
(1996) 05 CAL CK 0002
In the Calcutta High Court
Case No : C.O. No. 2957 (W) of 1991

Sri Satyapada Halder

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-05-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 235

Citation : (1997) 1 CALLT 1

Hon'ble Judges : Arun Kumar Dutta, J

Bench : Single Bench

Advocate : Bikash Ranjan Neogi and Kartick Kr. Bhattacharjee, for the Appellant; Arun Prokash Sircar and Alok Kr. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Dutta, J.—By this Writ application under Article 226 of the Constitution of India the Writ Petitioner Satya Pada Halder (hereinafter referred to as petitioner) has prayed the Court for issue of a Writ of and/ or in the nature of Mandamus commanding the respondents to cancel, rescind, withdraw and/or set aside the purported order of withdrawal of confirmation as communicated vide communication dated 15th December, 1983, being Annexure "B" herein, and further directing the respondents to treat the petitioner as confirmed with effect from 1-6-83 in the West Bengal Civil Service (Judicial) forthwith; to take immediate steps for release of his annual increments which are lying withheld since 1-6-83 and thereby to fix his basic pay as Rs. 980/- as on 1-6-89 at the existing scale of pay along with other consequential benefits and thereafter go on allowing him to enjoy the annual increments as usual relating to his service as a member of West Bengal Civil Service (Judicial) without any further delay; and directing the respondents not to take any step or further step relating to the departmental proceedings over the alleged incident of 1975 and thereby to affect the present service of the petitioner as a member of West Bengal Civil Service(Judicial), along with the other reliefs prayed for, for the reasons stated

and on the grounds made out therein.

2. The facts and circumstances giving rise to the instant writ application may shortly be stated as follows:

The petitioner had Joined the Calcutta Customs as a Lower Division Clerk in 1961. Having been selected by the Central Recruitment Board on, his application through proper channel, on the basis of the result of written examination and interview, he was appointed as Sub-Inspector of Police in Unarmed Branch in 1966. He had undergone the requisite training and had completed the period of his probation and was declared confirmed in the said post. After passing the LL.B. Examination in 1978 he had appeared at the W.B.C.S. (Judicial Examination) with prior permission of his appointing authority, and on the basis of the result of the competitive examination held by the Public Service Commission, West Bengal, he was selected and appointed and as a Munsif by the Governor of West Bengal. He had joined as Munsif on 1st June, 1981. On successful completion of the period of his probation and on his passing the departmental examination he was confirmed as Munsif with effect from 1st June, 1983 by an order of the High Court dated 16th November, 1983. By another Memo, dated 15th December, 1983 issued by the High Court the order of his confirmation was withdrawn. He has not been declared confirmed as yet and has neither been allowed to draw yearly increments from 1983. It is contended that no reason whatsoever was recorded for withdrawing the order of his confirmation. It is stated that according to the Letter of Appointment issued by the Governor of West Bengal his confirmation depends on the passing of the departmental examination and on his general fitness.

3. The Registrar, High Court, Appellate Side, Calcutta, the Respondent No. 2 herein by a Memorandum No. 1784-R dated 21-2-1989 had intimated the petitioner, inter alia, that the High Court proposes to hold an enquiry against him (Petitioner) relating to the alleged incidents of 1975 while he was working as Sub-Inspector of Police. Upon receipt of the said Memorandum, he had prayed for copies of certain documents essential for the purpose of preparing his defence. Though the Chargesheet on the basis of the allegations made therein had been issued in February, 1989 no enquiry has been held as yet and no date of enquiry has either been fixed therefor, without any laches on his part Even though the relevant Chargesheet was issued in February, 1989, the yearly increments, earned by him (Petitioner) by rendering satisfactory service for a year had been withheld from 1983 since he has been deconfirmed, as stated above. Hence the instant writ application.

4. The Writ application is resisted by the contending Respondents No. 2 by filing affidavit-in-opposition. It is contended therein that the letter of confirmation was mistakenly issued and was subsequently withdrawn on reasonable ground as the allegations against him (Petitioner) were under investigation and the authorities concerned were contemplating to initiate disciplinary proceedings against him. It is further contended that since the petitioner is a Judicial Officer, the High Court

has the authority to initiate proceedings against him. And, the petitioner is not entitled to get any service benefit during the pendency of the disciplinary proceedings.

5. By this writ application the petitioner has mainly and inevitably challenged the initiation of the disciplinary proceedings by the High Court against him as a Judicial Officer in 1989 over the alleged misconduct/ incidents of 1975, while he was a Police Officer, and withholding of his confirmation and increment in consequence thereof.

6. The petitioner, undeniably, was appointed as a Munsif in West Bengal Civil Service (Judicial) in 1981 by the Governor of West Bengal. In terms of his letter of appointment his confirmation was dependent upon his passing the Departmental Examination and his physical/general fitness. He having successfully completed the period of his probation, passed the departmental examination and, having been found fit was confirmed by the High Court in the West Bengal Civil Service (Judicial) with effect from 1-06-1983, as communicated by letter No. 12904-A, dated 16th November. 1983, being Annexure "A" to the Writ application. By the subsequent letter No. 14212-A dated 15th December, 1983, being Annexure B" to the Writ application, issued by the High Court, the Petitioner was intimated that the aforesaid earlier order of confirmation was mistakenly issued and communicated, while its issue and communication were to remain stayed, further stating therein that the Court's aforesaid earlier letter dated 16-11-1983 was withdrawn thereunder. It is contended by the Petitioner that there is no provision in the relevant Rules for withdrawing confirmation. Withdrawal of confirmation on the ground of pendency of any investigation is also without the authority of law. In the absence of any Chargesheet issued against the Petitioner till February, 1989 it could neither be assumed that there was any proceeding pending against him for which confirmation allowed to him could have been withdrawn by the High Court on 15-12-83. The order of confirmation issued under the aforesaid earlier letter dated 16-11-1983 could neither have been withdrawn by the High Court by the subsequent letter/order dated 15th December, 1983 in anticipation of a proceeding to be initiated in 1989. It is further contended that in terms of Rule 5(l)(b) of the West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979, which is applicable to the petitioner, he is entitled to be confirmed and made permanent on satisfactory completion of the period of probation. The said Rule further provides that where passing of any departmental examination is essential before confirmation, the provisions of Chapter-1 of the Services (Training and Examination), Rules, West Bengal, shall have to be complied with. It is thus contended by the petitioner that he having satisfactorily completed the period of probation and having passed the departmental examination (he) is entitled to be confirmed as a matter of rule, the way he was confirmed by the aforesaid earlier letter of the High Court dated 16-11-1983. Sub-rule (4) of Rule 5 of the aforesaid Rules further provides as follows:--

"On completion of the period of probation the appointing authority shall either issue formal declaration making the probationer permanent or take such action as may be considered necessary in terms of the provisions of part A of Chapter I of the Services (Training and Examination) Rules, West Bengal, within six months from the date of completion of the period of probation, or of the extended period of probation, if any, and the appointing authority shall ensure that confirmation on satisfactory completion of the period of probation is not delayed in any case."

7. The aforesaid Rule being, what it is, the confirmation of the Petitioner, in the aforesaid facts and circumstances, could neither have been delayed by the High Court. And since appointment, probation and confirmation of a Government employee like the petitioner are guided by the provisions of the Rules framed in terms of the provisions of Article 309 of the Constitution of India, the authority concerned could not have any implied power regarding confirmation or withdrawal of confirmation of such an employee. The petitioner having once been declared confirmed by the aforesaid earlier letter dated 16-11-93 could neither have been deconfirmed without notice and without being given any opportunity of being heard in the matter. The Punjab & Haryana High Court in Babu Ram, Sanskrit Teacher v. State of Haryana and Ors. 1988(3) SLR 379 had as well set aside an order deconfirming the Petitioner therein on the ground that deconfirmation without notice is not proper. I am in complete agreement that the aforesaid decision of the Punjab and Haryana High Court for the same reasons recorded therein: and am of the view that deconfirmation of the petitioner herein by the aforesaid subsequent letter dated 15-12-1983 without notice and without giving the petitioner any opportunity of being heard is liable to be set aside. The order of deconfirmation of the petitioner by the aforesaid subsequent letter issued by the High Court dated 15-12-1983 could not clearly be sustained as such.

8. The petitioner has contended that he has neither been allowed to draw the yearly increments earned by him from 1983, in the circumstances indicated above. There can be no denying that the West Bengal Services (Classification, Control and Appeal) Rules, 1971 is very much applicable to the Petitioner herein. Withholding of yearly increment appears to be a specific punishment within the meaning of Rule 8 of the said Rules. The yearly increments of the petitioner could accordingly be withdrawn only after following the procedure laid down in Rule 10 of the said Rules. But the Petitioner's yearly increments, undeniably, have been withheld by the High Court without holding any enquiry, as contemplated by Rule 10 of the aforesaid Rules, and without giving the Petitioner any opportunity of being heard in the matter. As it appears from the materials on record the Chargesheet was issued by the High Court against the Petitioner in February, 1989. During the period from 1983 to February, 1989 there was, admittedly, no proceeding against the Petitioner. His yearly increments could neither have been withheld by the authority concerned in anticipation of a Proceedings to be initiated in February, 1989. Withholding of the Petitioner's increments from 1983 till February, 1989 clearly, therefore, appears to be not

only arbitrary but also illegal. Withholding of the petitioner's increments from 1989 onwards only on the ground that a Chargesheet has been issued against him in February, 1989, without finding him guilty to the charges framed against him, could neither be sustained in law. Withholding of increments being a specific punishment within the meaning of the aforesaid Rules could neither be imposed upon the Petitioner so long as he is not found guilty to the charge framed against him. It is now a settled principle of law, as held in the decisions in *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, *Union of India Vs. K.V. Jankiraman*, etc. etc., that a disciplinary proceedings could be said to have been initiated against an employee on the issue of Chargesheet against him, and a departmental enquiry starts after the Chargesheet is drawn, served upon the delinquent and upon receipt of his explanation thereon. In the instant case, the Chargesheet having, admittedly, been issued against the Petitioner in the month of February, 1989, no disciplinary proceeding could be deemed to have been initiated against him before that, and there could be no Jurisdiction whatsoever from withholding the annual increments earned by him without finding him guilty to the charges framed against him.

9. The Petitioner was, evidently, in the Police Service till his appointment as a Munsif on 1-06-1981. He having been released from the Police Service and his lien in the said service having since been suspended on his substantive appointment as a Munsif, he could neither be proceeded against by the High Court as a Judicial Officer for his alleged misconduct as a Police Officer. It is contended that his alleged misconduct as a Police Officer could not be deemed to be his misconduct as a Judicial Officer. It is further contended that since the conditions of service of a Police Officer and the conditions of service of a Judicial Officer are completely different, any lapse allegedly committed by the Petitioner as a Police Officer cannot be considered to be a lapse on his part as a Judicial Officer, since a Police Officer is appointed under Police Act (V) of 1861 and his service conditions are regulated by the Police Regulations of Bengal, 1943. It is thus contended that initiation of a disciplinary proceedings by the High Court against the Petitioner as a judicial Officer for his alleged misconduct as a Police Officer is without the authority of law. The alleged misconduct of a Police Officer could neither be treated as misconduct of a Judicial Officer. As held by the Supreme Court in the decisions reported in *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, and AIR 1988 S C 505 if misconduct is defined in the Service Rule and/or in the Standing Order, the employer cannot have any arbitrary power to act beyond the Rules/Standing Order and treat each and every lapse of a Government employee as misconduct for initiating disciplinary proceedings against him. It has further been held by the Supreme Court in the decision reported in AIR 1988 SC 504 that unless in the Service Regulation or certified Standing Order an act or omission is prescribed as misconduct it is not open to the employer to fish out some conduct of a Government employee as misconduct. It is thus contended that the Petitioner could neither be proceeded

against in his capacity as a Judicial Officer for his alleged misconduct as a Police Officer. It had also been urged on behalf of the Petitioner that while he was appointed as a Sub-Inspector of Police his appointing authority was the Superintendent of Police concerned, who was his disciplinary authority for his alleged misconduct as a Police Officer. But the Governor of West Bengal is his appointing authority while he had been appointed as a Munsif in the West Bengal Civil Service (Judicial) in 1981. The Governor is his dismissing authority and the High Court is his disciplinary authority. The High Court could not conceivably proceed against him for his alleged misconduct as a Police Officer.

10. It is further reiterated by the petition that while a Sub-Inspector of Police is guided, regulated and controlled by the provisions of the Police Regulation of Bengal, 1943 and the Police Act (Act V) of 1861 a Proceedings for his misconduct in the discharge of his official duties as a Police Officer could be initiate by the Superintendent of Police concerned, his disciplinary authority under the aforesaid Regulations. After his appointment as a Munsif by the Governor of West Bengal, being his appointing authority, he (Petitioner) could only be proceeded against for any misconduct in relation to his service as a Judicial Officer. As contended by him, the misconduct of a Police Officer cannot be treated as misconduct of a Judicial Officer. The Petitioner having been released from the Police department and his lien in the said service having been suspended on his successful completion of the probationary period as a Munsif and on his passing the departmental examination, he could not be proceeded against by the High Court for his alleged misconduct as a Police Officer in his capacity as a Judicial Officer. He having ceased to be a Police Officer, in the aforesaid circumstances, no Proceedings could either be initiated against him for his alleged misconduct as a Police in analogy to the relevant provisions of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 under which no proceeding can be initiated against a retired Government employee over an incident which took place prior to four years before his retirement. The Petitioner having been released from the Police Service in 1981, the relevant Proceedings initiated against him in February, 1989 for his alleged misconduct as a Police Officer in 1975 is, therefore, wholly untenable according to law.

11. True it is, there is nothing in Article 235 of the Constitution to restrict the control of the High Court in respect of Judges, other than District Judges, in any manner, and the administrative, Judicial and disciplinary control over the Members of the judicial service is vested solely in the High Court, as held by the Supreme Court in State of Haryana Vs. Inder Prakash Anand H.C.S. and Others, . The Supreme Court in the The State of West Bengal Vs. Nripendra Nath Bagchi, has also clearly held that the word "control" in the aforesaid Article, though not defined in the Constitution at all, must obviously mean disciplinary control or disciplinary jurisdiction of the High Court. It has been held therein that "control" is vested in the High Court to effectuate a purpose, clearly, securing the independence of the subordinate Judiciary. And, unless it included a disciplinary control as well the very object would be frustrated. The word "control",

accompanied by the word "vest" clearly show that the High Court is made the sole custodian of the control over the Judiciary. Control is not merely the power to arrange the day-to-day working of the Subordinate Courts, but contemplates disciplinary jurisdiction over the Presiding Judge. Article 227 of the Constitution gives to the High Court superintendence over these Courts and enables the High Court to call for returns etc. The word "control" in Article 235 has a different content. It includes something in addition to mere superintendence. It is control over the conduct and discipline of the Judges. The word "deal" therein also points to disciplinary and not mere administrative jurisdiction. It has further been held therein that the word "Court" is compendiously used therein to denote not only the Court proper, but also the presiding Judge. The latter part Article 235 talks of the man who holds the Office. What is vested in the High Court includes disciplinary jurisdiction. Control is useless if it is not accompanied by disciplinary powers. It has thus been held therein that the High Court has disciplinary jurisdiction over the presiding Judges of the subordinate Courts, which could never be disputed. As held in the aforesaid decision the High Court has power of control under Article 235 of the Constitution over the conduct and discipline of the presiding Judges of the subordinate Courts. But unhappily for the contending Respondent No. 2, no authority whatsoever could be cited by their learned Advocate, despite ample opportunities granted to them, to satisfy the Court that the High Court's power of control and disciplinary jurisdiction extends to conduct and discipline of a Judicial Officer in relation to an alleged misconduct not in his capacity as Judicial Officer but in his capacity as a Police Officer. Plainly read. Article 235 of the Constitution does not seem to indicate that the High Court would have disciplinary control/ jurisdiction over a Police Officer or in respect of an alleged misconduct of a Judicial Officer, not in his capacity as a Judicial Officer, but while serving as a Police Officer. With things as they are, It would, therefore, be difficult to hold that the High Court would have disciplinary control/jurisdiction in respect of an alleged misconduct of a Police Officer.

12. Even most charitably assuming for the sake of argument that the High Court has power to initiate disciplinary proceedings against the Petitioner for his alleged misconduct as a Police Officer, the relevant disciplinary proceedings initiate against him by the High Court on the basis of the Chargesheet issued against him in February, 1989 for his alleged misconduct in October 1975 has rendered the entire Proceedings vitiated. As held by a learned Single Judge of this Court in *Samarendra Narayan Ghosh v. The State of West Bengal and Ors.* 1984(1) CLJ 56 admitted and unexplained delay in initiating disciplinary proceedings constitutes violation of the principles of natural justice. It had similarly been held by another learned Judge of this Court in *Sri Binayak Dutta v. State of West Bengal and Ors.* 1991(1) CLJ 291 that the disciplinary proceedings started in April, 1988 in connection with an occurrence of 1976 was an inordinate delay in commencing and concluding the proceedings, which is a ground for quashing the entire proceedings. It has also been held in the decision in *The State of Madhya Pradesh Vs. Bani Singh and another*, that it would be unfair to

permit departmental enquiry to be proceeded within 1986 in respect of irregularities stated to have taken place in the year 1975-77 in the absence of any explanation for inordinate delay of 12 years. Another learned single Judge of this Court in *Subhas Chandra Basu v. Bank of Baroda and Ors.* 1992(1) SLR 38 had also quashed a disciplinary proceedings where there had been delay of six years in issuing Chargesheet for which no explanation had been issued. In view of the aforesaid decisions, with which I completely concur, the alleged misconduct of the Petitioner allegedly committed by him as a Police Officer on 22nd October, 1975, as appearing from the materials on record, could not clearly be enquired into after 14 years with the Chargesheet issued against him in February, 1989 without any explanation for such long delay, since the charges and/or the allegations levelled against him have become too stale and remote for initiation of disciplinary proceedings against him. It is thus submitted that the incidents of 1975 were too stale and remote and the Chargesheet issued on that basis in 1989 would mean want of nexus vitiating the entire proceedings against the Petitioner. The relevant proceedings initiated against the Petitioner on the basis of the Chargesheet issued in February, 1989 in respect of his alleged misconduct as a Police Officer in October, 1975, is accordingly liable to be quashed.

13. In the premises above, I am clearly of the view that the withdrawal of the Petitioner's confirmation, as appearing from the Annexures A & B to the Writ application, withholding of his annual increments since 1983, and the initiation of the relevant disciplinary proceedings by the High Court on the basis of the Chargesheet issued in February, 1989, are not according to law. The delayed initiation of the relevant proceedings in February, 1989 in respect of the alleged misconduct allegedly committed by the Petitioner as a Police Officer in October, 1975, without offering any explanation for such inordinate delay has further rendered the same vitiated for the reasons amply and appallingly made clear above. The Writ application should accordingly succeed, as it must, and be accordingly allowed. The Respondents herein are accordingly hereby directed, by issue of appropriate Writ, to cancel, rescind and withdraw the purported order of withdrawal of the petitioner's confirmation, as communicated by their letter dated 15th December, 1983, being Annexure "B" to the Writ application; treat the petitioner as confirmed in the West Bengal Civil Service (Judicial) with effect from 1-6-1983; take immediate steps for release of his annual increments from 1983 onwards; allow him (Petitioner) all promotional benefits, treating him to be confirmed with effect from 1-6-1983, if not otherwise found unfit; and not to take any step or further step relating to the disciplinary proceedings initiated against him (petitioner) on the basis of the Chargesheet issued in February, 1989, which relevant proceedings be hereby quashed.

14. In the facts and circumstances of the matter, I direct the parties to bear their respective costs of this hearing.