
(1999) 04 CAL CK 0059

Calcutta High Court

Case No: F.M.A. No. 236 of 1992

Gita Bhattacharjee
(Smt.) and Others

APPELLANT

Vs

South Bengal State
Transport Corporation
and Others

RESPONDENT

Date of Decision: April 6, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2000) 87 FLR 693 : (2000) 2 LLJ 377

Hon'ble Judges: Shyamal Kumar Sen, J; D.P. Kundu, J

Bench: Division Bench

Advocate: Manas Kumar Kundu, for the Appellant; Tapan Kumar Sengupta and Debayan Bera, for the Respondent

Final Decision: Allowed

Judgement

D.P. Kundu, J.

This appeal has arisen out of judgment and order dated September 24, 1991 passed by MAHITESH majUMDAR, J. as he then was in Civil Order No. 9654 (W) of 1990 to the extent the said judgment and order permitted the drawal of fresh proceedings and directed that the appellant/writ petitioner be kept under suspension during the pendency of such fresh proceedings.

2. One Ajit Kumar Bhattacharjee, since deceased, was an employee of South Bengal State Transport Corporation which is a Statutory Body. The said Ajit Kumar Bhattacharjee expired on July 1, 1996. After his expiry, appropriate application had been made for substitution and the present appellants had been substituted in place and stead of Ajit Kumar Bhattacharjee.

3. While the said Ajit Kumar was in service in South Bengal State Transport Corporation, certain charges were framed against him and a disciplinary proceeding was initiated against him. In the said disciplinary proceeding Ajit Kumar was found guilty of the charges and ultimately he was dismissed from the service of the Corporation. Thereafter Ajit Kumar preferred an Appeal before the Appellate Authority which was also rejected by the Appellate Authority. Being aggrieved and dissatisfied with the aforesaid dismissal from service, Ajit Kumar initiated a writ petition being Civil Order No. 9654 (W)/90 challenging the legality of the disciplinary proceeding and the order of penalty imposed upon him and also the appellate order passed in the Disciplinary proceeding. MAHITESH majUMDAR, J. (as he then was) finally heard the aforesaid writ proceeding and by the judgment and order dated September 24, 1991 partly allowed the writ application.

4. The operative part of the said judgment and order dated September 24, 1991 is quoted herein below:

"Let me now examine the facts and circumstances of the case. In my view such charge-sheet without the list of witnesses and the list of documents by whom and by which the Articles of Charges were to be sustained, cannot but be held to be unauthorised and illegal inasmuch as the relevant provision of the Rule 39 has been completely violated. It is also an admitted position that the letter of the passengers were not supplied to the petitioner and particulars of those passengers were not disclosed to the petitioner. Petitioner asked for the production of those passengers for the purpose of his defences, but that was denied. Any uncommunicated or undisclosed materials cannot be taken into account without giving any opportunity.

Inquiry officer in my view did not prepare the inquiry report properly and the said report suffers from violation of Regulation 38(9) and Regulation 39(3) of the said Regulation.

I have carefully considered the contention of Mr. Chatterjee that the entire proceedings was commenced, continued and concluded properly and validly. Further the contention of the respondents regarding past record cannot be accepted. The contention that the Appellate Authority properly and legally passed the order, in my view cannot be sustained for the reasons set forth above. Appellate Authority did not act in terms of Regulation 39(3). Inquiry report was not prepared in accordance with the Regulation 38(9) of the said Regulation. The Charge-sheet without the statement of imputation of misconduct as also list of witnesses and list of document ought not to have been proceeded with and commenced, continued and concluded. The proceeding is invalid and improper. The contention of the respondents as are recorded above and also the submission of Mr. Chatterjee in my view cannot be sustained for the reason that the inquiry proceedings from the very beginning suffers from innumerable infirmity. In that view of the matter I set aside the charge-sheet which was served without the statement of imputation, list of witnesses and documents. Inquiry report was not served. Failure to supply the inquiry report to the petitioner constitutes prejudice to the petitioner. Therefore non-supply of inquiry report resulted in denial of reasonable opportunity. Respondents ought to have

disclosed that they would consider the past record at the stage of the charge-sheet. At the time of final order, relying on past record in my view resulted in denial of reasonable opportunity. So the order passed by the disciplinary authority cannot be sustained and the same is accordingly set aside. Appellate authority acted in clear breach of Regulation 39(3). Therefore the said order cannot be sustained:

In view of the aforesaid findings I set aside the charge-sheet, the enquiry proceedings, inquiry report and the final order and the appellate order. This order shall not prevent the respondents from proceeding with framing of new charge but in the event such charge is framed the respondents shall secure compliance of the provisions of Regulation 38. In the event such proceeding is commenced and continued, petitioner shall be given reasonable opportunity at each of the stages of the proceedings in conformity with the provisions as contained in the said Regulation as also the fundamental rules of law. Petitioner shall be kept under suspension during the pendency of the proceedings but the petitioner shall be paid subsistence allowance which would have been otherwise payable to him had he not been fastened with the proceedings. The arrears on account of subsistence allowance from the date of the order of removal shall be paid within a period of two weeks from the date of communication of this order.

The writ petition is disposed of accordingly. There will be no order as to costs."

5. On March 5, 1999 this Division Bench granted liberty to the appellants to file supplementary affidavit within two weeks and also granted the respondent/opposite parties to file reply if any by one week thereafter. Pursuant to such leave granted by this Court, the appellants filed supplementary affidavit on March 30, 1999 but the respondents chose not to file any reply to the said supplementary affidavit. The statements made in the said supplementary affidavit thus remains uncontroverted. Therefore this Court is bound to proceed on the averments made in the said supplementary affidavit. In the aforesaid supplementary affidavit, it has been stated that pursuant to the leave granted by the learned single Judge a charge-sheet dated January 17, 1992 had been issued against Ajit Kumar levelling certain charges against him. In paragraph 5 of the said supplementary affidavit filed by the appellants, it has been stated that the respondents however did not proceed with the said proceeding during the lifetime of the appellant/writ petitioner. It was further stated in the said paragraph 5 of the supplementary affidavit that the appellant/writ petitioner expired on July 1, 1996 and upon his death the legal heirs have been substituted in place and stead of the appellant/writ petitioner. These statements have not been denied by the respondents by filing any reply. Therefore the respondents accepted that during the lifetime of the writ petitioner, the respondents did not proceed with the chargesheet dated January 17, 1992. In fact, while the learned Advocate for the respondents was addressing us, we wanted to know from the learned Advocate whether the respondents proceeded with the charge sheet dated January 17, 1992. The learned Advocate for the respondents very fairly submitted that the respondents did not proceed with the said chargesheet dated January 17, 1992. Thus, it is apparent that though after the issuance of the charge sheet dated January 17, 1992,

the writ petitioner Ajit Kumar lived for about four years, yet the respondents did not proceed with the said charge sheet dated January 17, 1992 though the Appeal Court permitted the respondents to proceed with the Departmental proceeding in connection with the said charge sheet dated January 17, 1992. Therefore, by their own action the respondents had given a go-bye to or abandoned the said charge sheet dated January 17, 1992. That apart, a disciplinary proceeding against an employee is an action in personam. Due to the death of the employee, such disciplinary proceeding initiated by the respondents by virtue of the charge sheet dated January 17, 1992 becomes infructuous due to the expiry of the writ petitioner Ajit Kumar on July 1, 1996. It may be mentioned herein that the charges contained in the charge sheet dated January 17, 1992 are nothing but the repetition of charges earlier levelled against the writ petitioner which was the subject matter of the writ proceeding and also the subject matter of this appeal.

6. Thus, we are of the view that the respondents by their own action had given a go-by or abandoned the charge-sheet issued on January 17, 1992 and in addition to that, the disciplinary proceedings by the said charge-sheet dated January 17, 1992 had become infructuous due to the death of the writ petitioner Ajit Kumar on July 1, 1996.

7. It would appear from the operative part of the judgment of the learned trial Judge, which has been quoted hereinabove, that the learned trial Judge directed that the petitioner shall be kept under suspension during the pendency of the proceedings but the petitioner shall be paid subsistence allowance which would have been otherwise payable to him had he not been fastened with the proceedings.

8. In our view whether during the pendency of a disciplinary proceeding, the employee shall be placed under suspension or not, is a matter which falls entirely within the domain and jurisdiction of the disciplinary authority and the Court should not exercise such power while exercising power of judicial review under Article 226 of the Constitution by directing an employee to be placed under suspension,

9. Therefore, we are of the view that by directing the writ petitioner Ajit Kumar should be kept under suspension during the pendency of the proceedings, the learned single Judge nakedly usurped the functions and the jurisdiction of the disciplinary authority which is not permissible under law and accordingly we are setting aside the said observation of the learned single Judge which is related to placing the writ petitioner under suspension.

10. The learned Advocate for the respondents at the time of argument, produced before us the order of suspension which was issued on October 9, 1991. The said order of suspension reads as follows:

"In terms of the order of the Hon"ble High Court dated September 24, 1991 Shri Ajit Kumar Bhattacharjee who was removed from service vide order No. 4980/8-SBSTC/89 dated December 15, 1989, is deemed to have been placed under suspension.

Fresh charge-sheet will follow. Shri Bhattacharjee is entitled to subsistence allowance on and from the date i.e. December 15, 1989.

He be paid an ad hoc amount of Rs. 5000/-subsistence allowance immediately which will be adjusted against his arrear subsistence allowance."

11. It is apparent from the said order of suspension that in terms of the order of the Hon"ble High Court dated September 24, 1991 Shri Ajit Kumar Bhattacharjee who was removed from service vide order No. 4980/8-SBSTC/89 dated December 15, 1989 was deemed to have been placed under suspension. The learned Advocate for the respondents drew our attention to the Regulation 35(5) of the Durgapur State Transport Corporation Employees" Service Regulations which inter alia laid down that where a penalty of dismissal, removal or compulsory retirement from service imposed on an employee under suspension on a disciplinary proceeding pending against an employee under suspension is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the appointing authority on a consideration of the circumstances of the case decides to hold a further inquiry against the employee on the allegations on which the penalty was originally imposed or the disciplinary proceeding was originally started, the employee shall be deemed to have been placed under suspension by the appointing authority or any other authority empowered by the appointing authority to place the employee under] suspension, with effect from the date on which the order imposing the penalty of dismissal, removal or compulsory retirement from service was made or where the disciplinary proceeding was pending, from the date on which the employee was originally placed under suspension. It is evident from the order of suspension that the writ petitioner Ajit Kumar was not deemed to have been placed under suspension in view of Regulation 35(5) but in view of the order passed- by the High Court dated September 24, 1991. The disciplinary authority chose not to act in terms of the said Regulation 35(5) but acted in view of the order passed by the High Court dated September 24, 1991.

12. Therefore, we are of the view that since we have already set aside that part of the order of the learned single Judge which directed that the writ petitioner should be kept under suspension, the order of suspension is also liable to be set aside and we hereby set aside and quash the order of suspension issued on October 9, 1991.

13. In view of the discussions herein above, we are of the view that the petitioner Ajit Kumar should be treated as in continuous employment till he expired and should not be treated as placed under suspension. We are also of the view that the writ petitioner was also entitled to all consequential reliefs and of uninterrupted service.

14. We accordingly direct the respondents to pay the appellants the consequential reliefs which the writ petitioner Ajit Kumar Bhattacharjee was entitled to in terms of service rules after adjustments of the amounts already paid to the petitioner under Court"s order passed earlier, within three months from the date of communication of the order.

The Appeal is accordingly allowed. There will be no order as to costs.

15. Learned advocate for the appellants is directed to communicate operative portion of the order to the respondent authorities of the South Bengal State Transport Corporation for information and compliance of the order.

16. Let plain copies of the operative portion of the order duly countersigned by the Assistant Registrar (Court) be supplied to the learned Advocate for the parties on usual undertaking.

Shyamal Kumar Sen, J.

17. I agree.