

(1980) 03 CAL CK 0003
In the Calcutta High Court
Case No : A.O.D. No. 654 of 1979

West Bengal Khadi and Village Industries Board	APPELLANT
Vs	
Dibyendu Prokash Bhattacharya	RESPONDENT

Date of Decision : 27-03-1980

Acts Referred:

West Bengal Khadi And Village Industries Board Act, 1959 — Section 3, 3(1), 32, 33, 5

Citation : 84 CWN 833

Hon'ble Judges : P.K. Banerjee, J;B.C. Ray, J

Bench : Division Bench

Advocate : A.P. Chatterjee and R.N. Roy, for the Appellant;T.N. Bandopadhyaya, for the Respondent

Final Decision : Allowed

Judgement

Banerjee, J.—This appeal at the instance of the West Bengal Khadi and Village Industries Board and others challenges the judgment and order passed by the Hon"ble single Judge making the Rule absolute.

The petitioner in the main Rule challenged the order of suspension which is in the following terms :--

WEST BENGAL KHADI & VILLAGE INDUSTRIES BOARD

2, Ripon Street, Calcutta-16

Order No. 237

date : 19.7.78

Whereas Disciplinary proceedings against Shri Dibyendu Prokash Bhattacharya, Auditor of the Board is being drawn up for insubordination, neglect of duty and other Charges, Shri Bhattacharya is hereby placed under suspension as directed by the Chairman West Bengal Khadi and Village Industries Board with effect from 10.7.78 (afternoon).

It is further ordered that during the period of suspension the Head Quarter of Shri Bhattacharya will be at 2, Ripon Street, Calcutta-16 and that Shri Bhattachar-ya shall not leave Head Quarter without obtaining previous permission of the authority. It is further ordered that during the period of suspension he shall get half of his pay and other allowances as admissible to him under the rules as subsistence allowance.

By order of the Chairman.

Sd- A. K. Ghosh,

Executive Officer.

No. 1725 (5) dated 19-7-78.

Copy forwarded for information and necessary action to :-.

1. Shri Dibyendu Prokash Bhattacharya, Auditor, West Bengal Khadi and Village Industries Board, 2, Ripon Street, Calcutta-16

2. Additional Executive Officer.

3. F. A. & C. A. O.

4. A. Cs, Officer.

5. Administrative Section.

Sd- A. K. Ghosh, Executive Officer.

It must be made clear that so far as the suspension order is concerned the portion by which the petitioner respondent was restrained from leaving Head Quarters without obtaining the previous permission of the authority cannot be sustained and the Hon"ble single Judge rightly set aside the order complained of to the extent indicated hereinbefore. We further say that the order was passed on 19.7.78 making the order retrospectively from 10.7.78 and when pointed out to this anomaly that there cannot be any retrospective suspension and the suspension order must take effect from 19.7.78 the learned Standing Counsel did not contend otherwise and, therefore, we must make it clear the order of suspension must take effect from 19.7.78 for the reasons already stated. We uphold the order of suspension prospectively from 19.7.78.

2. The case of the petitioner in the main Rule is that he was appointed auditor in 1964. His employer is a statutory body being the West Bengal Khadi and Village Industries Board. It is stated that the petitioner"s condition of service is governed by the rules and regulations framed in accordance with the provisions of the West Bengal Khadi and Village Industries Board Act, 1959. It is further stated that in the matter of condition of service the Chairman is responsible for implementing the decision of the Board but has no power or authority to give directions affecting the condition of service or in other words the Chairman has no power to pass an order of suspension of an employee under the Board. The

Hon"ble single Judge was pleased to uphold these contentions of the petitioner and made the Rule absolute. Being aggrieved by the said order the West Bengal Khadi and Village Industries Board (hereinafter called the Board) preferred the present appeal.

3. The learned Standing Counsel, on behalf of the appellant, contended that the Chairman of the Board has power to suspend his employee under the Rules of the West Bengal Khadi and Village Industries Board Rules, 1960, in particular under Rule 9(3) which gives the Chairman power to exercise administrative control over all departments and all officers of the Board. It is argued by Mr. Chatterjee that the Chairman exercised his power of suspension he having the administrative control over all the officer of the Board. Alternatively, Mr. Chatterjee argued that the Chairman has exercised the power of suspension under Rule 7(1) of the West Bengal Service (Classification Control and Appeal) Rule, 1971, which was specifically adopted by the Board by resolution passed on the 97th meeting held on 17.1.77. It was further stated in the resolution that the Rules applicable to the West Bengal Government Employees will be observed in the case of the employees of the Board *mutatis mutandis* and the proceedings drawn up by the State Government Board will be governed by the service conditions and rules of the State Government. It was further resolved that the Chairman be authorised for drawing up departmental proceedings against any of the Board employees till approval of the Service Regulations framed by the Board by the State Government. Mr. Chatterjee brought to our notice also the resolution passed by the Board on the 93rd meeting on 12.8.76, by which, it was argued by Mr. Chatterjee, that the Chairman was directed to initiate departmental proceedings against any other officer of the Board named in the report of the Hon"ble Justice Bijoyesh Mukherji Commission as and when deemed necessary unless otherwise advised by the Board.

4. To this submission Mr. Chatterjee, Mr. Bandopadhyaya, on behalf of the respondent, contended that Rule 9(3) of the Board Rules, 1960 does not give the Chairman any power of suspension over its employees. In our opinion, this argument of Mr. Bandopadhyaya cannot be accepted. When asked what is the "meaning of the administrative control" Mr. Bandopadhyaya was pleased to say administrative control cannot be a matter of service condition of the employee under its control. The employee's appointing authority is the Board and the Board can alone exercise the power. As we have stated hereinbefore under Rule 9(3) of the Rules made by the Board the Chairman can exercise all administrative control over all departments and officers of the Board cannot be narrowed down to say that the departmental officers are not within the control of the Chairman inasmuch as no suspension order can be passed against them. In our view, this will curtail or narrow-down the power of the Chairman in so far as the administrative control of the officers is concerned. In our opinion, the administrative control can bring with it all the powers regarding any step that may be taken against the officer when the Chairman is satisfied that such step is necessary for the purpose of controlling its officers. Mr. Bandopadhyaya further

argued that the Board being a statutory body and the Board's rules and regulations of 1960 cover the entire sphere of service conditions from appointment to termination but omits the word "Suspension". The Board cannot lay down terms and conditions of service as inherent power or general power of master for the purpose of suspension of the servant or officer of the Board. In our opinion, this argument cannot be accepted. It appears to us administrative control brings in the power of suspension as also the power of initiation of proceedings and that power is to be found under Rule 9(3) of the Rules framed in 1960 u/s 32 of the West Bengal Khadi and Village Industries Board Act, 1959.

5. Mr. Bandopadhyaya argued that the Board is the employer and not the Chairman. This power can only be exercised by the Board and not by the Chairman. While giving the reply to this argument we agree with Mr. Chatterjee that the Board's administrative power of control has been delegated to the Chairman u/s 32 of the Act. Furthermore, Rule 9 of the Rules framed by the Board u/s 33 does not in any way curtail the power of the Chairman in regard to conduct, discipline and appeal of its officers and workmen. More so, when we find by the resolution at the 93rd and 97th meetings of the Board the Chairman was specifically empowered to initiate proceedings and draw up proceedings against any of its employees. In our view also in view of the Board's resolutions till formulation of their own Rules under the statute the conditions of service as contained in the West Bengal Service (Classification, Control and Appeal) Rules, 1971, were adopted and continued and the officers will, therefore, be covered by the Rule when no new Rule has been framed. In any case, we are of the opinion the Chairman in the facts and circumstances of the case is empowered to pass an order of suspension pending departmental inquiry into the charges which are to follow.

6. Mr. Bandopadhyaya strongly relied upon P. R. Nayak's case reported in 1972 SC 554 P. R. Nayak v. Union of India, in paragraph 9, in 1964 SC 787 paragraph 11 and R. P. Kapur v. Union of India, 1977(1) SLR paragraph 18. P.R. Nayak's case is one which lays down that u/s 3 of the Indian Civil Service Rules P.R. Nayak cannot be suspended unless charge sheet is framed against him. When in the said case the argument was advanced saying that the appointing authority has inherent power to make an order of suspension apart from the statutory power even if the statutory power is absent their Lordships in the Supreme Court held that the order of suspension cannot be made because there is a specific Rule under Rule 3(1) of the Civil Service Rules that an officer of the rank of P.R. Nayak cannot be suspended in contemplation of an inquiry unless he has already been charge-sheeted in view of the specific statutory provision u/s 3 of the Rule. In that view of the matter, in our opinion, this case has no application to the facts and circumstances of the present case. Mr. Bandopadhyaya referred to T. Cajee v. Jormanik, 1961 SC 276, and argued that the appellant cannot suspend the petitioner as the suspension according to the Supreme Court is of two kinds. In the first place, suspension may be as a punishment and in the second place interim suspension pending inquiry. In this type of interim suspension without

some provisions of the statute or the rules the master cannot withhold the wages of the servant though he has the power for asking the servant not to perform his duties or the servant to work but he must be paid the full wages for the period. In our opinion, this case has no application to the facts of the present case. In view of the statutory power given under the West Bengal Payment of Subsistence Allowance Act, 1969 it is undoubtedly true that the Board comes within the word "Establishment" and section 3 comes into operation and the petitioner respondent will be entitled to his subsistence allowance u/s 3 of the Act which provides that for the period exceeding ninety days payment by the employer as subsistence allowance will be an amount equal to fifty per cent of the wages which the employee was drawing immediately before the suspension and with the expiry of the said ninety days as provided u/s 3(1) seventy five per cent of the amount of subsistence allowance will have to be increased till the departmental proceeding is disposed of.

7. Mr. Bandopadhyaya, however, contended that in view of section 5 which says the rights and privileges of an employee which are more favourable to him and were in vague when the Act came into force the West Bengal Payment of Subsistence Allowance Act, 1969 will not apply. In our view, Mr. Bandopadhyaya's contention is not correct. There was no rule before the suspension order is made in so far as the subsistence allowance is concerned. On the other hand, as it was alternatively argued by the learned Standing Counsel that the West Bengal Service (Classification, Control and Appeal) Rules, 1971 applies there was already existence of a rule by which subsistence allowance of the employee has been controlled. It does not appear the West Bengal Subsistence Allowance Act was in any way unfavorable to the Rules itself.

8. In the- circumstances, the appeal is allowed. The Order impugned is set aside to the extent hereinbefore stated. We uphold Mr. Bandopadhyaya's argument regarding restraining the petitioner respondent from leaving his Head Quarters without permission and we also direct the appellant to give the petitioner respondent subsistence allowance in accordance with the West Bengal Payment of Subsistence Allowance Act, 1969.

There will be no order as to costs.

9. An oral application for leave to appeal to the Supreme Court was made and it is hereby refused as in our opinion no substantial question of law of public importance has been raised in this matter and that we do not feel that such question should be resolved by the Supreme Court.

B.C. Roy, J.

I agree.