

(1999) 09 CAL CK 0025

Calcutta High Court

Case No: W.P.C.A.N. No. 3425 of 1999 in Writ Petition No. 696 (W) of 1999

Shibnath Mukherjee

APPELLANT

Vs

Webel Power Electronics Ltd. and
Others

RESPONDENT

Date of Decision: Sept. 7, 1999

Citation: (2000) 86 FLR 969 : (2001) 3 LLJ 598

Hon'ble Judges: Sameresh Banerjee, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Samaresh Banerjee, J.

The main writ application was moved by the writ petitioner, inter alia, challenging the charge-sheet issued in connection with the disciplinary proceeding and the order of suspension passed therein.

2. The charge-sheet was challenged, inter alia, on the ground that the same is vague and the same has been issued mala fide and without any authority of law and the same is harassing. It is also contended that the charge-sheet and the suspension has been issued in excess of jurisdiction and the same is not based on any materials. It was also contended that the biased and closed mind of the disciplinary authority is manifest on the charge-sheet. On moving the aforesaid writ application ALTAMAS KABIR, J. was pleased to direct that the enquiry proceeding will continue and the final order may be passed but no effect of the same will be given.

3. During the pendency of the writ application the instant application has been made by the petitioner being CAN 3425/1999, wherein the main prayer of the petitioner is that he is entitled to full salary during the period of suspension, which is being illegally withheld and therefore there should be direction upon the respondents to pay his full salary.

4. On the previous day both the parties addressed the Court at length on the aforesaid application. After hearing the parties I directed that today the application should appear along with the main writ application being of the view that both can be disposed of today.

5. It, however, appears to this Court after hearing both the parties that the writ application cannot be disposed of at this stage along with the application.

6. The writ petitioner is now seeking also to challenge the action of the respondents subsequent to the passing of the said interim order by virtue of which the disciplinary proceeding is continuing referring to certain actions of the respondents. It is being alleged that the disciplinary proceeding is conducted in violation of the principles of natural justice. Mr. Mehta, learned advocate appearing for the respondents has rightly contended, inter alia, that since the Court has already permitted the respondents to continue the proceeding, this Court should not go into the question as to whether the conduct of the respondents subsequent to the interim order while conducting disciplinary proceeding is in violation of the principles of natural justice or not as alleged, since after the conclusion of the enquiry it will be open to the writ petitioner to challenge the same.

7. It is needless to mention that Mr. Mehta has submitted that the allegations of the petitioner that the disciplinary enquiry is being conducted in violation of the principles of natural justice is not correct.

8. After considering the respective submissions of the parties, I accept the contention of Mr. Mehta that the writ petitioner should not be heard at this stage since the Court already having permitted the disciplinary authority to continue the disciplinary proceeding the same should be allowed to be completed. The petitioner, however, will be at liberty to challenge the entire disciplinary proceeding and the order passed therein after conclusion of the enquiry if he is aggrieved by the same and if he is so advised by amending the writ application.

9. Today, therefore, only the prayer of the petitioner in the said application for payment of the entire amount is being considered by the Court. That the petitioner has been put under suspension is not disputed nor it is disputed by the learned advocate appearing for the respondents that there is no rule under which the petitioner is put under suspension pending disciplinary enquiry and is being paid subsistence allowance during such suspension.

10. Even in absence of any Rule the employer is authorised to put an employee under suspension cannot be disputed. It is well settled that the power of the employer to appoint will also include the power of the employer to suspend the employee which amounts to cessation of work. It is also the prerogative of the employer not to assign any duty to her employee. But it is also settled that when there is no rule authorising the employer to put an employee under suspension or there is no contract in respect thereof but the employer does not choose to assign

any duty to the employee and thereby forbids the employee from work he will be entitled to full salary. The aforesaid position of law was clarified by Court long ago in the case of [V.P. Gidroniya Vs. The State of Madhya Pradesh and Another](#), .

11. It will be worthwhile to refer the relevant paragraph specially paragraphs 6 and 7 of the said judgment, where such principles of law in respect thereof has been enunciated by the Supreme Court. The aforesaid paragraphs are quoted hereunder:

"Three kinds of suspension are known to law. A public servant may be suspended as a mode of punishment or he may be suspended during the pendency of an enquiry against him if the order appointing him or statutory provisions governing his service provide for such suspension. Lastly he may merely be forbidden from discharging his duties during the pendency of an enquiry against him which act is also called suspension. The right to suspend as a measure of punishment as well as the right to suspend the contract of service during the pendency of an enquiry are both regulated by the contract of employment or the provisions regulating the conditions of service. But the last category of suspension referred to earlier is the right of the master to forbid his servant from doing the work of the contract of service or the provisions governing his conditions of service at the same time keeping in force the master's obligations under the contract. In other words the master may ask his servant to refrain from rendering his service but he must fulfil his part of the contract.

The legal position as regards a master's right to place his servants under suspension is now well settled by the decisions of this Court. In [The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union](#), , the question whether a master could suspend his servant during the pendency of an enquiry came up for consideration by this Court. Therein this Court observed that it was well settled that under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or any statutory provision governing such contract. It was further observed therein that ordinarily in the absence of such a power either in express terms in the contract or under the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work he will have to pay the wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relationship of master and the servant with the consequence that the servant is not, bound to render service and the master is not bound to pay."

12. If the present issue is now tested in the light of the aforesaid Supreme Court judgment it will appear that the present suspension is not as per any rules empowering the employer to do so or in terms of the contract and by such

suspension in the instant case the respondents really have asked the petitioner not to perform his duties under the ordinary law of master and servant for which the same cannot be without pay.

13. Under such circumstances the respondents could not have paid merely a portion of salary instead of paying full salary.

14. Mr. Mehta, learned advocate appearing for the respondents although could not dispute such legal position, wanted to refer to West Bengal Payment of Subsistence Allowance Act, 1969 as also the Industrial Employment (Standing Orders) Act, 1946. It is, however, not understood as to how the aforesaid two Acts can permit the respondents in the instant case to withhold the full salary of the petitioner. The West Bengal Payment of Subsistence Allowance Act, 1969 defines the employee wherefrom it will appear that the same specifically excludes a person who is employed mainly in a managerial or an administrative capacity. It is not disputed in the instant case that the petitioner is not a workman but is working in a managerial capacity and admittedly an officer of the Company.

15. For the same reason the Industrial Employment (Standing Orders) Act, 1946 does not come to the aid of the respondents. The said Act, admittedly, will apply to the workman and not to such employees who work in managerial capacity. Although Mr. Mehta strenuously argued that the principles of said provisions should be made applicable in the instant case, that submission of Mr. Mehta is not tenable.

16. As pointed out, hereinbefore, the position of law in this respect has been clarified beyond doubt by the Supreme Court and in view of the same, vice the respondents have any duty to the petitioner during the pendency of the departmental enquiry, although they were free to do so, the respondents are bound to pay salary to the petitioner.

17. For the reasons stated, this application stands allowed. The respondents are directed to go on paying the petitioner his full salary month by month to which he is entitled to had he not been put under suspension and the same should be paid on the date all other officers of the company are being paid. The respondents are further directed to pay the entire amount of arrear salary after adjustment of the amount that has already been paid as subsistence allowance, by September 21, 1999.

18. Learned advocates for the parties are permitted to take down gist of this order for communication to the respondents who are directed to act on such communication.

19. Certified xerox copy/certified copy of this order, if applied for, be granted as expeditiously as possible.