
(1983) 08 MP CK 0017
In the Madhya Pradesh High Court
Case No : M.P. No. 484 of 1984

Vidhya Bohare

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 20-08-1983

Acts Referred:

Citation : (1987) JLJ 166

Hon'ble Judges : T.N. Singh, J; Rampal Singh, J

Bench : Division Bench

Advocate : Ashok Velankar, for the Appellant; R.A. Roman, Dy. Government Advocate for State, V.K. Bohare, for the Respondent

Final Decision : Allowed

Judgement

Dr. T.N. Singh, J.—This matter is taken up for final hearing on merits with the consent of counsel for both sides for instant disposal because of the Constitutional compulsion.

2. The petitioner is the wife-surprisingly pressing by proxy the grievance of her husband, non-petitioner No.?, a Government servant under suspension, unable to feed his family for non-payment to him by the State, the statutory "subsistence allowance" due to him. We do not deny her standing to challenge the action of State (non-petitioners No. 1 and 2) as the question is of a family being destituted. More about it later but the admitted facts of the case to be noticed first is that husband was suspended twice, on 3-5-1919 and 22-10-1983, and he is paid nothing because he did not join at Sagar where he was posted at the time of his second suspension. On these admitted facts, mentioned in the return and also orally pressed forcefully for our consideration by Deputy Government Advocate Shri Roman, we propose to base our decision in this case.

3. Learned Deputy Government Advocate, while fairly conceding that non-petitioner No. 3 is entitled to "subsistence allowance" under the law, submits that the amount due to non-petitioner No. 3 was sent by bank draft to Sagar, from

where the drafts have, come back. Why this was done ? Shri Roman submits that it was validly done, because during the period of suspension, the headquarters of non-petitioner No- 3 was fixed at Sagar and he was required to resume duty there. However, that is not the be-all and end-all of the matter. Facts are bizarre and have to be noted. Two civil suits were filed by non-petitioner No. 3, challenging the two orders passed by the department, an order of local transfer and the order of suspension in question Shri Velankar drew our attention to Annexure R. 3-A to submit that the local transfer, which order was first passed, was stayed in the first civil suit filed by non-petitioner No. 3. He has also drawn our attention to Annexure R. 3-B, which order concerned the subsequent suit, in which the suspension order was challenged. It appears that the Court, while dealing with the prayer for stay of the the suspension order, observed that the proper and adequate relief would be available to the petitioner in the suit first filed, in which the transfer order was challenged. That being the position, it is difficult to deny relief to the concerned parties in this writ petition.

4. It is the question of livelihood and the question of a family being destituted, family of a person who is in service of the State. In such a case, burden lay on the State to satisfy the Court that procedure adopted by it in taking any action, by which its employee was being deprived of his livelihood was a reasonable procedure. It is held by their Lordships of Supreme Court in the Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, that right to life granted under Article 21 also guarantees right to livelihood to a person. In any case, we are of the view that the State is bound to Directive Principles of Article 39-A and 42 and 43 of the Constitution. In infringement of Article 21 in the particular facts and circumstances of the case can be, and has to be tested in reference thereto. Indeed, another question also arises in this case, if Articles 16 and 33 were also violated by the State. Plea taken by the State obviously precludes it from answering these questions, which have indeed, to be decided in favour of the petitioner because of what is stated in several decisions of the Apex Court. Reference, in this connection, may be made to the decisions in Sheela Barse Vs. State of Maharashtra, , Ranjan Dwivedi v. Union of India AIR 1983 SC 624, State of Maharashtra Vs. Chandrabhan Tale, and Bandhwa Mukti Morcha AIR 1983 SC 802.

5. The facts of the instant case clearly manifest the position that non-petitioner No. 3 who suffered an order of local transfer, was entitled to have payment made to him to the subsistence allowance at Gwalior though his headquarters during suspension were fixed at Sagar. We say so because of what appears in Annexure R. 3-B. Judicial orders passed interpret in the cases, in our view, adequately protects non petitioner No. 3 against any arbitrary action of the State to deny payment to him of the subsistence allowance at Gwalior. We take the view that non petitioner No. 3 is entitled to have payment made to him of subsistence allowance due to him, locally, at Gwalior. We say so also for the reason why that payment of subsistence allowance is a Constitutional obligation which cannot be whittled down or saddled by any condition; the obligation must be discharged so

long the employee continues to be in the service of the State. If the State acted unreasonably in discharging its obligation, this Court shall not hesitate to enforce the obligation, and uphold thereby the Constitutional mandate. In the instant case, it appears clear to us on the facts pleaded, that a recalcitrant employee is being punished in a novel way. He is denied the right to live and live with human dignity and being subjected to "forced labour" by depriving him the bare minimum for his survival which statute has granted him in the form of "subsistence allowance." This is not permissible. This is unconstitutional and not only illegal.

6. On the question of standing, we invoke the aid of judicial dicta in *Sheela Borse and Bandhwa Mukti Morcha (supra)* and of what was stated in the Judges case *S.P. Gupta Vs. President of India and Others*, , and *P I. L. case, People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, . If action can be taken by the Court for enforcement of fundamental right of any person on a letter addressed to it to serve public interest, how can judicial redress be denied to one vitally interested in the relief for his bare survival merely because the petitioner appears as a proxy in the lis, which, however, he is definitely not pursuing out of extraneous motives.

7. For the foregoing reasons, we merely direct the State (respondents No. 1 and 2) to make payment of all arrears of subsistence allowance due to non petitioner No. 3 at Gwalior within a period of one month from to day. A copy of this order shall be given to Shri Roman to take steps in the matter. We do not also consider necessary at this stage to say anything on the further prayer made by Shri Velanker for compensation and interest for belated payment. But we may give our reason for denying him this relief in this petition. The legality of the orders of transfer and suspension being Sub-judice, these questions will be decided there.

8. In the result, this application is allowed, but in the facts and circumstances of the case, we make no order as to costs.

9. Before we part with the records, we also express the hope that the State will consider whether, in the facts and circumstances of the case, it should still maintain the direction fixing headquarters of non-petitioner No. 3 at Sager during suspension. We hope, State will consider if his headquarters should be fixed at Gwalior. Because Shri Roman had expressed strong apprehension that non-petitioner No. 3, taking cover of this order, may not join at Sager, we further direct that the final order in the disciplinary proceedings shall be passed within a period of three months.

10. A word of praise must also be said for Shri Roman, Deputy Government Advocate, who co-operated with the Court in the instant disposal of the matter and thereby maintained the high tradition of the Bar which is supposed to act in the aid of Constitutional processes and values, The Bar and the Bench must act in unison to wipe off every tear from every eye if welfare State in real term has to be established in our country and if the hopes and aspirations of teeming

millions and the primal function of founding fathers is to be truly reflected in the Constitutional text and ethos.