

Appellant Vs. Respondent

Appellant Vs. Respondent

SooperKanoon Citation : sooperkanoon.com/1060371

Court : Kolkata

Decided On : Feb-08-2012

Judge : Jayanta Kumar Biswas

Appellant : Appellant

Respondent : Respondent

Judgement :

1 In The High Court At Calcutta Constitutional Writ Jurisdiction Original Side
Present: The Hon'ble Mr Justice Jayanta Kumar Biswas WP No.99 of 2012
Rakesh Kumar Singh v.

State Of West Bengal & ORS.Mr.Arunava Ghosh and Mr.Soumya Majumdar,
advocates, for the petitioners.Mr.A.Mazumdar and Mr.T.M.Siddiqui, advocates,
for the respondents.

Heard on: February 8, 2012.

Judgement on: February 8, 2012.

The Court:-The petitioner in this WP under art.226 dated February 6, 2012 is seeking the following principal relief: (a) A writ of and/or in the nature of Mandamus commanding the respondents and each one of them their men, agents, assigns and subordinates to immediately initiate appropriate disciplinary action against the respondent no.3 on the basis of your petitioners complaints

dated 19th January, 2012 and 30th January, 2012, and if necessary to place the respondent no.3 under suspension for the said purpose.

The respondent no.3 referred to in prayer(a) is Baidyanath Saha, presently working as Officer-in-Charge of Hare Street Police Station, Kolkata-700012;.

and the complaints dated January 19, 2012 and January 30, 2012 referred to therein are at pp.23 and 48 respectively.

The complaint dated January 19, 2012 was made to the Commissioner of Police, Kolkata and making the same allegations the complaint dated January 30, 2012 was sent to the Deputy Commissioner of Police, Central Division, Kolkata.

The complaint dated January 19, 2012 was made making a Prayer for departmental enquiry and administrative action against the Officer-in-Charge attached to Hare Street Police Station Inspector Baidyanath Saha for threatening and lodging false and fabricated F.I.R.for some wrongful gain and vested interest.

The question is whether the petitioner had any right to call upon the Commissioner; the employer of the third respondent, for that matter; to initiate disciplinary proceedings against the third respondent.

Mr.Ghosh appearing for the petitioner has submitted as follows.

The petitioner alleged that the third respondent committed a criminal misconduct.

Hence as the victim the petitioner was entitled to call upon the third respondents employer to initiate disciplinary proceedings against the third respondent and also to suspend the third respondent.

He has relied on s.13 of the Prevention of Corruption Act, 1988 and the decisions in Chaitanya Kalbagh & Anr.v.State of U.P.& Ors., AIR 198.SC 145.and P.

Mahalingam v.

Monica Kumar & Anr., (2012).SCC 694.

Mr.Majumdar appearing for the State has submitted that the petitioner had no right to call upon the third respondents employer to initiate disciplinary proceedings against the third respondent on the basis of the allegations made in the complaint dated January 19, 2012.

In my opinion, the provisions of s.13 of the Prevention of Corruption Act, 1988 and the two decisions of the Supreme Court cited to me have no manner of application to the issue involved in the WP.

I am unable to accept the contention that the petitioner accusing the third respondent of misconduct had a right to call upon the third respondents employer to initiate disciplinary proceedings against the third respondent on the basis of the allegations made in his complaint dated January 19, 2012.

The complaint dated January 19, 2012 is not a statutory complaint.

The service rules applicable to the third respondent do not provide that receipt of a complaint from a stranger third party will create a statutory obligation of the third respondents employer to consider the question of initiating disciplinary proceedings against the third respondent on the basis of the allegations.

Hence the complaint could not and actually did not create any statutory obligation of the third respondents employer to consider the question of initiating disciplinary proceedings against the third respondent.

It is another matter whether the third respondents employer could initiate disciplinary proceedings against the third respondent on the basis of the allegations.

In the absence of any prohibition, the employer was free to do that.

But the employers such right could not create a corresponding public law right of the petitioner, a stranger third party to the employer-employee relationship, to call upon the third respondents employer to initiate disciplinary proceedings against the third respondent.

The rights, obligations and duties regulating the employer-employee relationship between the third respondents employer and the third respondent, irrespective of whether they are statutory or contractual, are not enforceable by a stranger third party such as the petitioner.

The third respondents employer can initiate disciplinary proceedings against the third respondent only in exercise of right conferred on the employer by the service rules applicable to the third respondent, or by the contract between them, or by both.

Besides, the third respondents employer could initiate disciplinary proceedings against the third respondent only in exercise of a right, not a public law power that is in the nature of a trust, the public being the beneficiary.

A right can be waived, a power not.

A power creates a corresponding obligation to exercise it when needed or called upon.

The third respondents employer was entitled to waive his right to initiate disciplinary proceedings against the third respondent.

The art.226 public law remedy is not available to a stranger third party such as the petitioner to compel the employer to exercise the right.

Whether on the basis of the allegations made in the complaint the third respondents employer should initiate disciplinary proceedings against the third respondent is entirely for the employer to decide.

As already noted hereinbefore, in the absence of any prohibition the employer is entitled to consider the question.

But by making the complaint the petitioner could not create an obligation of the employer to consider the question of proceeding against his employee.

Whether the employer will proceed against the employee is entirely a matter to be decided by the employer.

An order directing consideration of the grievances of a petitioner in a WP under art.226 is to be made only when the decision given in compliance with the order, if questioned, can be judicially reviewed under art.226.

An employers decision not to take disciplinary action against his employee cannot be judicially reviewed under art.226 at the instance of a stranger third party to the employer-employee relationship.

Hence the indifference of the third respondents employer to the petitioners demand that disciplinary proceedings should be initiated against the third respondent cannot give the petitioner a cause of action to seek the public law remedy under art.226.

It is wrong to say that if the employer does not consider the question, then the petitioner will be without any remedy.

The petitioner making allegations against the third respondent was free to move the ordinary Civil and Criminal Courts against the third respondent.

For these reasons, the WP is dismissed.

No costs, Certified xerox.

(Jayanta Kumar Biswas, J.) nm(c);ab(f)

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com