

Jagadish Chowdhury Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: Sept. 15, 2000

Acts Referred: West Bengal Co-operative Societies Rules, 1987 " Rule 108A

Citation: (2001) 1 ILR (Cal) 6

Hon'ble Judges: Dilip Kumar Seth, J

Bench: Single Bench

Advocate: Milan Bhattacharyya and A. Banerjee, for the Appellant; Prasanta Kumar Mukherjee, for the Respondent

Judgement

Dilip Kumar Seth, J.

By an order dated September 6, 2000, the Petitioner was put under suspension. Mr. Bhattacharyya, learned Counsel

for the Petitioner contends that by reason of para. 16 clause A of Rule 108 of the West Bengal Co-operative Societies Rules 1987 the Petitioner

cannot be suspended unless an enquiry is pending. He had also alleged mala fide against the Respondents as well as the competence of the

Respondents with regard to the initiation of the disciplinary proceedings. While elaborating his submission he contends that an enquiry is initiated

with to the issue of the charge sheet Until a charge is issued no enquiry is initiated and as such there is no question of pendency of any enquiry and

as such the suspension cannot be sustained.

2 The learned Counsel for the Respondents on the other hand contends that by reason of Sub-para. (2) of para 15 the Petitioner has a remedy by

way of appeal. There being an adequate alternative remedy, the Petitioner cannot maintain this writ petition. He secondly contends that if the

conduct of the employee requires investigation and a decision is taken by the disciplinary authority to initiate a disciplinary proceeding it is open to

it to put an employee under suspension pending issue of the charge sheet. Relying on Rule 48 Clause (F) he contends that the very decision to held

an enquiry by the disciplinary authority is itself an initiation of the enquiry and this enquiry becomes pending alternatively he submits that even

before issuing the charge sheet when the conduct requires an investigation, an employee cannot be placed under suspension.

3. In reply Mr. Bhattacharyya contends that the appeal provided a Sub-para. 2 of para. 15 of Rule 108 is an appeal against an order of penalty.

Since para. 15 precedes para. 16 therefore, suspension under para. 16 cannot be subjected to an appeal under Sub-para. (2) of para. 15.

4. Heard learned Counsel for the parties at length.

5. Paragraph 16 of Rule 108 in Clause (a) provides as follows:

(a) An employee of a co-operative society whose conduct requires investigation on a charge of misconduct enumerated in Clause (a) of paragraph

14 may be placed under suspension pending inquiry. if in the opinion of the disciplinary authority the attendance of such employee on duty during

the period of investigation into such charge is likely to vitiate the proceedings.

6. A plain reading of the said provision shows that an employee cannot be put under suspension pending enquiry. An enquiry is envisaged when the

conduct of an employee requires an investigation. An enquiry becomes pending as soon as an enquiry is initiated. An enquiry is said to be initiated

only on the issue of a charge sheet. Even if a decision is taken to hold a disciplinary proceedings against an employee by the disciplinary authority

but until the charge sheet is issued the decision is not translated into an action so as to treat the enquiry pending. Thus in many of these rules

suspension is permitted in contemplation of an enquiry. As soon as a decision is taken the disciplinary enquiry is in contemplation of the disciplinary

authority. In the absence of any provision that an employee can be put under suspension in contemplation of enquiry the expression used in Clause

(a) above cannot be interpreted to mean that even when the conduct of an employee requires investigation and the disciplinary authority decides to

hold an enquiry it would not amount to pendency of an enquiry. Therefore unless the charge sheet is issued an enquiry cannot be said to be pending

and thus an employee cannot be put under suspension until the enquiry is pending. Rule 48 in Clause (F) provides that a person can be dismissed

or removed from services only after holding an enquiry, but the same does not contemplate that contemplation of an enquiry is pendency of an

enquiry. Contemplation and pendency come with different meanings. They are not synonyms. In interpreting the statute the words used are to be given

simple grammatical meaning. When the meaning is unambiguous no intrinsic or contextual aid could be taken. In the present case language being

simple there is no scope for any two opinions about the interpretation of provision contained in Clause (a) above.

7. Thus the issue of an order of suspension only on the ground that a charge sheet would be issued shortly, cannot be sustained.

8. So far as the question of appeal is concerned Sub-para. (2) of Section 15 provides an appeal against an order passed by the disciplinary

authority. There is no doubt that an order suspending an employee is also an order passed by the disciplinary authority and as such appealable

under Sub-section (2), inasmuch as, sub-para. (2) has not confined the appeal only to penalty. It has expressed in terms of an order of the

disciplinary authority which has to be treated in generic sense.

9. Be that as it may, in the present case the order that has been passed being beyond the competence of the disciplinary authority, the existence of

adequate alternative remedy by way of appeal will not be a bar in a case where the order is incompetent.

10. Thus, the order of suspension cannot be sustained and is hereby quashed.

11. However, it will be open to the disciplinary authority to issue the charge sheet and if it is so advised and is of opinion that it is necessary to

place an employee under suspension it may take the appropriate decision according to its own wisdom and in accordance with law.

12. This writ petition is, thus, disposed of. There will be no order as to costs.

13. Urgent xerox certified copy of this order, if applied for, be supplied expeditiously.