
(2008) 11 CAL CK 0061
In the Calcutta High Court
Case No : Writ Petition No. 1514 of 2008

Susant Pal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-11-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2008) 11 CAL CK 0061

Hon'ble Judges : S.P. Talukdar, J

Bench : Single Bench

Advocate : P.K. Tarafdar, Joydeep Sen, Sujoy Chakraborty, for the Appellant; Tarun Kr. Ghosh, Surashree Ghosh Respondent Nos. 1 and 2 Arijit Chowdhury, Arunava Ghosh, Raja Bose Respondent Nos, 3, 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

S.P. Talukdar, J.

The Judgment of the Court was delivered by:

1. Being aggrieved by the Office Memorandum dated 25th of August, 2008 being Annexure- "P-5" to the writ application the petitioner approached this Court for redressal of his grievances.

2. The facts of the case may briefly be stated as follows:

The petitioner was appointed as Secretary in 1995 in the respondent organization, being the National Centre for Jute Diversification (hereinafter referred to as "the NCJD"). In the staff structure, the Secretary is the senior most officer and has high degree of administrative and supervisory responsibility. The rank of the Secretary is just below that of the Executive Director. Except for certain unavoidable circumstances, during his tenure as Secretary, all the Annual Statutory Audits, Council Meetings, Annual General Meetings and other statutory assessments were conducted smoothly. There had been no occasion for any

complaint against his functioning as Secretary. In the office note dated 26th of November, 2004, it was observed by the higher authorities that "his leadership in such events has been of great importance and appreciated by the August gathering. In nutshell there has been adequate and extensive responsibility lying on the shoulder of the Secretary. Since set up of NCJO, the role played by Secretary is very remarkable and commendable.

3. The petitioner was given promotion in November, 2004 on "personal merit" basis to a higher scale of pay. He was entrusted by the Executive Director with the overall responsibility and charge of operation of the promotional and developmental schemes of the Government, which speaks much about his dedication, efficiency and integrity.

4. The complication, however, changed with the change of the head of Jute Manufacturers Development Council (hereinafter referred to as "JMDC") taking charge of the Executive Director in the middle of 2005. The benefit of pay scale, which, was extended in November, 2004, was certainly withdrawn in October, 2005. The petitioner, who was officially sent on deputation to a Central Government Undertaking located at Delhi from February, 2006 was not allowed to join his parent organization i.e. NCJD after his repatriation to the parent organization from the deputation on 1st June, i.e. within the specified period. The Executive Director of NCJD directed the petitioner to proceed on leave and after prolonged deliberation; he was allowed to join in the post of Secretary of NCJD in October i.e. after six months. His salary for the said period was withheld without assigning any reason. Though by letter dated 22nd May, 2007, it was intimated that the Jute Commissioner and Chairman of the Executive Committee had no objection for release of the salary of the petitioner, it was disregarded. The petitioner was, thus, compelled to file an application under Article 226 of the Constitution and the said petition is still pending.

5. The petitioner was thereafter subjected to various forms of harassment and there had been attempts to malign him. As the Secretary of the NCJD, the petitioner was entrusted with the overall administrative and supervisory duties and to a great extent; the administrative and supervisory functions entrusted to him in the post of Secretary have been similar to that of the Executive Director of the organization. As the Secretary, the petitioner has been designated as the convener of various monitoring, promotional and expert committees.

6. To his utter shock and surprise, he came to learn that the Executive Director issued an order on 25th August, 2008 to the effect that the respondent No. 6, who is junior and subordinate to the petitioner in rank, shall discharge all the functions and responsibilities of the Secretary i.e. the petitioner until further orders and all the files and communications should be routed through the said respondent No. 6. The petitioner's right to discharge his duties and responsibilities as the Secretary of the respondent organization has thus, been totally curtailed and that too, for no reason whatsoever. The petitioner was not given any opportunity to have his say in that regard. The impugned order, thus,

suffers from non-disclosure of reason and is patently arbitrary and unreasonable and as such, ex facie bad in the eye of law. This could be a counterblast of the petitioner's filing an earlier application under Article 226 of the Constitution. This order dated 25th August, 2008 could be a step towards making the petitioner irrelevant in the post of Secretary. It reflects bias and high-handedness. The petitioner submitted a representation on 27.08.2008 addressed to the Executive Director; The same has not been considered at all. The impugned order dated 25th August, 2008, thus, suffers from illegality, procedural irregularity and impropriety.

7. Respondent No. 5 on behalf of respondent No. 3 contested the case by filing affidavit-in-opposition, thereby denying all the material allegations made by the writ petitioner. The maintainability of the writ proceeding has been challenged on the ground that the writ petition does not disclose any cause of action since there could be no violation of any legal right, far less a Constitutional right. It is claimed that the rules of the respondent organization do not provide for the post of a Secretary, which is a post created by an executive order extended from time to time by the Ministry of Textiles, Government of India. The Secretary is required to discharge such functions as are assigned to him from time to time by a superior including the Executive Director of the organization. Such respondent No. 5 has emphatically denied the claim of the writ petitioner regarding his efficiency and integrity. It is claimed that the writ petitioner failed to take appropriate steps for the interest of the organization. The attendance registers and the leave records could not be properly maintained. No effective step had been taken for regularization of the posts of the employees. The petitioner failed to prepare leave and tour roster. He had not taken any substantive action for preparation and implementation of a Management Information System to monitor and report the implementation of various schemes.

8. On 26th October, 2006, the petitioner assaulted the Chief Finance Officer of the respondent organization as would appear from the written complaint made by him and the statement of Shri Mahadeb Datta, Assistant Director (Technical). It is further claimed that the petitioner was illegally enjoying a higher pay scale and this left respondent No. 5 with no option but to put the things in order by shifting him back to the pay scale, which he was entitled to. Petitioner's conduct in the discharge of his responsibility with regard to loans is under investigation. The petitioner though directed by an order dated 3rd of September, 2008 failed to prepare an up-to-date report of his JTM Scheme Component 7.1. On 4th September, 2008, he was asked to attend a JTM review meeting at the Jute Commissioner's office, but he did not do so. By an order dated 9.9.2008, he was requested to prepare a format of the respective scheme for MIS (7.1.), but he did not do so. By an order dated 11th September, 2008, he was requested to attend the meeting of the 9th Sectoral Summit on Agricultural and Allied Services in Assam. By an order dated 16.09.2008, he was asked to attend another meeting on 17.07.2008.

9. The respondent, in such circumstances, prayed for dismissal of the writ application.

10. Learned Counsel for the petitioner, while inviting attention of the Court to the impugned order dated 25th August, 2008, submitted that an officer below the rank of the Secretary was directed to exercise the powers and discharge the functions hitherto exercised and discharged by Secretary NCJD until further notice in addition to his existing responsibilities. The said order was given immediate effect and all relevant files and communications were directed to be routed through him. Copy of such office memorandum was sent to "all concerned". Annexure-"P-6" to the writ application clearly indicates that the petitioner submitted a representation on 27th August, 2008. Learned Counsel for the petitioner submitted that such a representation has not received the care and attention, it deserved.

11. Learned Counsel for the petitioner submitted that the legality or otherwise of an order passed by a statutory authority must be judged on the face thereof as the reasons contained therein cannot be supplemented by an affidavit. In this context, reference was made to the decision in the case of Chandra Singh Vs. State of Rajasthan and Another,

12. In the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , the Apex court observed:

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

13. Relying upon the same, the Apex Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , observed that "when a statutory functionary makes an Order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise". It was further observed that "orders are not like old wine becoming better as they grow older."

14. In response to this, Mr. Chowdhury, appearing as learned Counsel for the respondents, submitted that there could be no justification for entertaining the present writ application since the averments made in the writ application do not reflect any alleged violation of legal right or Constitutional right. It was contended that there could be no cause of action for filing of the present application.

15. Learned Counsel, Mr. Chowdhury, referred to the fact that the authority

concerned by the impugned Order has not done anything so as to create doubt or anxiety in the mind of the writ petitioner. His salary has not been touched. There had been no attempt to degrade his position or status. According to Mr. Chowdhury, for his consistent malfunctioning and inefficient handling of the office matters, the authority concerned had no option but to ask another officer to shoulder the responsibility. It was further added that this had to be done in the best interest of the respondent organization, which was left with no option whatsoever. If it is assumed that the impugned order dated 25th August, 2008 amounted to clipping the wings of the writ petitioner, it cannot, perhaps, be said that there was no scope for raising any grievance. After all, it is not in dispute that the post of Secretary is undoubtedly much senior and superior to that of the Assistant Director who has been directed to discharge the responsibilities of the Secretary and to exercise his powers. Significantly enough the person, who has been so directed, is also admittedly an eye-witness in connection with an incident dated 26th October, 2006.

16. At the time of hearing, Mr. Chowdhury referred to the long list of events in support of his contention that the petitioner miserably failed to discharge his responsibilities, thereby affecting smooth functioning of the organization. Assuming it to be so, it is not understood as to what could prevent the organization from taking appropriate action against the writ petitioner. Admittedly no such proceeding has been initiated so far against the writ petitioner for his alleged inefficiency/incompetence in the discharge of his official duty as the Secretary.

17. On the other hand, admittedly the petitioner filed a writ application earlier ventilating certain grievances and the said application is still pending. Pendency of a writ application directed against the respondent organization may, in certain circumstances, give rise to ill-feeling and there are instances where such "ill-feeling" leads the parties to take steps or initiate action which in turn makes the situation worse. The relationship gets more and more sour. When such deterioration in the relationship affects smooth functioning of the organization, it certainly becomes a reason for anxiety.

18. If the respondent authorities have found the petitioner failing to respond to the challenge of his position as Secretary, nothing could prevent them from initiating appropriate action. But what has been done by issuance of the, office order dated 25th August, 2008 is nothing but an attempt to sideline and sidetrack the petitioner in the organization, he has been virtually made irrelevant and this is nothing short of humiliation. It is, perhaps, needless to mention that such humiliation hurts the dignity of an individual. The right to live with dignity is well recognized as fundamental within the enlarged and expanded meaning of, Article 21 of the Constitution. If any act on the part of the respondent attempts to affect such right. I do not find any reason for not entertaining his grievance.

19. Article 226 of the Constitution certainly empowers this Court to take appropriate action by issuance of writ and this need be done in appreciation of

the petitioner's right to live with dignity. The Writ Court cannot afford to remain a passive onlooker and shut its doors to the affected and aggrieved persons taking recourse to the plea that there is no cause of action.

20. It is the bundle of facts, which constitute cause of action. It is not necessary that such cause of action must have to relate to any particular situation or in a specified context. In order to explore whether there is any cause of action or not, the Court does not have to necessarily embark upon an enquiry following the process of isolated scrutiny. It is the judicial evaluation of the totality that is called for.

21. In the facts and circumstances of the present case, I certainly hold that there is every reason for the petitioner to knock the door of this Writ Court for redressal of his grievances. The manner in which the petitioner has been sought to be sidetracked and, thus, made irrelevant, cannot satisfy the test of scrutiny. Lifting the veil of the impugned order, it can be easily gathered that the authority concerned has acted in an unreasonable manner. The wound inflicted on the petitioner by such act on the part of the respondent authority cannot be healed up merely for the reason that the status and salary as well as allowances of the writ petitioner have not been sought to be affected in any manner. In the affidavit-in-opposition, the respondent authority has specified various reasons, which according to them compelled the authorities to take such action and issue the impugned order. This, by itself, impliedly indicated that such impugned order is a reflection of a conscious act. There is nothing to show that the petitioner was given any proper opportunity for answering to the alleged lapses. Keeping a man in position and then ignoring his existence is certainly not justified.

22. Considering all these aspects, I find it difficult to brush aside the grievances, as ventilated on behalf of the petitioner. The present application being W.P. No. 1514 of 2008 succeeds and be allowed.

23. The office Memorandum dated 25th August, 2008 being Annexure ""P-5" to the writ application is quashed.

24. There is no order as to Costs.

25. Xerox certified Copy of the judgment be supplied to the parties, if applied for, as expeditiously as possible.