

(1993) 07 CAL CK 0043

Calcutta High Court

Case No: Civil Order No. 9095 (W) of 1992

Ajit Kumar Moitra

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: July 16, 1993

Acts Referred:

- N.J.M.C. Conduct, Discipline and Appeal Rules, 1982 - Rule 23, 25

Citation: (1993) 2 ILR (Cal) 162

Hon'ble Judges: Susanta Chatterji, J

Bench: Single Bench

Advocate: Malay Kumar Basil, B.C. Chakraborti and Sarmila Das, for the Appellant; Pradip Tajafdar, for the Respondent

Judgement

Susanta Chatterji, J.

The present writ petition has been moved on May 12, 1992, praying for the following reliefs:

(a) A writ in the nature of certiorari commanding the Respondents, their officers, subordinates and agents to certify and transmit the records of the case so that the same may be perused by this Hon'ble Court and the impugned charge-sheet dated April 28, 1992, and order dated - April 29, 1992, withholding the payment of gratuity made at Annexs. T and "J" to this petition may be quashed and set aside ;

(b) A writ in the nature of mandamus commanding the Respondents, their officers, subordinates and agents to withdraw, revoke and cancel the impugned orders made at Annexs. I and J to this petition and further commanding the Respondents not to proceed any further on the basis of the said impugned charge-sheet and further commanding the Respondent to release the Petitioner from his service with all terminal benefits on the basis of his letter of resignation dated January 31, 1992 ;

(c) A writ in the nature of prohibition commanding the Respondent from proceeding any further in pursuance to the said so-called charge-sheet dated April 28, 1992, made at Annexs. I and J to the petition;

(d) Rule nisi in terms of prayers (a), (b) and (c) above;

(e) An ad interim order of injunction restraining the Respondents, their officers, subordinates and agents from giving any effect and/or further effect and/or from continuing to give effect of the said charge-sheet dated April 28, 1992, and the order dated April 29, 1992, withholding gratuity made at Annexs. I and J to the petition and further restraining the Respondents from removing the Petitioner from the quarter and other facilities including car and telephone until the disposal of this application and till the payment of retiral benefits and further interim order directing the Respondents to pay forthwith the terminal benefits on the basis of the letter of resignation submitted by the Petitioner on 30.1.92 ;

(f) Any other writ or writs, order or orders, and/or direction or directions as Your Lordships may deem fit and proper in the facts and circumstances of the case;

2. It appears that the Petitioner being aggrieved by the charge-sheet, has come up to this writ Court seeking for the reliefs as mentioned above. It is stated in detail that the Petitioner, who had been the Chairman-cum-Managing Director of the National Jute Manufacturers Corporation of India (N.J.M.C.), has since tendered his resignation on health ground and his resignation letter has been accepted. It is emphasized that the charge-sheet has been served prior to the acceptance of the resignation and in view of Rule 11(b), of the Service Rules and Regulations, 1992, by which Petitioner's service condition is guided, resignation tendered by an employee shall not become effective till it is accepted by the N.J.M.C. and the acceptance thereof is communicated to the employee concerned. The N.J.M.C. shall have the right to refuse, for reasons to be communicated to the employee in writing, to accept resignation in a case where any disciplinary proceedings against the concerned employee is contemplated or has been initiated or is pending.

3. It is argued on behalf of the Petitioner that the N.J.M.C. cannot accept resignation on certain conditions as done in the instant case. However, considering all the aspects of the matter, this Court directed the parties to complete and file the affidavits and an interim order was made to the extent that the proceedings pursuant to the charge-sheet will proceed in accordance with law giving all opportunities to the Petitioner to defend and on complying with principles of natural justice the final order may be made, communicated to the Petitioner, but no effect should be given thereto without the leave of the Court. Petitioner was permitted to remain in the quarters for eight weeks on payment of usual charges, but was not permitted ui enjoy the other facilities while in service. Time to further reply to the charge-sheet was extended for a fortnight and Ministry of Textiles, Union of India, was directed to appoint an Enquiry Officer.

4. By subsequent order dated July 1, 1992, it was brought to Court's notice that Enquiry Officer was to be appointed and the interim order regarding the quarter will remain in force for a fortnight. Thereafter by Court's order dated July 14, 1992, it was made clear that enquiry must be completed and final order may be passed without prejudice within three weeks, and Petitioner must co-operate therein at every stage.

5. Time and again, enquiry proceedings was allowed to be proceeded with. Subsequently, an application was filed that proper opportunities were not being given to the Petitioner and the Enquiry Officer has whimsically adjourned the proceedings according to his convenience, but refused to grant necessary prayer for adjournment on the ground of difficulties of the Advocate for the writ Petitioner. However, this Court, having heard the learned Advocates for the parties and by order dated April 7, 1993, stayed the further enquiry proceedings till further orders. It was brought to the Court's notice at that time that the Enquiry Officer holding the enquiry had been given a different assignment outside the country. Since the affidavits had been filed by all parties, final hearing of the matter has been taken tip to resolve the dispute as suggested and agreed.

6. Attention of the Court has been drawn to Service Rule, and Regulations, 1982, Conduct, Discipline and Appeal Rules, 1982 of N.J.M.C. indicating, inter aim, for imposing of penalties. It is provided therein that no order imposing any of the major penalties specified in cl. (e), (f) and (g) of Rule 23 shall be made except after an enquiry is held in accordance with the said Rule (Rule 25 of the Rules). Further, it is provided that whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself enquire into, or appoint any public servant to inquire into the truth thereof.

7. By taking this Court into detail of Rule 25 aforesaid. Mr. Basu, learned Advocate appearing for the Petitioner, has argued that there is no scope to give any charge-sheet imposing any penalty since the resignation has been accepted. The alleged charge-sheet is either misconceived or it has become infructuous. There is nothing for the Respondents to withhold payment of gratuity and to proceed with the purported enquiry and steps taken by the Respondents authorities are inconsistent with the Rules and there is no bar and/or impediment to grant the reliefs sought for by the Petitioner in the manner as prayed for in the writ petition.

8. Learned Counsel for the N.J.M.C, however, submits that since the resignation has been accepted on health ground, the management employer has reserved the right to proceed with the disciplinary proceedings while the Petitioner has caused many irregularities/illegalities. There is nothing wrong on the part of the Respondents authorities which necessitate any interference by the writ Court as submitted. It is further argued that at the instance of the writ Petitioner, time to hold the enquiry was extended. Truly, on certain occasions enquiry proceedings had to be adjourned

for the inconvenience of the Enquiry Officer and also for the inconvenience of the writ Petitioner. But, at a stage while the enquiry proceedings has been stalled, there is no fault on the part of the Enquiry Officer and it was all the more bona fide at all relevant points of time.

9. With much, anxiety, this Court has considered the submissions of the respective parties. Admittedly, the writ Petitioner has tendered resignation on health ground and the same has been accepted on certain conditions There is a charge-sheet. This Court has permitted the authorities to proceed with the enquiry on the basis of the alleged charge-sheet. The Enquiry Officer has not completed the proceedings within the time and this Court granted time on various occasions to enable the Enquiry Officer to conclude the enquiry. At the final hearing, this Court inquired as to whether it was possible for the Enquiry Officer to complete the enquiry since he has accepted an assignment outside the country, and thereto the management employer's learned Advocate has submitted that it is not possible to make any submission in that regard.

10. Regard being had to the materials on record and to the scope of submissions made, it is found that the Respondents authorities have already appointed an Enquiry Officer in terms of the leave granted by the Court and the enquiry has not yet been completed. Attention of Court has been drawn to two decisions-- State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, and State of Maharashtra Vs. M.H. Mazumdar, The decisions indicate, inter alia, as to the rights of the employer to withhold the pension or other benefits. Attention of the Court has been drawn to the said two decisions and attempt has been made to distinguish, define the ratio of the said two decisions with regard to the facts of the present case inasmuch as Rule thereto permitted such actions on the part of the employer whereas, in the instant case, no Rule permits taking such actions on the part of the Respondents authorities. Be that as it may, this Court is of the view that while there are serious allegations that the Petitioner had committed several irregularities/illegalities, and when the Petitioner has been charge-sheeted and an Enquiry Officer has been appointed to go into the charges, and to file report, it will be not justified for the writ Court to quash the charge-sheet al this stage and to permit the Petitioner to go scot-free. However, considering the background of the case and regard being had to the "entire facts at issue, this Court disposes of the writ petition by directing the Respondents authorities to appoint a fresh Enquiry Officer within a month from the date of the communication of the order and the said Enquiry Officer would conduct the enquiry from the stage where it was, would complete the same and file the report within 4 months from the date of assuming charge, as indicated above. It is also made clear that the Enquiry Officer would give full particulars of the available documents to the Petitioner, if sought for, all opportunities to the Petitioner to defend his case, allow the Petitioner to cross-examine any witness. The final order should be made within a month from the date of receipt of the final report and the Respondents will not give effect to the final order for a period of three weeks. If the

Petitioner is aggrieved, there would be a fresh cause of action for the writ Petitioner before the appropriate forum in accordance with law. Respondents, however, are directed to release 75 per cent of gratuity amount to the Petitioner within four weeks, subject to the decision to be taken after the enquiry is completed. The Petitioner will, however, receive 75 per cent gratuity amount on the undertaking that in case of any adverse final order against him, he would be liable to refund the amount. The Petitioner will vacate the quarter within a fortnight from the date of receipt of the gratuity amount as aforesaid and the Respondents authorities will have the right to adjust the amount of rent month by month, which would be equated with the amount actually paid by the Respondents authorities for holding the quarter in possession.

11. All other orders are vacated. There will be no order for costs.

12. Let xerox copy of the order, authenticated by the Deputy Registrar (Ct.) be given to the Advocates for the parties.