

(2012) 08 CAL CK 0009

Calcutta High Court

Case No: W.P.C.R.C. 68 (W) of 2012 (Arising out of CPAN NO. 719 of 2011)

Sanat Kumar Halder

APPELLANT

Vs

Amar Kr. Seal

RESPONDENT

Date of Decision: Aug. 28, 2012

Acts Referred:

- Constitution of India, 1950 - Article 215
- Criminal Procedure Code, 1973 (CrPC) - Section 173(2)
- Penal Code, 1860 (IPC) - Section 120B, 406, 418

Citation: (2013) 1 CHN 567

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: Rabilal Moitra and Mr. Ashim Kumar Halder, for the Appellant; Swapan Kumar Pal, for the Respondent

Final Decision: Dismissed

Judgement

Hon'ble Justice Dipankar Datta

1. W.P. 11663(W) of 2010, filed by the petitioner, was disposed of on November 30, 2010. The order reads as follows:

The petitioner was the Headmaster of Ghonja High School (HS). He retired from service on attaining the age of superannuation on 28.2.2010. However, by an order dated 23.2.2010 he was placed under suspension on the allegation of misappropriation of school funds.

In this petition dated 21.5.2010, the petitioner has prayed for direction on the respondent authorities to sanction pension, gratuity and other retiral benefits including provident fund and to release the same at an early date.

I have heard counsel for the parties.

Even if the petitioner has committed the offence of misappropriation of funds, the school authority has no competence to proceed against him departmentally in view of the Division Bench decision of this Court reported in [Durgadas Mukhopadhyay Vs. State of West Bengal and Others](#), . Interim suspension, ordered by the school, therefore, is of no significance.

However, it has been brought to my notice that a complaint has been lodged with the police authorities on the selfsame allegation of misappropriation of funds by the petitioner. No charge-sheet has yet been submitted before the criminal court and hence, question of taking cognizance does not arise. As on date, it cannot be contended that any criminal proceeding is pending against the petitioner. There can, therefore, be no impediment in sanctioning and releasing retiral benefits in favour of the petitioner.

This writ petition stands disposed of with a direction upon the District Inspector of Schools (S.E.), North 24 Parganas to take necessary steps for release of retiral benefits in favour of the petitioner after complying with all legal formalities.

The District Inspector must ensure that the petitioner sees the colour of pension and other retirement benefits as early as possible but not later than 6 months from date.

It is, however, made clear that if the criminal court takes cognizance of offence allegedly committed by the petitioner, and by that time the petitioner has not been paid his entire retiral benefits, he shall be entitled to provisional pension and provisional gratuity in terms of the rules till such time he is exonerated in the criminal proceedings.

If the petitioner is entitled to his own contribution of provident fund, the District Inspector shall ensure that the same is released in his favour as early as possible but not later than a month from date of receipt of a copy of this order.

There shall be no order as to costs.

Urgent certified photostat copy of this order if applied for, be supplied to the parties expeditiously.

By filing CPAN 719 of 2011, the petitioner alleged wilful and deliberate violation of the directions contained in the order dated November 30, 2010 by Sri Amar Kr. Seal, the District Inspector of Schools (SE), 24 Parganas (N).

2. Despite service of the contempt application on the contemnor/respondent, he did not appear on January 24, 2012. Rule was issued calling upon him to show cause as to why he should not be committed to prison or otherwise penalised or dealt with for wilful and deliberate violation of the order dated November 30, 2010.

3. The contemnor/respondent, upon service of the Rule, has filed his answer thereto on affidavit in due time, whereafter the parties have been heard.

4. Mr. Mitra, learned senior advocate appearing for the petitioner, contended that despite cognizance of offence, allegedly committed by the petitioner, not having been taken by the Additional Chief Judicial Magistrate, Bongaon (hereafter the ACJM) within May 30, 2011 i.e. six months from November 30, 2010 (the date of disposal of the writ petition), the contemnor/respondent did not take steps for release of entire retiral benefits and instead issued office orders for release of provisional pension and provisional gratuity in favour of the petitioner. There being a clear case of contempt, he urged the Court to send the contemnor/respondent to prison and to bridge the breach, to pass direction on him to take immediate steps for release of entire retiral benefits.

5. The power of the High Court to punish for contempt of itself flows from Article 215 of the Constitution. Law is well settled that being a special jurisdiction, wherein unusually the prosecutor and the judge are combined in one, it has to be sparingly exercised with utmost restraint and considerable circumspection, and only in appropriate cases, to uphold the dignity of the Court and the majesty of law and to keep the stream of administration of justice pure and clean. Mere violation of an order of Court or undertaking given before Court by a party bound thereby does not amount to civil contempt. Proceedings in contempt being of a quasi-criminal nature, it must be demonstrated without any shadow of doubt before the Court that the violation complained of is not accidental or involuntary but is deliberate and wilful to lower the prestige, majesty and dignity of the Court and by his action(s) the contemnor has shown utter disrespect and disobedience to the order.

6. There has indeed been a violation of the Court's order dated November 30, 2011. However, bearing the aforesaid principles in mind, I propose to consider whether this is an appropriate case for punishing the contemnor/respondent.

7. The answer of the contemnor/respondent to the Rule reveals a state of affairs, which the Court can never ignore while deciding whether he has wilfully and deliberately violated the order dated November 30, 2010 and, therefore, is in contempt or not.

8. It appears therefrom that even before the writ petition was considered on November 30, 2010, the police officer entrusted to investigate Gaighata Police Station Case No. 128 dated April 21, 2010 had written the police report u/s 173(2), Code of Criminal Procedure, resulting in the birth of charge-sheet No. 561 of 2010 dated November 27, 2010 under Sections 406/418/120B, Indian Penal Code. The petitioner was shown therein as one of three accused persons.

9. Despite preparation of the charge-sheet on November 27, 2010 and forwarding thereof by the Officer-in-Charge, Gaighata Police Station on the same date, it reached the ACJM only on August 11, 2011. The charge-sheet, thus, travelled 17 Kms. (approx.) i.e. the distance between Gaighata Police Station and the Court premises of the ACJM, in seven months fourteen days. The progress, to say the least,

is startling. It defies logic and raises suspicion.

10. Be that as it may, the ACJM took cognizance on August 11, 2011 itself. It is no doubt true that with taking of cognizance by the ACJM, in law it could be regarded that a criminal proceeding is pending against the petitioner. It is only when a criminal proceeding is pending that the extant rule ordains release of provisional pension and provisional gratuity in favour of the person proceeded against.

11. Who would benefit from delayed receipt of the charge-sheet dated November 27, 2010 by the ACJM thereby preventing him to take cognizance of the offence, in view of the order dated November 30, 2010? Even a student of law can answer the question. Though Mr. Mitra has vehemently argued that the petitioner had no role to play in belated transmission of the charge-sheet to the Court of the ACJM, this Court refuses to believe that the petitioner is innocent. The beneficiary of delayed transmission of the charge-sheet being none other than the petitioner, he cannot wriggle out by feigning ignorance and the finger has to be raised at him. The contempt jurisdiction of the High Court under Article 215 of the Constitution is not intended to approve dishonest acts.

12. Even if the petitioner was not instrumental at all in delaying transmission of the charge-sheet to the Court of the ACJM, he can not reap the benefit of procedural delay and corruption that is so inextricably involved in the system today. Once the charge-sheet was written by the Investigating Officer, investigation at the end of the police was complete and the procedural delay of the charge-sheet reaching the Court of the ACJM via the G.R.O. cannot enure to his benefit. Since all steps at the end of the police were complete, it would be subversion of the rule of law and an abuse of power to hold that the contemnor/respondent is in contempt, and thereby allow the petitioner to walk away with all his retiral benefits unscathed.

13. It is difficult, in the circumstances, to hold that there has been wilful and deliberate violation of the Court's order. The Rule stands discharged and the contempt application stands dismissed, without order for costs.

Urgent photostat certified copy of this judgment and order, if applied for, shall be furnished to the applicant at an early date.