

(1991) 02 CAL CK 0005

Calcutta High Court

Case No: Civil Order 14273 (W) of 1985

Chandi Charan Bose

APPELLANT

Vs

West Bengal State Electricity
Board

RESPONDENT

Date of Decision: Feb. 8, 1991

Acts Referred:

- Constitution of India, 1950 - Article 14
- West Bengal State Electricity Board Employees Service Regulations - Regulation 34

Citation: (1994) 1 ILR (Cal) 335

Hon'ble Judges: Susanta Chatterji, J

Bench: Single Bench

Advocate: Gautain Dutta, for the Appellant; P.K. Ray and K.K. Dasgupta, for the Respondent

Final Decision: Allowed

Judgement

Susanta Chatterji, J.

The writ petition has been filed by an Accounts Officer since suspended under West Bengal State Electricity Board in the district of Nadia challenging inter alia the disciplinary proceeding on the basis of the charge-sheet copy of which is Annex. "G" to the writ petition. It is alleged that the order of suspension cannot be passed as a matter of course in all cases where the disciplinary proceedings are initiated against the delinquent employees inasmuch as there are cases where disciplinary proceedings are initiated against the delinquent employees inasmuch as there are cases where disciplinary proceeding is conducted without suspending the employee. It is stated in detail that in the instant case the authorities cannot form the opinion inasmuch as the Petitioner has been kept out of office since March 23, 1984, by virtue of order of termination and the purported reinstatement of the Petitioner by the order dated February 25, 1985, which does not permit the Petitioner to join the office in view of the formation of opinion on the part of the

Respondents that if the Petitioner is allowed to remain in office his presence in office will prejudicially affect the disciplinary proceeding. It is stated in detail that the Petitioner joined West Bengal State Electricity Board on June 17, 1957. The Petitioner became a Storekeeper from January 2, 1959 and from the said post he was promoted to the post of Lower Division Clerk (Directorate) on April 30, 1962. He became an Assistant Accountant on January 2, 1966, and thereafter he was promoted to the post of Accountant on April 17, 1973, and lastly he was promoted an Accounts Officer on September 30, 1981. The Petitioner's service as Accounts Officer was confirmed and suddenly in the afternoon on March 23, 1984, he received a purported order of termination and a cheque amounting to Rs. 6,108. Being shocked to receive the order of termination of satisfactory service of 27 years without any notice and/or without any proceeding, the Petitioner challenged the impugned order and the relevant regulation of the West Bengal State Electricity Board Employees' Service Regulation to dismiss an employee under a cloak to interfere with the service of the employee arbitrarily. The Petitioner moved the writ Court challenging the impugned order and Regulation 34 as aforesaid and there was an order of injunction with effect to the order of termination. The matter went before the Division Bench and it was found ultimately that Regulation No. 34 contravenes Article 14 of the Constitution of India and the same was struck down as invalid. The impugned order of termination of the service of the Petitioner was quashed as inoperative and void. The Chairman of the West Bengal State Electricity Board passed an order on February 25, 1985, to reinstate the Petitioner in service. Thereafter, by the impugned Memo No. 309 dated February 25, 1985, the Chairman of the said Board was pleased to issue an order purporting to place the Petitioner under suspension with immediate effect. The copy of the said order is Annex "D" to the writ petition. By another Memo, dated February 23/25, 1985, a cheque for Rs. 16,288 was issued in favour of the Petitioner being his gross salary from August 1, 1984 to August 31, 85. It is placed on record that against the judgment of the Hon'ble Division Bench of this Court the West Bengal State Electricity Board preferred a SLP before the Hon'ble Supreme Court in the case of Deshbandhu Ghosh, another employee, and the SLP (Civil 2835 of 1985) was dismissed and the judgment of the Division Bench was upheld. It is further placed on record that a disciplinary proceeding has been initiated against the Petitioner in respect of the self-same allegation which was considered in the earlier writ petition and after the extinction of the earlier writ petition upto the Apex Court of the country, the fresh charge-sheet has been followed containing the same allegations which were the subject-matter in the previous writ petition. It transpires from Annex. "G" to the writ petition that the Petitioner has been charge-sheeted on 3 (three) counts. The Petitioner has challenged the purported order of suspension, charge-sheet and the entire disciplinary proceeding. The Petitioner submitted his reply to the charge-sheet and it was made clear that no fair enquiry is possible in respect of the allegation against him. The Petitioner requested the authorities to allow the inspection of documents in connection with the charges and by the letter dated July

4, 1985, he specifically demanded copies of the documents and papers for inspection. According to the Petitioner, there is a guideline for holding of expedition of departmental enquiry and it ought not to take more than 4 (four) months time to complete the enquiry in terms of a circular (copy of which is Annex. "J" to the writ petition). It is highlighted that the charge-sheet and the impugned disciplinary proceeding were allowed to continue in terms of an interim order of this Court and the Respondents were restrained from giving any final order, if any.

2. The writ petition is contested by the Respondent Board by filing a comprehensive affidavit-in-opposition. The allegations of the writ Petitioner have been controverted and it is divulged that the Board has suffered considerable loss by reason of the irregularities committed by the Petitioner and it was bona fide decided on the basis of records and available materials that the continuance of the Petitioner in service would neither be suitable for the Board nor be in the interest of the public. It was decided without coming to any conclusion with regard to the guilt or otherwise of the Petitioner, proper steps should be taken and in the said circumstances at that stage that the Board might have intended to inflict any punishment whatsoever on the Petitioner and no stigma has been cast on the Petitioner in any manner whatsoever. The Board had done fairly to discharge the Petitioner following the existing regulation. It is further stated that the Petitioner was reinstated in service in compliance with the order dated January 28, 1985, passed by the High Court at Calcutta and in compliance with the said order a cheque for a sum of Rs. 16,288 was issued and by a memo, dated February 28, 1985 the Chairman of the Board placed the writ Petitioner again under suspension for charges of misconduct and serious breach of discipline. It was intimated that the writ Petitioner has drawn subsistence allowance as admissible from time to time. It is a specific case of the Respondents that the charges are bona fide and fair and disciplinary proceeding was conducted and the Petitioner cannot have any grievance to move the writ Court once again and the present petition is misconceived and liable to be dismissed. This Court has patiently considered the lengthy submission made on behalf of the respective parties. The attention of the Court has been drawn to the facts of the case as detailed in the pleadings filed by the parties. The attention of the Court has also been drawn to a case, [Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh](#). It is found that after an order passed in an enquiry against the public servant imposing a penalty is quashed by a civil Court, a further proceeding can be commenced against him if in the proceeding in which the order quashing the enquiry was passed, the merits of the charge against the public servant were never investigated. Where the High Court decreed the suit of the public servant on the ground that the procedure for imposing the penalty was irregular, such a decision cannot be prevented the State from commencing another enquiry in respect of the same subject-matter consistently with the provisions of Arts. 310 and 311 of the Constitution. If the State Government is competent to order a fresh enquiry it would be competent to direct suspension of the public servant during the pendency of the

enquiry. Another decision was cited from the Bar in [K.R. Deb Vs. The Collector of Central Excise, Shillong](#). The ratio of the said decision is that if there is some defect in an enquiry conducted by the Enquiry Officer, the Disciplinary Authority can direct the Enquiry Officer to conduct further enquiries in respect of that matter, but it cannot direct a fresh enquiry to be conducted by some other officers. Much emphasis has been laid upon the decision in [Anand Narain Shukla Vs. State of Madhya Pradesh](#). It considered that the propriety of second enquiry vis-a-vis where first enquiry vitiated owing to a technical defect and a fresh enquiry on the same old charges can be held on merits. It was found that reinstatement order which followed quashing the reversing order based on the first enquiry invalidate the second enquiry and the subsequent enquiry and consequential reversion were found to be valid.

3. With great anxieties, this Court has gone through the materials on record and tried to appreciate the ratio of the decisions cited from the Bar in support of the contention of the Respondents as to the validity of the order of suspension, charge-sheet and the disciplinary proceeding conducted thereafter since challenged before this Court in the second writ petition. It is also to be appreciated that the ratio of the reported decisions has to be applied to the facts and circumstances of each case. Regard being had to the background of the present case and the steps taken by the Respondents after disposal of the earlier writ petition may not be lost sight of. It transpires that the Petitioner's service was terminated by resorting to Regulation 34 of the West Bengal State Electricity Board Employees' Service Regulation and while the same was challenged, certain specific facts were pleaded as to the basis to terminate the service of the Petitioner. The matter was seriously contested upto the Hon'ble Supreme Court. After the order of quashing the impugned termination and striking down the connected regulation, the Petitioner was not allowed to join although there was a specific order of reinstatement by the High Court and the said judgment was upheld by the said Hon'ble Supreme Court. The facts lead to convince this Court that the Respondents jealously pursued the matter in not permitting the Petitioner to join the service in spite of order of reinstatement and by putting him under suspension and to receive salary for a few months in order to comply with the order of the Court and/or to circumvent the situation. Very serious allegations have been made by the Petitioner that the order of suspension is not fair and reasonable. It is an outcome of malice, and due to challenge of an employee against the regulation of the Board, and the Petitioner succeeded in quashing the order of termination on the basis of irregular and illegal regulation. It has to be appreciated that any dry principle of law cannot answer the requirement of substantive justice unless the facts of the case are properly appreciated in real perspective. Every case has its own dimension. The modern jurisprudence in India has always indicated that there should be lifting of the veil and there should be proper appreciation of the facts of each case and to consider the principle of law to adjudicate the matter as the situation demands. In the instant

case, this Court, with great anxiety, has scrutinised the order of suspension which was issued after disposal of the previous writ petition upto the apex Court of the country and a charge-sheet was followed containing the charges which appeared, on scrutiny, to have no merit in accordance with law. Furthermore, the disciplinary proceeding continued after the purported charges were not fair, and reasonable opportunities were denied to the Petitioner to inspect necessary documents and to participate the proceedings by defending his interest in accordance with law. Moreover, the charges levelled against the Petitioner are found to be remote having no nexus to the offences as allegedly committed. The charges appear to be biased, motivated and irrelevant. This Court is convinced that in order to keep the -Petitioner away after he was successful in the previous writ petition by quashing the impugned order of termination and also by obtaining the order of the Court in striking Regulation 34 as aforesaid, the charges have been brought and preceded by the order of suspension. The entire step appears to be thoroughly misconceived. It is no doubt that if an earlier step to terminate an employee is found to be irregular on certain technical ground, there is no bar to hold a fresh enquiry on merit. But there is no law to permit a jealous employer to proceed against a successful employee who has been able to quash a frivolous charge-sheet to terminate the service of the employee to be faced with another ground of illegal attempt to dismiss his service by resorting to frivolous charges and lengthy disciplinary proceeding to the greatest prejudice of a service career. This type of step by any recalcitrant employer, howsoever high it is, is strongly deprecated by the Courts with judicial wisdom. In the instant case, upon scrutiny, this Court finds that the charges levelled against the Petitioner suffer from inherent defects. There was no necessity to issue the purported order of suspension to facilitate the enquiry as to the nature of the charges so warrant. Besides, the charges have not been properly proved and the materials produced before this Court indicate, inter alia, that there is a serious defect in the decision making process of the Respondent in dispensing with the service of the Petitioner. Since, the charges are irregular and illegal and since the charges have not been properly proved and since the Petitioner has been denied to obtain reasonable opportunities to participate in the proceedings fairly and reasonably, this Court has no hesitation to observe that the steps taken by the Respondents in issuing the order of suspension, the charge-sheet and to continue disciplinary proceeding thereafter are contrary to and inconsistent with the provisions of service jurisprudence. This Court finds sufficient merit in the contention of the writ petition and, accordingly, the writ petition is allowed and an appropriate writ is issued by quashing the order of suspension, the charge-sheet and the disciplinary proceeding and the Petitioner is entitled to all the reliefs as he would be deemed to continue in service until the same is determined in accordance with law. He is entitled to all consequential reliefs as admissible in law within a period of 2 (two) months. There will be costs of 100 G. Ms, to be paid by the Respondents to the Petitioner.