

(1989) 04 CAL CK 0024
In the Calcutta High Court
Case No : C.O. No. 7826 (W) of 1988

Sridhar Dhani

APPELLANT

Vs

Chairman, Suri Municipality and Others

RESPONDENT

Date of Decision : 25-04-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 2 CALLT 193

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Advocate : Manik Ch. Das and Mr. Animesh Mukhopadhyay, for the Appellant;

Final Decision : Allowed

Judgement

K. Ganguli, J.—In this application under Article 226 of the Constitution of India the petitioner prays, virtually, for reinstatement in service.

2. This is a good example of a bad petition. Neither the cause title nor the prayers make any sense. The grievances of the petitioner have not been properly formulated in the petition itself. Although ordinarily such petitions-should not be encouraged and should be dismissed in limine but such an action would cause hardship to, the petitioner. In my view a litigant should not be allowed to suffer for the incompetence of his lawyer.

3. Bereft of verbiage the case of the petitioner is that for absenting himself without obtaining leave and for not complying with the orders of the superior officer, a charge-sheet was issued on 15th January, 1976 by the President of the Suri Municipal Committee. A copy of the said charge-sheet has been annexed to the writ petition and marked with the letter "G". There were three charges levelled against the petitioner namely, willful violation of the lawful orders issued by the authority, non-resumption of duty after expiry of sanctioned leave and using intemperate language against the superior officer.

4. The petitioner was asked to give a reply to the said charge-sheet within a

fortnight from the date of issuance of the charge-sheet.

5. The petitioner showed cause within the time prescribed in the charge-sheet.

5a. The Municipal Authorities were not satisfied with the explanation given by the petitioner and straightway dismissed him from the service. The order of dismissal has been annexed to the writ petition marked with the letter "I".

6. Against the aforesaid order of dismissal the petitioner moved this Court under Article 226 of the Constitution of India on or about 26th February, 1978 and the said application was disposed of by the Hon"ble Mr. Justice Dipak Kr. Sen, as His Lordship then was, by quashing the impugned order and giving liberty to the respondents therein to continue the disciplinary proceeding on the basis of the said charge-sheet. This order of the High Court was passed as far back as on 15th January 1980.

7. The allegation of the petitioner is that since the date of the said judgment neither has the petitioner been reinstated in service nor such proceeding been recommenced and/or continued on the basis of the charge-sheet. It was the incumbent duty of the respondents either to drop charges or to continue with disciplinary proceeding but the Municipal Authorities have no rights to keep its employees in a perpetual state of suspended animation. It may be recorded here that for the long years the petitioner has not been paid anything.

8. Such lackadaisical attitude on the part of the Municipal Authority cannot be tolerated and admitted and unexplained delay initiating the disciplinary proceeding constitute violation of the principle of natural justice. Although in the instant case the proceeding was initiated in 1976 yet nothing beyond issuance of the charge-sheet has been done since then. Such attitude of the employer has been frowned upon in the case of Samarendra Narayan Ghosh vs. State of West Bengal & Ors. reported in 1984(1) CLJ 156. Although in the aforesaid case the charge-sheet itself was issued after inordinate and unexplained delay yet the ratio of the said decision apply equally in the circumstances of the instant case.

9. Although the prayers made in the application are wholly misconceived, inter alia, in as much as there cannot be a writ to execute another writ issued by a previous Court, yet the High Court in its high prerogative writ jurisdiction has enough power to mould the prayers in the interest of justice if proper and adequate pleadings are there in the petition itself and if foundation has been laid in the body of the petition for granting of appropriate reliefs.

10. It may be noted here that no one has appeared on behalf of the respondents to controvert the allegations made in the writ petition and by the application of the doctrine of non-traverse, the allegations made in the writ petition are deemed to have been admitted.

11. In the circumstances, the application succeeds. The charge-sheet, dated 15th January, 1976 which is Annexure "6" to the writ petition is hereby set aside. The respondents are directed to treat the petitioner as on duty throughout and to pay

all his arrears of emoluments including the increments and promotions, if any, within a period of three weeks from the date of communication of this order. Let a writ in the nature of mandamus, issue accordingly.

12. There will be no order as to costs.