
(2006) 12 CAL CK 0015
In the Calcutta High Court
Case No : W.P.S.T. No. 400 of 2006

Suman Roy Chowdhury

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226, 227
Management of Recognized Non Government Institutions (Aided and Unaided) Rules, 1969 — Rule 28(8)
Penal Code, 1860 (IPC) — Section 406, 498A
West Bengal Services (Classification, Control and Appeal) Rules, 1971 — Rule 7, 7(1), 7(2), 7(3), 71

Citation : (2007) 1 ILR (Cal) 555

Hon'ble Judges : Kishore Kumar Prasad, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Debjani Sengupta, Rama Prasad Sarkar, Prasenjit Saha and Moumita Majumdar, for the Appellant; Sandeep Srimani and Tapash Kumar Majumdar, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—This writ-application under Article 226/227 of the Constitution of India is at the instance of an Applicant u/s 19 of the Administrative Tribunal Act, 1985 and is directed against an order dated January, 2005 passed by the Tribunal by which the said Tribunal admitted the application filed by the writ-Petitioner but refused to grant ad interim order of stay of operation of the order impugned in the said application.

2. The writ Petitioner is a Government employee. On the basis of allegation of his wife against him and his mother, a Criminal Case under sections 498A/406 of the Indian Penal Code was started against them and consequently, he was arrested on July 18, 2005. Ultimately, he was released on bail on August 24, 2005. As the writ-Petitioner was in judicial custody, he was absent from duty during the said

period. After being released on bail, he joined his duty on August 25, 2005 and filed an application for grant of earned leave for the aforesaid period.

3. Long thereafter, on October 14, 2005, he was served with an order of suspension vide the Memo No. 3050 (7) / C & F by which he was informed that he was placed under suspension under Rule 7(3) of WBSF (C, C&A) Rules, 1971 (hereinafter referred to as the Rules) from July 28, 2005, the date of detention under police custody in connection with the Jadavpur Police Station Case No. 281 under sections 498A/406 of the Indian Penal Code as reported by the Inspector-in-charge of the Jadavpur Police Station vide Memo No. 4870/05 dated September 30, 2005.

4. Being dissatisfied, the writ Petitioner filed an application u/s 19 of the Administrative Tribunal Act before the State Administrative Tribunal and prayed for an interim order staying the operation of the order of suspension. As indicated above, the Tribunal although admitted the said application, refused to grant any interim order.

5. Being dissatisfied, the writ Petitioner has come up before us with this application under Article 226/227 of the Constitution of India.

6. Mrs Sengupta, the learned Counsel appearing on behalf of the writ Petitioner has laboriously contended before us that the learned Tribunal erred in law in refusing to pass any interim order in favour of her client notwithstanding the fact that the order of suspension impugned in the application before the Tribunal was on the face of it illegal and beyond the scope of Rule 7(3) of the concerned Rules. Mrs. Sengupta contends that once her client was released on bail by the competent Court, there was no justification of keeping him under suspension by taking aid of Rule 7 (3). According to Mrs Sengupta Rule 7 (3) has application only in a case where an employee is under custody or suffering sentence. In the case before us, Mrs Sengupta contends, the writ Petitioner having already been released on bail and having joined the service in the month of October 2005, there was no justification for invoking Rule 7(3). She, therefore, contends that the Tribunal in the fact of the present case ought to have stayed the operation of the order of suspension purportedly issued under Rule 7 (3). Mrs Sengupta further contends that although the application filed by her client before the Tribunal was entertained in the month of January 2005, till date, the said application has not been heard and at the same time, the State-Respondent even did not care to file objection to the application filed by her client. She, therefore, prays for setting aside the order impugned in this application and permitting her client to join service subject to the final decision in the pending Criminal Case.

7. Mr. Srimani, the learned Additional Government Pleader, appearing on behalf of the Respondent, has, however, opposed the aforesaid contentions advanced by Mrs Sengupta and has contended that the writ Petitioner having been involved in a Criminal Case involving offence against a woman and the society, his client has every right to place him under suspension till the disposal of the said Criminal

Case. In support of such contention, Mr Srimani relies upon the provisions contained in Rule 7 (2) of the concerned Rules. According to Mr Srimani, mere wrong description of the relevant Rule in the order of suspension will not invalidate the order of suspension, if it appears that the employer has, otherwise, power to put the writ-Petitioner under suspension. Mr Srimani, therefore, prays for dismissal of the writ-application by approving the order passed by the Tribunal.

8. Therefore, the only question that arises for determination in this writ-application is whether the Tribunal was justified in the fact of the present case in refusing the prayer of stay of operation of the order of suspension issued under Rule 7 (3) of the Rules.

9. To appreciate the aforesaid question it will be profitable to refer to the provisions contained in Rule 7 of the concerned Service Rules which is quoted below:

Rule 7 (1) The appointing authority or any authority to which it is subordinate or any authority empowered by the Governor in that behalf may place a Government servant under suspension -

(a) Where a disciplinary proceeding or departmental enquiry against him is contemplated or is pending; or

(b) Where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State ; or

(c) Where a case against him in respect of any criminal offence is under investigation or trial

Provided that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A Government servant against whom a proceeding has been commenced on a criminal charge but who is not actually detained in custody (e.g., a person released on bail) may be placed under suspension under Clause (c.) of Sub-rule (1) by an order may by any of the authorities mentioned in that sub-rule. If the criminal charge is related to the official position of the Government servant or involves any moral turpitude on his part, suspension shall be ordered under this sub-rule, unless there are exceptional reasons for not adopting such a course.

(3) A Government servant who is detained in custody for a period exceeding 48 hours under any law providing for preventive detention or as a result of a proceeding either on a criminal charge or otherwise, shall be deemed to have been suspended, by an order of the appointing authority, with effect from the date of his detention and shall remain under suspension until further orders. A Government servant who is undergoing a sentence of imprisonment shall also be dealt with in the same manner, pending a decision on the disciplinary action to

be taken against him.

(4) (1) Where a penalty of dismissal, removal or compulsory retirement from service imposed on a Government servant under suspension, or (2) a disciplinary proceeding pending against a Government servant under suspension, is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any directions the order of his suspension shall be deemed to have continued in force -

(a) in the case where the penalty of dismissal, removal or compulsory retirement from service had been imposed on and from the date of the order imposing such penalty, and

(b) in the case where the disciplinary proceeding was pending, on and from the date of the order placing the Government servant under suspension;

and in either case, the order of suspension shall remain in force until further orders.

(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed on a Government servant under suspension or a disciplinary proceeding pending against a Government servant under suspension is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority on a consideration of the circumstances of the case decides to hold a further inquiry against the Government servant on the allegations on which the penalty was originally imposed or the disciplinary proceeding was originally started, the Government servant shall be deemed to have been placed under suspension by the appointing authority or any other authority empowered by the Governor to place a Government servant under suspension with effect from the date on which the order imposing the penalty or dismissal, removal or compulsory retirement from service was made or where the disciplinary proceeding was pending, from the date on which the Government servant was originally placed under suspension.

An order of the suspension made or deemed to have been made under this sub-rule shall continue in force until it is modified or revoked by the authority competent to do so.

Note 1: (Vide the Explanation below Note 1 to Rule 9).

Note 2: A Government servant who is placed under suspension or be deemed to be under suspension in the circumstances mentioned in his rule shall, irrespective of the circumstances which lead to or result in the suspension, be entitled to subsistence allowance during the period of Suspension, and to pay and allowance on reinstatement in respect of the period of suspension, under rules 71 and 72 of the West Bengal Service Rules - Part 1, respectively:

Provided that in the case where a Government servant is detained in custody under any law providing for preventive detention, the subsistence allowance

admissible under this rule shall be reduced by the amount of allowance if any paid to the detainee under the relevant laws or rules for the time being in force.

10. After hearing the learned Counsel for the parties and after going through the aforesaid provision contained in the rules, we find that Rule 7(3) deals with the case where a Government servant is detained in custody for the period exceeding 48 hours under any law providing for preventive detention or as a result of a proceeding either on a criminal charge or otherwise or where he is undergoing a sentence of imprisonment. According to sub-Rule 3, the Government servant in those types of cases should be deemed to be under suspension with effect from the date of his detention and shall remain under suspension until further order. But the aforesaid Sub-Rule 3, in our opinion, has no application to a case where the Government servant has already been released on bail due to pendency of a criminal proceeding if the employer had not passed the order of suspension before release of the Government servant on bail. In such a situation even though, no formal order of suspension was passed during the period when the Government servant was in the custody, he should be "deemed" to be under suspension for the period during his custody. In the case before us, the writ-Petitioner after being released on bail, joined service and more than one month thereafter, the Respondent passed the order of suspension until further order by taking recourse to Rule 7(3). Such course of action, in our opinion, is not permissible under the aforesaid Sub-Rule 3.

11. We are quite conscious of the provision contained in Sub-Rule 2 of Rule 7 which gives power to the employer to consider notwithstanding the fact that the Government servant is already released on bail, he should be nevertheless placed under suspension during the pendency of investigation or trial, the aforesaid Sub-Rule 2 mandates that if the criminal charge is related to the official position of the Government servant or involves any moral turpitude on his part, suspension "shall" be ordered unless there are exceptional reasons for not adopting such course.

12. Therefore, in the case before us, the employer was entitled to consider the question of keeping the writ Petitioner under suspension notwithstanding the fact that the Petitioner had already been released on bail by virtue of the power conferred upon the employer under Sub-Rule 2. Apparently, as it is manifest from the order of suspension, the employer did not invoke its power in terms of Sub-Rule 2 but exercised power under sub-Rule 3 which is totally inapplicable to the fact of the present case. We have already pointed out that till today, the State Respondent has not even filed objection before the Tribunal against the application u/s 19 of the Act filed by the writ-Petitioner disclosing its stance.

13. We, therefore, find substance in the contention of Mrs Sengupta that the order impugned before the Tribunal, as it stands, reflects total misapplication of mind on the part of the employer in keeping the writ Petitioner under suspension by taking recourse to Rule 7(3). The aforesaid Sub-Rule 3 has no application to a case where the Government servant is already released on bail.

14. In our view, it was a fit case to pass an interim order staying operation of the order of suspension imposed by the Respondent by invoking Rule 7 (3). The learned Tribunal, as it appears from the order impugned, totally overlooked the aforesaid provision. Therefore, the Petitioner had made out a strong prima facie case to have an interim order staying operation of the order of suspension issued under the provision of law which is not applicable to the fact of the present case.

15. We are also in the agreement with Mr Srimani, the learned advocate appearing on behalf of the State Respondent, that even if we stay the operation of the order impugned, such fact will not stand in the way of the employer in considering whether it will pass fresh order in terms of Rule 7(2). We have already indicated that according to the said provision even if a Government servant is released on bail, the employer should put him under suspension if the offence alleged is related to the official position of the Government servant or involves any moral turpitude on his part. There is no dispute that in the case before us, the charge against the writ Petitioner does not relate to his official position. But if the allegation against the writ-Petitioner is ultimately found to be true, it is an offence against the woman and the society as well. According to the said provision, in this type of a case, unless the employer finds that it is an exceptional case, the suspension should follow "as a matter of course. Therefore, in order to invoke jurisdiction under Rule 7(2) it is also the duty of the employer to see whether the case comes within the proviso to the Rule i.e., whether it is an exceptional case where the employee should not be kept under suspension. To consider whether it is an exceptional case, the employer should look into the allegations and other materials available before the employer and should also give opportunity of hearing to the Government servant and after considering all those facts, if it appears that the allegation made is prima facie true and is so serious that the employee should be kept under suspension, it will pass necessary order. While considering the case in the light of the Rule 7(2), the Respondent should bear in mind that if the materials made available to the employer are not convincing enough to justify the allegation made against the employee, the Government employee should not be kept on suspension for indefinite point of time thereby depriving the Government of the service of the employee at the cost of public exchequer. If the Government employee is kept under suspension, the Government is required to pay him suspension-allowance without taking any service from such employee. In this case, there is no scope of even making any simultaneous departmental enquiry as the offence involved, even if the allegation is true, was not done in the capacity of his official position nor is it a case, where the offence was allegedly committed against the person or property of the employer or a co-employee or in the premises of the employment. In the aforesaid types of cases, an employer is free to proceed with the simultaneous enquiry and even if, employee is acquitted in the criminal proceeding, the employer is free to take step according to the result of the departmental enquiry. But in the present case, the Government is to wait till the decision of the criminal proceeding and if the government servant is convicted,

he should be dismissed without starting any further enquiry simply on the basis of the order of conviction.

16. Similarly, if the Government servant is acquitted, the Government is bound to accept the order of acquittal and withdraw the order of suspension.

17. Although Mrs Sengupta strongly relied upon a decision of a single Judge of this Court (one of us) in the case of *Sunder Gopal Sinha v. West Bengal Board of Secondary Education* and Ors. 2003 CWN 954 in support of her contention that the employer had no right to impose suspension once the Petitioner is released on bail, we are of the view that the said decision has no application to the facts of this case. In the said decision, the Court was considering the case of suspension of an Assistant Teacher of a Secondary School in terms of Sub-Rule 8(b) of Rule 28 of the Management of Recognized Non Government Institution (Aided and unaided) Rules where the Managing Committee is not vested with any power like the Rule 7(2) and in the absence of such provision, the Court held that as the allegation against the teacher was not with regard to any offence against the School or in connection with his duty as a teacher, there was no scope of keeping him under suspension although he was released on bail.

18. We, therefore, set aside the order passed by the Tribunal and stay the operation of the order of suspension, as on the face of it, the same was not in conformity with Rule 7(3).

19. This order, however, will not stand in the way of the Respondent in considering whether it is an exceptional case where the employee should not be kept under suspension during the pendency of the criminal proceeding and to pass appropriate order accordingly. We make it clear that we have not considered the merit of the allegations against the writ Petitioner and it is for the employer to consider such case for the purpose of proceeding under Rule 7(2) after considering the materials available before it and after giving the writ Petitioner an opportunity of being heard.

20. The writ application is, thus, allowed. The Tribunal is directed to dispose of the application as expeditiously as possible. The Respondent is directed to file objection before the Tribunal positively within a fortnight after reopening. In default of filing such objection, the Tribunal will proceed ex parte.

21. We make it clear that our observation made in this order is on the basis of the averments made by the writ Petitioner in the application u/s 19 of the Act without going in to the defence of the Respondent. In the facts and circumstances, there will be, however, no order as to costs.

Kishore Kumar Prasad, J.

I agree