

(2010) 03 CAL CK 0001

Calcutta High Court

Case No: Writ Petition No. 1065 of 1999

Nageshwar Prosad

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: March 23, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226, 32

Citation: (2010) 2 CALLT 375

Hon'ble Judges: I.P. Mukerji, J

Bench: Single Bench

Advocate: Bharati Ghosh Dutta, for the Appellant; A.K. Gayen, for the Respondent

Final Decision: Allowed

Judgement

I.P. Mukerji, J.

I will deal with the objection concerning territorial jurisdiction first. In this case, at the time of institution of the writ application the service of the writ petitioner was under the Eastern Railway administration having its headquarters in Calcutta. Subsequently in 2002 East Central Railway was created. That service would now be under the East Central Railway which is not within the territory of West Bengal. It is said that by virtue of this, this Court has lost its jurisdiction to try this case.

2. Furthermore, it has been contended on behalf of the respondent Railways that the service of the petitioner was in or near Patna, Bihar, the absence from service was also at or near that place, the show-cause notice or charge-sheet was issued there, the Enquiry Officer conducted the there, which are outside the jurisdiction of this Court.

3. The learned counsel representing the respondents, also represents East Central Railway.

4. I have considered Article 226 of the Constitution of India. Sub-sections 1 and 2 are reproduced below:

226. Power of High Courts to issue certain writs.-(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

5. Sub sections 1 and 2 of Article 226 deal with the territorial jurisdiction of the High Court to issue writs. The words of sub sections 1 and 2 are not absolutely simple. They admit of interpretation but what is reasonably clear is this. The High Court has the power to issue writs to any government or person within the territories in which it exercises jurisdiction. By sub section 2 that power to issue a writ or order is available, if part of the cause of action arises within the territorial jurisdiction of the High Court. In that case, it may issue a writ or order to any government or person, whether the seat of such government is within the territory or not. Therefore, under sub section 1 if any government or authority is within jurisdiction writ or order may be issued, irrespective of the place of occurrence of the cause of action. Under sub section 2 a writ may be issued to any government or person or authority within or outside the territorial limits if part of cause of action arises within the jurisdiction of the High Court.

6. It is not necessary for me to decide the issue as to what happens when an authority is within jurisdiction at the time of filing of the writ application but ceases to be within jurisdiction at the time of hearing of the writ, because that point was not argued and secondly that point need not be decided for determination of the territorial jurisdiction issue in this writ. Here, the order of the appellate authority impugned has been passed within the territorial jurisdiction of this High Court. Therefore, part of the cause of action has arisen within the jurisdiction of the Court. I have no hesitation in holding that this Court has the jurisdiction to determine the merits of the matter. This objection is accordingly rejected.

7. The writ petitioner was a constable in the Railway Protection Force. His number was 2156, the place of posting being Danapur, Bihar. He was issued a charge-sheet on 2nd January 1992. This charge-sheet stated that an enquiry would be held

against him under Rule 153 of the Railway Protection Force Rules 1987. There were two accusations, first on 26th October 1991, from his place of posting he had gone to Patna from where he left for his native place without obtaining leave from the Railways and thereafter not regularising it. He rejoined on 8th December 1991, that is, about 1 1/2 months later. The second accusation against him was that he was a regular absentee with a "bad record in this regard. He was asked to show-cause why suitable punishment should not be imposed. The enquiry was fixed on 20th January 1992. The defence of the writ petitioner discloses a very unfortunate story. The truth of it has neither been contradicted nor disproved at the enquiry. On reaching Patna he heard that his daughter was ill and proceeded to his native place. His daughter died, before he arrived. Soon thereafter an uncle of his also died. After all the religious ceremonies he rejoined duty on 8th December 1991, that is after a period of about 1 1/2 months.

8. In fact after detailed enquiry the Enquiry Officer has found in his order and report dated 31st December 1993 as follows:

Regarding charge No. 1. The party charged states that on 26.10.91 being post, he had gone to Patna for shopping and there he received information about sickness of his daughter. As such he left for his native place from Patna itself. On reaching home he found his daughter had expired and he stayed there to perform her last rights. He further states that subsequently his uncle expired at Dibrugrah and he went there to attend the ceremony and thereafter he joined duty on 8.12.91.

His contention may be true but his act of leaving for his native place from Patna itself was highly irregular and breach of discipline. He should have left for his native place only after his leave sanctioned. Unfortunately this was not done by him.

9. In spite of finding that "his contention may be true" he goes on to hold that the writ petitioner "leaving for his native place from Patna itself was highly irregular and breach of discipline. He should have left for his native place only after his leave sanctioned."

10. Then the Enquiry Officer proceeds to discuss his past record of absence.

11. At the end of the order he directs removal of the writ petitioner constable from service with immediate effect.

12. The constable writ petitioner preferred a writ in this Court being W.P. No. 1413 of 1996, Nageshwar Prasad v. Union of India and others. In this writ application by its order dated 3rd December 1998 this Court directed the appellate authority to consider all questions including punishment.

13. Now, the appellate authority being the Security Commissioner Railway Protection Force, Eastern Railway Calcutta has passed the following order on 21st January, 1999 which is impugned in the writ application:

In this appeal he had not come up with any fresh ground to merit a reversal of the order of his disciplinary authority. I don't find any infirmity in this case. Hence, there is no reason to interfere with the appellate order passed by the DSC/DNR. The appeal of the petitioner is therefore dismissed.

14. When the High Court directs an appellate authority to reconsider a matter afresh that authority is required to decide the entire matter considering facts, evidence, law and to come to a decision. This very statement in the order "In this appeal he had not come up with any fresh ground to merit a reversal of the order of his disciplinary authority" is a glaring example of the Chief Security Commissioner's defiance of and disregard to the order passed by the Court. In fact it would have been proper to haul up this adjudicator for contempt and deal with him appropriately. But it appears that no steps have been taken by the writ petitioner except filing this writ application challenging that order. After a period of over 10 years there is no point in digging up this kind of insubordination because it will serve no purpose.

15. When this kind of a cause is shown which could not be controverted by the employer railways - that the constable had heard of the sudden illness of his daughter and upon hearing of such illness he proceeded to his village to see her and take care of her; then upon arriving in the village he found that she had already expired - the finding of the Enquiry Officer upheld by the authority that this constable was required to travel back to Patna and obtain a formal leave before proceeding to see his daughter is in my opinion inventing a rule of a monster, when no such rule exists. On my understanding of the service rules on such an occasion the constable was at liberty to proceed straightway to attend, to his daughter and apply for leave subsequently which ought to have been granted, considering the circumstances. I find from the records that the writ petitioner had informed his authorities of his predicament and that is enough, in the circumstance. No anxious and worried father hearing of his daughter's sudden and grave illness is expected to travel to his place of work and apply for formal leave as has been held by the Enquiry Officer. Far less is the requirement of a bereaved father, whose daughter died quite unexpectedly. In any case, the absence was for about 1 1/2 months only. Even if there was some irregularity there was power in the superior officers to condone such irregularity. They should have done so. This kind of draconian and absolutely arbitrary, ruthless and above all erroneous interpretation and application of rules has no place in a country where the rule of law is still paramount.

16. In my opinion, past absence or irregular record of service is a factor to be taken into account in awarding punishment but when no steps had been taken in respect of that past absence, or steps had been taken and punishment imposed, that record may be considered for the purpose of considering the level of punishment to a reasonable extent, in appropriate cases. But a past record of absence cannot be joined with the principal cause for which an alleged delinquent has been asked to

show-cause, to inflict a disproportionate punishment to that which was warranted by the subject matter of the show-cause notice if proved. In the rules there are several levels of punishment to be inflicted upon a delinquent. In this case the harshest punishment of removal from service has been inflicted. In my opinion, there should have been no punishment at all for this kind of a cause. This whole enquiry process is vitiated by the highest level of arbitrariness and discrimination.

17. In view of my above observations, there is no point granting a further opportunity to the appellate authority to revise its own order. I have no doubt in my mind from the conduct of the Enquiry Officer and the appellate authority that their minds were absolutely closed and that a particular decision was predetermined. No matter how persuasive the case of the petitioner is or how compelling his arguments are, that decision is not likely to be changed, even now. As a consequence a further substantial period of time will be lost in making the decision and more time in challenging the decision before the Court in a new round of proceedings, before the writ petitioner can get any relief. He has already crossed the age of superannuation and I will not permit this exercise any more. I propose to dispose of the matter myself.

18. In those circumstances, the impugned order along with all the proceedings are quashed and set aside. It has been submitted that this discharged constable has crossed the superannuation age. In that view of the matter, he has to be treated as if he was in service from 26th October 1991 till the age of his retirement under the service rules. All his arrear salaries, allowances, gratuity, pension and other benefits, as admissible in law, have to be paid by the East Central Railway accordingly, within a period of three months from the date of communication of this order. The said Railway authorities will also keep on paying his pension and other retiral benefits as employees of his status are entitled to.

19. The writ application is accordingly allowed.

Urgent certified photocopy of this judgment and order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.