convicted by a Criminal Court and that Ipso facto, without any further reference to any other act of misconduct entitles the employer to place the worker under suspension. Undoubtedly it is upto the employer to furnish a charge-sheet in which it is open to the employer to level allegations of misconduct against the worker and it is for the worker to defend the charge-sheet in terms of the procedure prescribed under Clause 5 of para 48 of 1970 Scheme. Without doing that, however, merely saying that since the worker has been convicted by a Criminal Court and then suspending him indefinitely, without taking recourse to Clause 5 of para 48 of the 1970 Scheme, is not permissible for the respondents. Suspension for an indefinite period is not one of the penalties prescribed in Clause 5 of para 48 of the 1970 Scheme. Indeed suspension even, as contemplated in Clause 3 of Para 48 of the 1970 Scheme is not by way of any penalty, since it is only in contemplation of the proceedings to be initiated against the worker who is liable to face the charge-sheet for committing an act of misconduct.

11. The respondents perhaps did not properly understand the true import of either Clause 3 or Clause 5 of Para 48 of the 1970 Scheme and unnecessarily placed the petitioners under suspension right from 1993 itself. If the respondents feel that the petitioners indeed have committed any act of misconduct which warrants enquiry under Clause 5 of Para 48 of the 1970 Scheme, it is open to them to serve a proper charge- sheet, detailing therein the particulars of the misconduct, with reference to the articles of the charges and so on and so forth. Thereafter also it is open to the respondents to impose any penalty as prescribed in Clause 5 of Para 48 of the 1970 Scheme. Merely saying that since the petitioners have been convicted by a Criminal Court and then placing them under suspension for an indefinite period would amount to reading either Clause 5 or Clause 3 of para 48 of the 1970 Scheme in a manner which is not permissible under the law. This is one aspect of the matter

12. The other aspect, equally important, is the fact that the petitioners have since been enlarged on bail by a Division Bench of the Patna High Court. One does not know how long it will take for the Patna High Court to dispose of the appeal filed by the petitioners and other persons accused in the trial. If ultimately the petitioners succeed in the appeal, may be after a few years and in the meanwhile keeping them under suspension for indefinite period, would

undoubtedly amount to not only wastage of the subsistence allowance payable to the petitioners, but would also cause undue hardship to them. If on the other hand the petitioners fail in the appeal and the High Court upholds their conviction, it shall be once again open to the respondents, as observed in the earlier part of the judgment, to charge-sheet the petitioners for committing an act of misconduct, if the respondents are so advised and then to proceed against the petitioners under Clause 5 of Para 48 of the 1970 Scheme and to award suitable punishment to them on the merits of the case. In either eventuality, keeping the petitioners under suspension for indefinite period from 1993 onwards is not permissible under Clause 3 of Para 48 of the 1970 Scheme. Recourse to this provision, therefore, as placed by the respondents in the impugned suspension order is wholly unwarranted and patently illegal.

13. The learned Advocate for the respondents relied upon a judgment of the Supreme Court in the case of State of Punjab Vs. Ajaib Singh, . This judgment is not applicable to this case because the apex court was dealing with a murder case wherein the respondent was convicted by the trial court and was acquitted by the High Court of Punjab and Haryana. The apex court has upheld the acquittal of the respondent but has observed that during the pendency of the appeal before the apex court, the Government of Punjab should not have granted promotion to the respondent as a Deputy Superintendent of Police. The facts in the present case are entirely different and totally distinguishable.

14. The writ petition accordingly is allowed. The impugned suspension order and the impugned charge-sheet are quashed and set aside, but with liberty to the respondents, as observed in this Judgment. All the consequences shall follow.

There shall be no order as to costs.

All parties are to act on a signed xerox copy of this Dictated Order on the usual undertakings.