
(2012) 06 GAU CK 0023
In the Gauhati High Court
Case No : W.A. No. 19 of 2012

State of Tripura and Another

APPELLANT

Vs

Dr. Shyam Lal Das

RESPONDENT

Date of Decision : 02-06-2012

Acts Referred:

Citation : (2013) 1 GLD 214 : (2013) 4 GLT 144

Hon'ble Judges : U.B. Saha, J;S.C. Das, J

Bench : Division Bench

Advocate : S. Chakraborty, Addl. GA, for the Appellant; D. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

U.B. Saha, J.—The instant writ appeal is preferred by the State appellants against the order of the learned single Judge dated 16.11.2011, passed in CM Application No. 428 of 2011, arising out of WP(C) No. 235 of 2010, wherein the learned Single Judge rejected the prayer for extension of time limit fixed in the order disposing the writ petition as has been already expired. Heard Mr. S. Chakraborty, learned Addl. G.A. appearing for the State appellants as well as Mr. D. Bhattacharjee, learned counsel for the respondent-writ petitioner, who submits that the instant writ appeal is required to be dismissed at this stage itself.

2. The brief facts needed to be discussed are as follows:

The respondent-writ petitioner, while serving as Joint Director, of Health Services under the appellant No. 1, was asked to show cause by Memorandum dated 27.02.2009 (Annexure-4 to the writ petition) and on receipt of the same he has filed his reply by stating inter alia that he is in dark about the matter and as such he is in no way involved with the criminal case and thus did not commit any misconduct as alleged.

3. On 08.04.2009, the respondent-writ petitioner was suspended in

contemplation of the disciplinary proceeding against which he has made a representation on 22.09.2009 stating that he is not involved in the case, therefore, his suspension may be revoked and he may be allowed to attend duty. But the State appellants did not revoke the order of suspension of the respondent-writ petitioner and passed the order dated 23.09.2009, enhancing the subsistence allowance of the respondent-writ petitioner by 50% of the allowance as he was getting earlier.

4. Since no charge could be framed by the State appellants against the respondent-writ petitioner and the matter is being delayed even after the representation filed by him, finding no other alternative he has filed one writ petition being WP(C) No. 341 of 2009 before this Court for interference and redress.

5. On 29.03.2010, the said writ petition was disposed of by the learned Single Judge of this Court with a direction to dispose of the representation of the respondent-writ petitioner dated 23.09.2009, wherein he has made prayer for revocation of his suspension order.

6. The State appellants, on 13.04.2010, issued one letter informing the respondent-writ petitioner that his suspension order will continue till disposal of the criminal case.

7. As in the criminal case, the respondent-writ petitioner is no way implicated, the writ petitioner has filed another writ petition being WP(C) No. 235 of 2010 for directing the State appellants, respondents in the writ petition, for quashing the order dated 08.04.2009 whereby and whereunder the respondent-writ petitioner was suspended and also for quashing the order dated 13.04.2010 by which the order of suspension of the writ petition was continued till the disposal of the criminal case (Annexure-11 and 12 to the writ petition).

8. On 20.12.2010, the aforesaid writ petition being WP(C) No. 235 of 2010 was disposed of by the learned Single Judge of this Court directing the State appellants to complete the departmental proceedings, preferably within a period of six months, considering the facts that the respondent-writ petitioner, by this time, superannuated from service. As the State appellants could not complete the said proceedings within the stipulated time fixed by the learned Single Judge as the respondent-writ petitioner sought adjournment on the ground of the marriage of his daughter, the State appellants preferred an application for extension of three months time for concluding the disciplinary proceedings.

9. Upon hearing the parties/the learned Single Judge disposed of the said application for extension of time, stating, inter alia, that as the said disciplinary proceedings could not be disposed of within the aforesaid period, the same should not be treated as closed. The learned Single Judge has also given a liberty to the State appellants for approaching the Court if the respondent-writ petitioner failed to cooperate with the disciplinary authority and for his non-cooperation if the disciplinary proceeding is delayed.

10. After completion of two months as granted by the learned Single Judge, the State appellants preferred another application seeking for one month's extension of time for completing the disciplinary proceeding and the said application was registered as CM Appln. No. 428 of 2011. The aforesaid civil Misc. application was disposed of by the learned Single Judge on 16.11.2011, which is impugned herein.

11. Mr. Chakraborty, while urging for allowing the State appellants to complete the disciplinary proceeding after setting aside the impugned order dated 16.11.2011, would contend that the learned Single Judge ought not to have dismissed the petition for extension of time as the same has not become infructuous. More so, the learned Single Judge failed to consider that the respondent-writ petitioner was given opportunity to file representation against the report of the inquiring officer for which five days time was given as the same is obligatory on the part of the disciplinary authority to provide the delinquent officer such opportunity and the respondent-writ petitioner could not file the same within five days from the date of receipt of the Memo., rather he filed his reply after the expiry of time stipulated by the learned Single Judge.

12. We have gone through the order dated 20.12.2010 passed in WP(C) No. 235 of 2010 as well as the order dated 23.06.2011, passed in CM Appln. No. 213 of 2011, arising out of WP(C) No. 235 of 2010. It is clear from the aforesaid orders that the State appellants were initially directed for completing the departmental proceeding in question preferably within six months and again thereafter allowed two months time but fact remains that the State appellants failed to conclude the said disciplinary proceedings within the said period and came with an application for further extension of time. More so, the said application was filed after expiry of two months as granted by the learned Single Judge on 23.06.2011, wherein it is specifically mentioned that if the disciplinary proceedings cannot be disposed of within the stipulated period of two months, then the same should be treated as closed.

13. In the impugned order, the learned Single Judge very rightly mentioned that the prayer for extension of time limit, fixed in the order disposing of the writ petition, has already expired as the said petition was filed after the stipulated period granted by the Court on 23.06.2011.

14. Extension of time cannot be granted unless the same is filed within the stipulated period granted on earlier occasion. According to us, Mr. Bhattacharjee has rightly pointed out that the learned Single Judge did not commit any wrong while passing the impugned order, as the application for extension of time was filed after expiry of two months granted by the Court. Nowhere in the petition, the State appellants stated that the respondent-writ petitioner did not cooperate with them after granting of two months time. It is the State appellants, who had failed to discharge their duties within the stipulated time. As it appears from the record that though they had issued a Memo. to the respondent-writ petitioner, accused officer, to submit his representation on 16.08.2011, but the same was

served later on and as a result, the respondent-writ petitioner could not get an opportunity to submit his reply within the stipulated period of two months. Thus, the respondent-writ petitioner did not commit any wrong filing his reply after the period granted to him.

15. We have given our anxious thought to the submission the learned counsel of the parties and also have gone through the impugned order passed by the learned Single Judge. Granting of time is nothing but a discretionary power of the Court and if the Court exercises such power judicially, even exercise of such discretion is erroneous but not illegal, then also the appellate Court cannot interfere with such order of the learned Single Judge unless it is totally perverted and violative of the provisions of law. Admission of a writ appeal is not a matter of right, like civil first appeal or criminal appeal, only when a prima facie case is made out for examining the judgment and order of the learned Single Judge, then only the Court should admit the appeal for hearing as the writ appeal is an in house appeal. At the time of admission of the appeal, the appellate Court should be more cautious to examine the prima facie of the appeal and when there is no prima facie merit in an appeal, the Court should avoid admitting the same. In the instant case, we are of the firm opinion that the learned Single Judge did not commit any wrong while passing the impugned order as the State appellants filed the application for extension of time after expiry of two months time granted to them on earlier occasion. In view of the above, we are of the opinion that the State appellants failed to make out even a prima facie case for admission of the instant writ appeal. In the result the writ appeal is dismissed, however, no order as to cost.