
(2011) 11 CAL CK 0062
In the Calcutta High Court
Case No : WPST No. 165 of 2011

Syed Mosaraf Hossain

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Citation : (2012) 1 CALLT 452 : (2012) 5 CHN 466

Hon'ble Judges : Shukla Kabir (Sinha), J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Amal Barman Chatterjee and Mr. Satadal Chatterjee, for the Appellant; Joytosh Majumder and Mr. Pinaki Dhole, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—The petitioner was appointed as a Health Assistant in a Health Centre at Bankura with effect from July 26, 1986. He was suspended with effect from July 26, 1990. He challenged the order of suspension by filing a writ petition before this Court. He was subsequently proceeded in a departmental enquiry as per the charge sheet dated December 9, 1994. As per the charge sheet, although he was a mere Health Assistant having no medical qualification he posed himself as a doctor and continued to do private practice at his residence by accepting money as his professional fees. As per the second charge, in view of his wrong treatment a patient died. Before issuance of the order of suspension, a confidential and secret investigation was made by the State through one P.C. Das, a Vigilance Inspector. Shri. Das examined fourteen witnesses and seized various documents while conducting the investigation. The enquiry officer conducted the enquiry. He examined a number of witnesses including one medical shop owner who admitted to have provided prescription pad having printed the name of the petitioner posing himself as a doctor. The enquiry officer ultimately came to a conclusion that the first charge with regard to private practice by accepting fees was partially proved whereas the second charge could not be proved. The Director, Health Service upon going through the

enquiry report and agreeing with the finding thereon, imposed a punishment of compulsory retirement that became the subject matter of challenge in an appeal. The appellate authority confirmed the order of the disciplinary authority dated July 13, 2001 vide order dated August 01, 2002. The petitioner challenged the order of the disciplinary authority so merged in the order of the appellate authority before the Tribunal. The learned Tribunal set aside the order and directed reinstatement with the 50% admissible back wages and other benefits vide order dated June 9, 2007.

2. Being aggrieved, the State filed an application before this Court being WPST 22 of 2008. The Hon"ble Division Bench modified the order of the Tribunal by granting opportunity to proceed with the enquiry de novo. The Hon"ble Division Bench was however silent on the issue of reinstatement and back wages. The authority re-enquired the matter and ultimately imposed the identical punishment. The petitioner again challenged the order of the disciplinary authority. The learned Tribunal vide judgment and order dated December 19, 2008 passed in O.A. No. 820 of 2008 set aside the order again and asked the authority to start proceeding de novo from the stage of second show cause notice. The parties accepted the order of the Hon"ble Division Bench and thus the proceeding up to the stage of issuance of second show cause notice reached finality. The authority again passed an identical punishment vide order dated March 12, 2009 that became the subject matter of challenge in a third round of litigation before the Tribunal being O.A. No. 762 of 2009. The Tribunal vide judgment and order dated January 11, 2011 modified the order of the Tribunal to the extent that the order of the Director of Health Service imposing punishment of compulsory retirement would be effective from March 12, 2009. However, the petitioner would get notional benefit between the period he last joined his duty till March 12, 2009 without any arrears salary.

3. Being aggrieved, the petitioner challenged the order of the Tribunal as according to the petitioner the Tribunal should have set aside the order again as it was mechanically passed without any reason assigned. The State however did not challenge the said order to the extent where the petitioner was extended the notional benefit till March 12, 2009.

4. We have heard Mr. Satadal Chatterjee, learned counsel appearing for the petitioner and Mr. Joytosh Majumder, learned counsel for the State. Mr. Chatterjee attacked the order on two counts.

5. Firstly, he questioned the authority of the Director to pass the impugned order of penalty as according to him it was nothing but a mechanical reproduction of earlier orders and thus it was contrary to the spirit of the earlier directions of the Hon"ble Division Bench referred to above. According to Mr. Chatterjee, such imposition of punishment should not have been passed.

6. In the alternative, Mr. Chatterjee contended that once the order of disciplinary authority was quashed earlier, reinstatement was a consequence and once

reinstatement was given the consequential financial benefit was automatic.

7. Mr. Chatterjee contended that the enquiry officer categorically held that out of two charges one charge was not proved while the other one was partially proved. Hence the authority before imposing punishment should have assigned reasons as to why such major punishment could be inflicted on the delinquent. He further contended that the finding of the enquiry officer was not examined by the disciplinary authority for his satisfaction. According to him, rule 10(10) of the disciplinary rules was not followed in the matter of imposition of penalty. Rule 10(11) would obligate the disciplinary authority to record reasons in writing and if necessary remit the case to the enquiry authority for further enquiry and report if he was not satisfied with the finding. According to him, the first enquiry was set aside and the Court directed a second enquiry to be done. The authority did not examine the veracity of the finding of the enquiry officer before imposing such punishment.

8. Per contra, Mr. Joytosh Majumder, learned counsel appearing for the State contended that once the enquiry reached finality and the Court directed proceeding to start de novo from the stage of second show cause notice the issue raised by Mr. Chatterjee on the finding had no relevance. According to him, the second show cause notice was replied to by the petitioner. Petitioner could not give any plausible explanation to the finding at the enquiry. Hence he was not entitled to challenge the order of penalty on that count. According to Mr. Majumder, considering the charges brought against the petitioner and proved to the extent as indicated above the punishment was appropriate and did not call for any interference. To support his contention he relied on two Apex Court decisions in the case of Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, and in the matter of Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane,

9. On the issue of non-supply of preliminary report or procedural lapses, Mr. Majumder relied on two Apex Court decisions in the case of Vijay Kumar Nigam (dead) through LRs. Vs. State of M.P. and others, and in the case of Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and other, .

10. On the issue of non-reasoned order and its effect and the scope of judicial review Mr. Majumdar relied on two Apex Court decisions in the case of State of U.P. & Ors. v. Harendra Kumar reported in (2004) 13 SCC 117 and in the case of State of Andhra Pradesh and Others Vs. Chitra Venkata Rao,

11. He lastly contended that the punishment was appropriate compared to the charge as brought and proved as against the delinquent. The authority rightly imposed the same. The Tribunal approached the problem in a right direction while rejecting the prayer for setting aside. This Court should not modify the same.

12. We have considered the rival contention. If we closely look to the second order of the Division Bench we would find that the Division Bench was categorical

while sending the matter back to the authority on a limited issue. The Division Bench categorically observed that the proceeding would start de novo from the stage of second show cause notice meaning thereby the entire enquiry proceeding reached finality and got the seal of approval from this Court. The petitioner did not challenge the order of the Division Bench on that score. Hence he was not entitled to challenge the same in the instant proceeding. Once the proceeding was directed to start de novo from the stage of second show cause notice and the proceeding culminated in a fresh order of punishment the question of reinstatement would have no consequence.

13. If we look to the earlier orders we would find that the Division Bench set aside the earlier orders not on merits but on procedural lapses. Had it been on merit, the Division Bench would have directed the proceeding to start de novo. Once the proceeding was directed to start de novo the delinquent would obviously be under deemed suspension and his entitlement to the back wages and/or subsistence allowance would be left to the discretion of the authority.

14. This Court was silent on such issue while sending it on remand. The Tribunal made it clear by the order impugned that he would get notional benefit till the date of fresh order of punishment being dated March 12, 2009. The State accepted the position by not challenging the said order. Hence we refrain from making comment on the same. The petitioner is thus entitled to such benefit as per the order of the Tribunal. The actual back wages was rightly refused by the Tribunal. In this regard, we may rely on the decision of the Apex Court in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, .

15. The scope of judicial review in case of a like nature is very much limited. Tribunal being a fact finding body is entitled to examine the departmental proceeding. The Tribunal did in the instant case as we find from the order impugned. It is not the case of the petitioner that the order did not consider his reply to second show cause notice or that the punishment was disproportionate. Even if we consider so as to the contention of the petitioner we would find that the first charge to the extent proved would obviously raise a definite pointer to the petitioner and would automatically attract the punishment of termination. The petitioner himself admitted that he issued prescription, his prescription was seized which would denote that he was described as a doctor which in fact he was not. He was a government servant entrusted with the job of health assistant. Taking advantage of his position he misutilized the trust and rather defrauded the rustic villagers. Even if it is said that there was no definite proof of financial transaction as and by way of professional fees his impersonation as a doctor and thereby treating patient without having any medical degree was unpardonable. He, in fact, played with the life of the rustic villagers. The punishment so imposed upon him did not deserve any interference by this Court. If we show sympathy to the delinquent it would certainly be misplaced. The application thus fails and is hereby dismissed without however any order of costs.

Urgent Photostat copy of this judgment be supplied to the parties, if applied for,

on usual undertakings.

Shukla Kabir (Sinha), J.

I agree