

(1997) 2 CALLT 490

Calcutta High Court

Case No: C.O. No. 18227 (W) of 1994

Gobinda Prasad Das

APPELLANT

Vs

State of West Bengal
and Others

RESPONDENT

Date of Decision: Feb. 19, 1997

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 325, 498A
- West Bengal Panchayat (Gram Panchayat Administration) Rules, 1981 - Rule 37

Citation: (1997) 2 CALLT 490

Hon'ble Judges: Nripendra Kumar Bhattacharyya, J

Bench: Single Bench

Advocate: P.K. Ray, P. Nath and Prabir Banerjee, for the Appellant; Satyajit Mondal, for Respondent Nos. 4, 6 to 14 and 16 to 24, for the Respondent

Final Decision: Allowed

Judgement

Nripendra Kumar Bhattacharyya, J.

Let the notice showing service upon the respondents filed in court today be kept on record. No one appears for the State respondents. Mr. Satyajit Mondal, learned Advocate, appears for the respondents Nos. 4, 6 to 14 and 16 to 24 and files a Vakalatnama on their behalf. Let it be also kept on record.

2. Heard the submissions of the learned Senior Advocate for the writ petitioner, Mr. P.K. Ray appearing with the learned Advocates Mr. P. Nath and Mr. Prabir Banerjee and the learned Advocate for the respondents Nos. 4, 6 to 14 and 16 to 24, Mr. Satyajit Mondal. Considered the materials on record.

3. The grievance of the Writ petitioner is that his service has been terminated without giving any opportunity to him to show cause. It has further been alleged that no notice

was ever served on him. The petitioner was working as job assistant of Ramganga Gram Panchayat and he was arrested in connection with a case u/s 498A/325 of the Indian Penal Code, being Pathar Pratima P.S. Case No. 48 dated 30.4.94 and the same was registered and he was taken into custody and he was kept in the custody for more than 48 hours. He was placed under suspension even though the order of suspension was not served on him. The panchayat authorities asked for a report from the District Panchayat Officer, 24 Parganas (South), PS. All pore, and the said officer explained the position that under Rule 37 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 1981, the petitioner can be suspended. On such recommendation, though suspension order was issued against the petitioner, that was never served. Ultimately the criminal case ended in compromise. In the meantime, another notice, though issued but not served, against the petitioner alleging that he is guilty of other offences and that is contained in Annexure "H" at page 28 of the affidavit-in-opposition. Unfortunately that notice was also not served. But a resolution was taken by the members of the Gram Panchayat on 22nd June, 1994, terminating the service of the petitioner. Rule 37 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 1981, inter alia, envisages as under:-

"(1) The Gram Panchayat may take disciplinary action against any officer or employee appointed under sub-rule (1) of Rule 36 by removing or dismissing him from service or by forfeiting his salary for a period not exceeding one month. The Gram Panchayat may also recover from the pay of any such officer or employee the whole or part of any pecuniary loss caused to the Gram Panchayat by negligence or breach of orders.

(2) Before any disciplinary action referred to in sub-rule (1) is taken against any officer or employee, the Gram Panchayat shall give him a reasonable opportunity of being heard.

(3) The Gram Panchayat may place any officer or employee under suspension where a disciplinary proceeding against him under this rule is contemplated or is pending and shall record in writing the circumstances in which the order of suspension is made."

4. So, the Rule shows that three types of punishment were prescribed, and their removal or dismissal from the services and by forfeiting the salary of the incumbent for a period not exceeding one month. But the Gram Panchayat has imposed the penalty of dismissal which is more onerous. Under the principles of Service Rules the authority should not proceed against the incumbent with a mala fide motive and the punishment that is to be inflicted must be in consonance with the allegation levelled against. In the instant case the allegation levelled against for which the suspension order was passed is that the writ petitioner was detained in custody for more than 48 hours. But that is for the purpose of suspension not for termination. When there are provisions for lesser penalties the authorities must go in for lesser penalties and not for onerous penalties which is more severe in nature. Secondly, no opportunity was given to the petitioner to show cause or any opportunity was afforded hearing.

5. In such circumstances, in my view, the order impugned cannot be sustained and I, accordingly, quash the same. However, this will not preclude the appropriate authorities from proceeding against the writ petitioner in accordance with law.

6. As there is no order of termination now, the petitioner may be directed to join his duties.

7. The writ application is thus allowed. There will be no order as to costs. Let the A/O filed in court be kept on record.

Be it recorded that though this matter has been listed under the heading "To be mentioned", it has been heard out and taken up for final disposal.

As prayed for, let a plain copy of this order countersigned by the Assistant Registrar (court) be handed over to the learned Advocate for the writ petitioner on his undertaking to apply for a certified copy of the same on his depositing the requisite number of stamps and folios. The learned Advocate for the petitioner is also directed to hand over a xerox copy of the plain copy of this order to the learned Advocate for the respondents Nos. 4, 6 to 14 and 16 to 24.