
(1976) 11 CAL CK 0034

Calcutta High Court

Case No: None

Dhirendra Kumar Saha

APPELLANT

Vs

State of West Bengal and Ors

RESPONDENT

Date of Decision: Nov. 5, 1976

Acts Referred:

- Penal Code, 1860 (IPC) - Section 201, 302, 364, 436

Hon'ble Judges: Chittatosh Mookerjee, J

Bench: Single Bench

Advocate: C.C. Ganguli, Miss N.K. Chaturvedi and Mrs. H.K. Chaturvedi, for the Appellant; Paritosh Mookerjee, for the Respondent

Judgement

Chittatosh Mookerjee, J.

The petitioner is a Sub-Inspector of Police in the West Bengal Police Service. At the relevant time was attached to Canning Police Station, within the 24 Parganas. On April 1, 1975, the Superintendent of Police, 24 Parganas passed the following order placing the petitioner under suspension, vide Annexure "F": -

S.I., Dhirendra Kumar Saha of Canning P.S. is placed under suspension with effect from 1.4.75 A.M. for his misconduct and negligent investigation of Canning P.S. Case No.36 dated 26.2.75 u/s. 364/302/201 I.P.C. and for not starting a case u/s 436 I.P.C. up to 31.3.76.

He will draw 1/2 of his pay as S.A. plus usual allowance during suspension period and will report to H.Qrs. at once and will deposit his kits.

Subsequently, on May 7, 1975 he was served with a charge-sheet which alleged that he was guilty of gross dereliction of duty and negligent investigation unbecoming of Police Inspector. It is not necessary for me to set out particulars of the charges against the petitioner inasmuch as the disciplinary proceeding in respect of the said charge is pending and the same is not the subject matter of the present Rule.

2. In my view, the order of suspension dated April 1, 1975 Annexure "F" impugned in the present Rule should be quashed as illegal and without jurisdiction. The petitioner's case is that the said suspension order, Annexure "F" was not a compliance with Rule 880, Clause (a) of the Police Regulations Bengal, 1943, Volume I. In the first place, the respondents did not produce any material before me to show that on the date the petitioner was placed under suspension, either a disciplinary proceeding was pending against him or it was even contemplated. Secondly, neither the order of suspension Annexure "F", nor any other materials on record indicate that the Superintendent of Police, 24 Parganas, had formed any opinion that continuance in office by the petitioner pending enquiry against his conduct would be prejudicial to public interest. I have already set out the suspension order Annexure "F", to the writ petition. The same categorically stated that the petitioner has been placed under suspension with effect from April, 1, 1975 "for his misconduct and negligent investigation of Canning P.S. Case No.36 dated 26th February, 1975 u/s 364/302/201 I.P.C. and for not starting a case u/s 436 I.P.C. upto 31st March, 1975". Thus, the suspension order on the face of it stated that the petitioner was being placed under suspension by way of punishment for his alleged misconduct and negligence. Plainly, this was not permissible in law. Admittedly, there was no enquiry against the petitioner prior to the passing of the suspension order and imposition of suspension by way of penalty upon the petitioner was illegal and in flagrant violation of principles of natural justice.

3. Further, in the instant case on perusal of the affidavit-in-opposition affirmed by Amal Kumar Dutt, Superintendent of Police, 24-Parganas, I find that he did not state that the deponent had satisfied himself that continuance in office by the petitioner pending enquiry into his conduct would be prejudicial to public interest. The records have not been produced before me to establish that the same contained any endorsement contemporaneously made by the suspending authority who suspend the petitioner that continuance in office by the petitioner pending enquiry against him would be prejudicial to public interest.

4. Mr. Mukherji, for the State, relied upon Regulation 858(2) of the Police Regulations which inter alia lays down: -

A Superintendent may suspend any Inspector subordinate to him, pending enquiry into his conduct...

The said Rule 858(2) also authorizes suspension pending enquiry and not suspended by way of punishment on the ground of misconduct and negligent investigation. Therefore, the Regulation 858(2) of the Police Regulations is also of no assistance to the respondents.

5. In the above view, the suspension order passed against the petitioner being illegal and without lawful authority should be quashed. I, accordingly make this Rule absolute.

6. Let a writ of certiorari issue commanding the respondents to forbear from giving effect to and or further effect to the said suspension order, Annexure "F" and the radiogram message Annexure "E". I, however, make it clear that it would be open to the respondents to proceed further in the matter in accordance with law. I also make it clear that order passed in this Rule will not affect the disciplinary proceedings now stated to be pending against the petitioner. Liberty is also given to the petitioner to contest the said disciplinary proceeding and to challenge the same hereafter, if necessary, in accordance with law.

7. There will be no order as to costs.