

(1981) 06 CAL CK 0022

Calcutta High Court

Case No: C.R. 5141 (W) of 1979

Promatha Nath Das

APPELLANT

Vs

Executive Officer, Midnapore
Zilla Parishad and Others

RESPONDENT

Date of Decision: June 4, 1981

Citation: 85 CWN 855

Hon'ble Judges: B.C. Roy, J

Bench: Single Bench

Advocate: J.K. Banerjee and D.P. Adhikari, for the Appellant; Bidyut Kumar Banerjee, for the Respondent

Judgement

B.C. Roy, J.

This Rule is directed against the order of suspension issued by the Executive Officer, Midnapore Zilla Parishad on 29.5.79 placing the petitioner Pramatha Nath Das, a Sub-Divisional Officer under Midnapore Zilla Parishad under suspension from services of the Parishad with effect from the date of receipt of this order unless otherwise directed. It has also been stated in the order that the petitioner will get his pay, allowances etc. during the period of his suspension so far the existing rules will provide. This order has been challenged-mainly on the ground that the petitioner being an employee under the Zilla Parishad drawing a salary of more than Rs. 300/- per month and he being appointed by the Zilla Parishad, executive officer of the Zilla Parishad, respondent No. 1, is not competent to make the impugned order as it is in the nature of a punishment which the respondent No. 1 cannot inflict upon an officer drawing a monthly salary of more than Rs. 300/-. It has, therefore, been submitted that the impugned order is patently without jurisdiction and as such it is liable to be quashed and set aside.

2. A Rule and an interim order was issued. The interim order was to be the following effect :

The petitioner will not attend office for a period of two weeks with liberty to apply for extension of the same on the same application upon notice along with copies of the writ petition on the respondents. The petitioner will be entitled to a salary during the period of 14 days and he is not required to handover charge of his office as such, but the respondents may make arrangements for carrying out the functions the petitioner was now doing so that the public works might not suffer.

3. This interim order was subsequently extended till the disposal of the Rule after hearing the learned Advocates for both the parties with this modification that this order will not prevent the respondents from issuing show cause notice, disciplinary proceedings and after issuing such show cause notice no further proceeding will be taken until the disposal of the Rule. The payment as directed to be made will be adjusted in case the petitioner loses ultimately in the Rule.

4. Subsequently by an order dated 4.12.80 the respondents were directed to pay six months salary and allowances to the petitioner which fell in arrears. The petitioner was directed to submit his explanation to the show cause notice issued on him and if inspection of any document is required by him, respondent No. 1 will give him inspection of such documents in the office of the zilla parishad. In compliance with this direction it appears that the petitioner filed his explanation to the charges served on him on 14.4.80 and the disciplinary proceeding could not be further proceeded with in view of the interim order stated hereinbefore.

5. Mr. Jamini Kr. Banerjee, learned Advocate appearing on behalf of the petitioner has made two-fold contentions on behalf of the petitioner. He firstly submitted that the impugned order is not an order of suspension pending the completion of the disciplinary proceeding but it has been made by way of imposition of punishment and referring to the provisions of section 168(2), (3) and (4) he submitted that the order is per se without jurisdiction as the executive officer is not competent to inflict any punishment on an employee like the petitioner drawing a salary more than Rs. 300/- per month. The second dimension of Mr. Banerjee's submission is that the petitioner being appointed by the Zilla Parishad and he having drawn a salary more than Rs. 300/- per month, it is only the Zilla Parishad which can take any penal measure against him and that is by a resolution of the Zilla Parishad at a meeting. This submission was made and/or advanced relying on the provisions of section 168(4). It has, therefore, been submitted that since the impugned order does not show that the matter had been placed before the Zilla Parishad for taking action in the light of the provisions of section 168(4), the order is without jurisdiction and contrary to the provisions of law and hence it is liable to be set aside, cancelled and quashed.

6. Mr. Bidyut Kr. Banerjee, learned Advocate appearing on behalf of the Zilla Parishad has drawn my attention to the word "control" and submitted that the word "control" means disciplinary control. Therefore, the executive officer who is vested with the power of general control over all the employees of the Zilla Parishad can in

appropriate circumstances take disciplinary measures against its employees though the executive officer cannot award any punishment, e.g., dismissal, removal and reduction in rank as specified in section 168(2), (3) and (A) of the said Act. It has therefore been submitted by Mr. Banerjee that the impugned order has been made merely as a disciplinary measure and it was made pending the starting of a disciplinary proceeding and not as a penal measure imposing punishment. As such it is not contrary to the provisions of section 168 of the said Act and hence not illegal and unwarranted.

7. Before examining the respective contentions advanced on behalf of the parties it is pertinent to consider the meaning of the expression "general control". Similar expression was used in Article 235 of the Constitution where it has been stated that the control over district courts and courts subordinate thereto including the posting and promotion of persons belonging the judicial service of a State and holding any post inferior to the post of district judge shall vested with the High Court. While examining this provision the Supreme Court in *State of West Bengal v. Nripendra Nath Bagchi* has pronounced that control means control over disciplinary and not mere administrative jurisdiction. The control vested in the High Court is complete control subject to the power of Governor in the matter of initial appointment including posting and promotion of district judges and dismissal, removal, reduction in rank of district judges. This pronouncement has been made in the case of [Baradakanta Mishra Vs. High Court of Orissa and Another](#), relying on AIR 1966 SC 447 (State of West Bengal -v- Nripendra Nath Bagchi).

8. Therefore, the executive officer being vested with the power to exercise general control over all officers and other employees of the Zilla Parishad has certainly the power of not only administrative but disciplinary control over all the employees of the Zilla Parishad including the petitioner who is a sub-divisional officer of the Zilla Parishad. The impugned order which has been made by the executive officer placing the petitioner under suspension, in my opinion, cannot be said to be bad and without jurisdiction as it has been made pending the initiation of the disciplinary proceeding.

9. It appears that the petitioner has already submitted his explanation to the charge sheet served on him. The respondents will now take steps in accordance with law to expedite the completion of the disciplinary proceeding as expeditiously as possible, not later than two months from today and will make final orders in the said disciplinary proceeding. In the meantime respondent Nos. 1 and 4 are directed to pay the petitioner a sum equivalent to four months emoluments within a period of two weeks from today. The Rule is accordingly disposed of. I also make it clear that if it is found that any excess payment during the entire period is made to the petitioner, the Zilla Parishad will be free to set off the said sum against the sum payable to the petitioner in accordance with law.