

(2007) 10 GAU CK 0053
In the Gauhati High Court

State of Tripura and Others

APPELLANT

Vs

Swapna Bhattacharjee

RESPONDENT

Date of Decision : 03-10-2007

Acts Referred:

Citation : (2008) 1 GLT 67

Hon'ble Judges : Utpalendu Bikas Saha, J; Brojendra Prasad Katakey, J

Bench : Division Bench

Judgement

B.P. Katakey, J.—The writ petitioner-respondent who was serving as Junior Social Education Organiser at Singirbil Social Education Centre under Kumarghat Inspectorate, North Tripura has been transferred to Sonatala Social Education Centre, Khowai, West Tripura by an order passed by the Director of Social Welfare & Social Education, Tripura on 24.12.94 against which, a representation was filed on 25.02.95, seeking modification of the said transfer order and accordingly, the order of transfer was modified by the Director vide order dated 11.09.95 transferring her to Chandipur Social Education Centre, Kumarghat Inspectorate at her own request. According to the appellants, pursuant to the order of transfer dated 24.12.94, the writ petitioner-respondent was released from Singirbil Social Education Centre vide order dated 03.04.95 with effect from 13.5.95, which has been disputed by the writ petitioner-respondent and according to her, she was for the first time released from the said Education Centre vide order dated 28.12.95 with effect from 31.12.95 (A/N) and there after, she joined her place of posting in terms of the modified order dated 11.09.95. A notice dated 29.04.97 was thereafter, issued by the Director of Social Welfare & Social Education, asking the writ petitioner to show cause as to why disciplinary action would not be taken against her for non-compliance of the orders of her superior authority i.e. the order of transfer dated 24.12.94 as well as the order by which she was asked to submit application for leave for the period from 13.4.95 to 31.8.95, during which period, according to the appellants, she remained absent from duty which has, however, been highly disputed by the writ petitioner-respondent by stating that she has discharged her duties and in

fact the various proposals submitted by her during the aforesaid period have been accepted by her superior authorities, while discharging her duties in Singirbil Education Centre. Thereafter, the Director passed an order on 24.10.97 treating the period of absence of the writ petitioner-respondent from 13.4.95 to 31.8.95 as "dies non" as per proviso to FR 17(1). This order was challenged by the writ petitioner-respondent in Civil Rule No. 1/1998. The learned Single Judge, upon hearing the learned Counsel for the parties, vide judgment and order dated 6.8.2001 set aside the order dated 24.10.97 passed by the Director by holding that the said order was passed without holding a full-fledged departmental proceeding as prescribed under Rule 14 of the CCS (CCA) Rules, 1965. On the prayer of Mr. S. Bhattacharjee, learned Counsel for the appellants, the learned Single Judge by another order dated 6.8.2001 granted liberty to the appellants to proceed in accordance with law after complying with the aforesaid judgment.

2. We have heard Mr. S. Chakraborty, learned State Counsel appearing on behalf of the appellants as well as Mr. K.N. Bhattacharjee, learned senior Counsel appearing on behalf of the respondent.

3. The learned State Counsel, referring to the order impugned in the writ petition dated 24.10.97 has contended that though the terminology "dies non" has been used in the order, in fact that was an order passed under FR 17(1) as the authority upon enquiry conducted, came to the finding that the writ petitioner-respondent did perform her duties from 13.4.95 to 31.8.95. It has been submitted that as the order dated 24.10.97 is not a punishment within the meaning of Rule 11 of the CCS (CCA) Rules, 1965, a full-fledged enquiry is not required to be conducted, as directed by the learned Single Judge. It has further been submitted that there is no doubt that before passing an order under FR 17(1), a notice is required to be issued, which in fact was issued by the Director on 29.04.97. Therefore, learned State Counsel submits that as the order dated 24.10.97 impugned in the writ petition has been passed after giving reasonable opportunity of showing cause to the writ petitioner-respondent, the order cannot be interfered with on the ground of violation of the principles of natural justice.

4. Mr. Bhattacharjee, on the other hand, submits that as the order dated 24.10.97 has adverse civil consequences as, by such order the writ petitioner-respondent has been deprived from receiving her pay and allowances to which she is entitled to, the principles of natural justice requires issuance of notice before passing such order. It is further submitted that as the order dated 24.10.97 by which the period from 13.4.95 to 31.8.95 has been treated as "dies non", has the effect of break in service which will also have the effect in pensionary benefits to be received by the writ petitioner after retirement from service on attaining the age of superannuation, a full-fledged enquiry as contemplated by CCS (CCA) Rules, 1965 is required to be conducted before passing the impugned order dated 24.10.97 and the same not having been done, the learned Single Judge has rightly set aside the said order by giving liberty to the respondents to proceed in terms of the provisions contained in CCS (CCA)

Rules, 1965.

5. There is no dispute on the fact that the writ petitioner-respondent was initially transferred from one place to another vide order dated 24.12.94 and, on her request, such order of transfer was subsequently modified vide order dated 11.9.95. The writ petitioner-respondent has disputed the issuance and service of the release order dated 3.4.95 releasing her from Singirbil Social Education Centre, with effect from 13.4.95 and, according to her, she was for the first time released from the said Education Centre vide order dated 28.12.95 with effect from 31.12.95 and accordingly, she joined at her modified place of posting. It appears from the pleadings of the parties in the writ proceeding that according to the appellants, though she was released with effect from 13.4.95 by order dated 3.4.95, she did not join her place of posting pursuant to the order dated 29.12.94 and has also not discharged her duties in Singirbil Social Education Centre.

6. FR 17, which is relevant for the purpose of the present appeal, is quoted below:

FR 17. (1) Subject to any exceptions specifically made in these rules and to the provision of Sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.

(2) The date from which a person recruited overseas shall commence to draw pay on first appointment shall be determined by the general or special orders of the authority by whom he is appointed.

FR 17-A. Without prejudice to the provisions of Rule 27 of the Central Civil Services (Pension) Rules, 1972, a period of an unauthorized absence-

(i) In the case of employees working in industrial establishments, during a strike which has been declared illegal under the provisions of the Industrial Disputes Act, 1947, or any other law for the time being in force;

(ii) In the case of other employees as a result of action in combination or in concerted manner, such as during a strike, without any authority from, or valid reason to the satisfaction of the competent authority; and

(iii) In the case of an individual employee, remaining absent unauthorisedly or deserting the post shall be deemed to cause an interruption or break in the service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in departmental examinations, for which a minimum period of continuous service is required.

7. It appears from the provision quoted above that an employee who is absent from duty without any authority shall not be entitled to any pay and allowances for such period. It is the case of the appellants that the order dated 24.10.97 was to the effect that the writ petitioner-respondent shall not be entitled to the pay and allowances for the period of her absence without taking any action contemplated under FR 17-A.

8. Note under Rule 24 of the Tripura State Civil Services (Leave) Rules, 1986 provides that a person who is absent from duty without leave shall be treated as "dies non" for the purpose of increment, leave and pension and such absence without leave where it stands singly and not in continuation of any authorized leave of absence will constitute an interruption of service for the purpose of pension and unless the pension sanctioning authority exercises its powers under Rule 27 of the CCS (Pension) Rules to treat the period as leave without allowance, the entire past service will stand forfeited.

9. In view of the submission of the learned State Counsel that as the authority has not taken any action as required under FR 17-A, the order impugned in the writ petition for non payment of the pay and allowances to the petitioner for the period of her absence from duty shall not affect her service in any manner either in the matter of pension or increment and the terminology "dies non" has been wrongly used, we need not enter into the question whether such order will have any effect of break in service or on the pension or in the increment.

10. It is evident from the order dated 10.4.97 that the authority neither proceeded against the writ petitioner-respondent under FR-17-A nor initiated any departmental proceeding as contemplated under the CCS (CCA) Rules, 1965. Rule 11 of the CCS (CCA) Rules stipulates the penalty to be imposed on an employee in compliance of the procedures laid down therein. The principles of natural justice cannot be put in a strait jacket formula. When, how and in what manner the opportunity of hearing, before passing an order, is to be afforded, differs from facts to facts depending upon the nature of order proposed to be passed. In all cases, a full fledged hearing, i.e. to say examination of witnesses, cross examination, etc. need not be given, unless of course, any penalty is imposed, within the meaning of the relevant disciplinary rules or affecting ones service career.

11. Nature of enquiry to be conducted before passing an order under proviso to FR 17(1) does not postulate holding of a full-fledged enquiry by the authority. Such order being not a penalty within the meaning of Rule 11 of the CCS (CCA) Rules, 1965, no disciplinary proceeding as contemplated under the Rules, is also required to be conducted, as directed by the learned Single Judge. However, before passing an order under proviso to FR 17(1), which has the effect of depriving a person of his pay and allowances, a notice at least is required to be issued giving opportunity to the person concerned to explain his position. In the instant case as observed above, the writ petitioner-respondent has disputed the allegation of the authority about not rendering service in Sigribil Education

Centre. It also appears from the show cause notice dated 29.4.97 that the Director before passing the impugned order dated 24.10.97 did not ask the writ petitioner to show cause as to why she would not be deprived of her pay and allowances for the period from 13.4.95 to 31.8.95, during which she was allegedly absent from duty, under the proviso to FR 17(1). The show cause notice dated 29.4.97 reveals that by the said notice the writ petitioner was asked to show cause as to why disciplinary action shall not be taken for non-compliance of the orders of the superior authority i.e. the order of transfer as well as the order asking her to submit an application for leave. Hence, the said notice dated 29.4.97 cannot be treated to be a notice before passing an order under proviso to FR 17(1).

12. In view of the above, we set aside the direction of the learned Single Judge contained in the impugned judgment and order dated 6.8.01 passed in CR No. 1/98 in so far it relates to interference of the order dated 24.10.97 on the ground of not holding a full-fledged enquiry as required under Rule 14 of the CCS (CCA) Rules, 1965 however without disturbing the ultimate decision of setting aside the order dated 24.10.97 on the ground of non-issuance of notice before passing such order. The competent authority will now be entitled to issue fresh notice on the writ petitioner-respondent to show cause as to why the payment of pay and allowances during the period from 13.4.95 to 31.8.95 shall not be with-hold for her alleged absence from duty and in the event of showing any cause(s) by the writ petitioner, the authority may pass necessary speaking order upon consideration of such show cause reply, if any, filed by the writ petitioner-respondent. The appeal accordingly shall stand disposed of. No costs.