

Pradip Kumar Mitra Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Feb-26-2003

Reported in : (2003)2CALLT507(HC)

Judge : Alope Chakrabarti and ;Joytosh Banerjee, JJ.

Acts : [Constitution of India](#) - Articles 20, 21 and 226; ;West Bengal Services (Control, Classification and Appeal) Rules, 1971 - Rules 7(3), 72B, 72B(1), 72B(3), 72B(5) and 72B(6); ;Indian Penal Code (IPC) - Sections 120B, 302 and 498A

Appeal No. : W.P.S.T. No. 1324 of 2002

Appellant : Pradip Kumar Mitra

Respondent : State of West Bengal and ors.

Advocate for Def. : Dipankar Dutta, Advs.

Advocate for Pet/Ap. : Milan Bhattacharjee and ;Chhabi Roy, Advs.

Disposition : Petition allowed

Judgement :

A. Chakrabarti, J.

1. The judgment and order under challenge was passed by the West Bengal Administrative Tribunal refusing to interfere with the order passed by the

concerned authority whereby petitioner's claim for payment of back wages and allowances during the relevant period was rejected.

2. The facts relevant for disposal of the present writ petition are that the petitioner while was working as Lower Division Clerk under the Burdwan Collectorate was implicated in a criminal case on the charge of administering poison to his wife which resulted in her death. In connection with the complaint against the petitioner relating to the said allegation the police arrested the petitioner on 5th December, 1992 and he was in jail custody till 30th December, 1992 when the petitioner was released on bail.

3. Under the Rule 7(3) of the W.B.S.(CCA) Rules, 1971, the petitioner was suspended from service as he was kept in custody for a period exceeding 48 hours and such suspension was with effect from 5th December, 1992 as appears from the order dated 30th December, 1992 (annexure P-1 to the writ petition). During such suspension initially the petitioner was granted subsistence allowance at the rate of 50% of his pay which was subsequently increased to 75% of his pay from 1st February, 1994.

4. By judgment and order dated 9th December, 1997 the petitioner was found not guilty for the offences under sections 498A/302/120B of the Indian Penal Code and accordingly was acquitted.

5. The District Magistrate and Collector, Burdwan by order contained in Memo dated April 28, 1998 reinstated the petitioner in service with immediate effect and the petitioner was directed to report for his duties to the Officer-in-charge, Establishment section. By another order contained in Memo dated 27th August, 1998 the petitioner was directed not to get pay and allowances beyond the subsistence allowance already drawn for a period upto 9th December, 1997 and ordered that the petitioner will get full pay and allowances from December 20, 1997 till the date of his joining in office adjusting the subsistence allowance already drawn.

6. The petitioner requested the authority concerned for disbursement of his back wages from the date of suspension till the date of reinstatement and as the same

was refused by the concerned authorities, the petitioner filed application under Section 19 of the Administrative Tribunal Act, 1985 before the West Bengal Administrative Tribunal which by the impugned order dismissed the application of the petitioner and this order is under challenge here by this writ petition.

7. Heard Mr. Milan Bhattacharjee, learned counsel for the petitioner and Mr. Dipankar Dutta learned counsel for the State authorities. The contention of the petitioner in brief is that on reinstatement in service for acquittal of the petitioner from the criminal case, the petitioner became entitled, as a matter of course, to the entire back wages starting from suspension till the date of reinstatement as the acquittal was on merit and in this connection provisions of law as contained in Rule 72B of West Bengal Service Rules, and particularly Clause 3 thereof were strongly relied upon with further reference to the provisions contained in Rule 7 of the West Bengal Services (CCA) Rules. Reliance was also placed on the judgment in the cases of Depot Manager, Uttar Pradesh State Road Transport Corporation v. P. Venkateswar Rao reported in : (1994)2SCC191 and District Manager, Andhra Pradesh State Road Transport Corporation v. N. Lakshminarayan reported in : (1995)IILLJ725SC .

8. On the other hand, Mr. Dutta learned counsel for the State authorities contended that in view of the provisions contained in Clause 1 of Rule 72B read with Clause 3 thereof, the authorities are required to pass a simple order in respect of pay and allowance payable in such cases to an employee of the State authorities and in case full payment of the entire back wages is to be made, requisite opinion is to be formed by the appropriate authority as provided, under Clause 3 of the said Rule 72B. It is further contended that for the period the petitioner did not work, he is not ordinarily entitled to back wages and therefore, such provision of law has been made in the relevant service rules requiring the appropriate authority to form an opinion that the suspension was fully unjustified and therefore, full payment is to be made of the pay and allowances of the concerned employee. It is also contended that Rule 7 relied on by the petitioner does not have any application as the same relates only for the purpose of quantification of the amount of subsistence allowance and this rule has no bearing so far as the question of payment of back wages in such facts and circumstances

of the case, is concerned. Reliance was placed on the judgment in the case of Management of Reserve Bank of India v. Bhopal Singh Panchal reported in : (1994)ILLJ642SC and Hukum Chand v. Jhabua Co-operative Bank reported in : (1998)2SCC291 .

9. Considering the aforesaid contentions and looking into the provisions of law relied on by the parties we find that Rule 7 does not render any assistance in the matter of deciding the present question which arises after acquittal of the petitioner in the criminal case in respect of the period concerned. The said rule only relates to assessment of the quantum of subsistence allowance payable to a delinquent during the period he remains under suspension pending the criminal case. Even the notes appended to the said Rule 7, as strongly relied on by learned counsel for the petitioner, does not, in our opinion, render any assistance for deciding the present question falling for our decision.

10. With regard to the other contention, which is the main contention required to be decided here, the matter can be properly assessed if the language of the Rule 72B is considered and for that purpose the said Rule 72B is set out hereunder:--

'72B. (1) When a Government employee who has been suspended is reinstated or would have been so reinstated but for his retirement including premature retirement while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowance to be paid to the Government employee for the period of suspension ending with reinstatement or the date of retirement including premature retirement, as the case may be; and

(b) whether or not the said period shall be treated as period spent on duty.

(2) Notwithstanding anything contained in Rule 71, where a Government employee under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for the period to which he would have been entitled

had he not been suspended, subject to adjustment in respect of subsistence allowances already paid.

(3) Where the authority competent to order reinstatement is of opinion that the suspension was wholly unjustified, the Government employee shall, subject to the provisions of Sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee had been delayed due to reasons directly attributable to the Government employee it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government employee shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under Sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under Sub-rule (2) or Sub-rule (3), the Government employee shall, subject to the provisions of Sub-rules (8) and (9), be paid such amount (not being whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine after giving notice to the Government employee of the quantum proposed and considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or Court proceedings, any order passed under Sub-rule (1) before the conclusion of the proceedings against the Government employee, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in Sub-rule (1) who shall make an order according to the provisions of Sub-rule (3) or

Sub-rule (5), as the case may be.

(7) In cases falling under Sub-rule (5) the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specific purpose:

Provided that if the Government employee so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admission to the Government employee.

(8) The payment of allowances under Sub-rule (2), Sub-rule (3) or Sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to Sub-rule (3) or under Sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 71.'

11. Upon a thorough reading of the said provisions, we find that the contentions of the respondents are that the Sub-rule (1) of said Rule 72B only requires the authorities to pass an order regarding pay and allowances to any employee upon his reinstatement. This provision does not indicate the quantum of pay and allowances. The contention of the petitioner is that as the petitioner was paid only allowances, it compels the authority to pass appropriate order in respect of pay which is referred to separately in Sub-rule (1) over and above the allowances. Sub-rule (3) shows that in case the concerned authority forms an opinion that the suspension order was completely unjustified, the full pay and allowances to be given to the petitioner. The learned counsel for the petitioner has stated that Sub-rule (3) has to be read along with Sub-rule (1) which can mean that with regard to pay of the petitioner some opinion is required to be formed and as the petitioner has been acquitted in the criminal case, appropriate opinion was required to be formed by the concerned authorities directing payment of full back wages upon holding that the suspension order was fully unjustified. On the contrary Mr. Dutta learned counsel for the respondents has stated that Sub-rule (3) read with Sub-rule (1) clearly indicates that in respect of pay and allowances only order is

required to be passed making mathematical calculation under Sub-rule (1) and this does not require any consideration by the authorities as to whether the petitioner was entitled to only full pay after the acquittal and only in case the authority forms an opinion that the suspension was unjustified, full pay and allowances can be paid in that circumstance and in that circumstance only.

12. But we find that in this respect, we are unable to accept either the contention of the petitioner or the contentions of the respondents in view of provisions contained in Sub-rule (5) of Rule 72B. Upon reading of Sub-rule (1) and Sub-rule (3) along with Sub-rule (5), we find that no opinion has been formed by any authority that the suspension is unjustified in case of the petitioner nor any determination has been made as per Sub-rule (5). In our opinion, the Sub-rules (1), (3) and (5) contained in Rule 72B require the authority to come a conclusion in either case as to the quantum of pay and allowances payable to a delinquent in given circumstances. Sub-rule (1) is general provision requiring passing of an order regarding pay and allowance for the period of suspension in case of reinstatement. For passing such order the authority can act either under Sub-rule (3) or under Sub-rule (5). Either opinion is to be formed under Sub-rule (3) or a determination has to be made under Sub-rule (5). This view gets support from provisions in Sub-rule (6) also. On such interpretation, we are of the opinion that the petitioner is entitled to pay and allowances and in the facts and circumstances of the petitioner's quantum is required to be decided by the appropriate authorities either by forming an opinion as to whether he is entitled to full pay and allowances for the entire period or by determination according to Sub-rule (5). In either of such cases appropriate authority is required to give reasons and in the present case, we find that the initial order passed directing reinstatement of the petitioner did not provide anything towards the pay and allowances payable to the petitioner and by a modification by order contained in Memo dated August 27, 1993 the authorities concerned simply said the full pay and allowances to be paid to the petitioner from 20.12.1997 till the date of his joining and no pay and allowance will be paid over and above subsistence allowance for the earlier period. Though the petitioner has been made to losse parts of the pay and allowances, no reason has been shown therefor nor any decision of any appropriate authority towards the same has been disclosed either in the order passed by the authorities or before the Tribunal in the

affidavits filed by the respondents. A copy of the said affidavit filed by the State respondents before the tribunal has been shown to us and it is apparent that the same does not disclose any reason given for such withholding of the parts of the pay and allowances for the relevant period.

13. The law as decided in the case of Gopal Krishna v. State of Madhya Pradesh reported in : (1968)11LLJ125SC dealing with a similar provision of service rule shows the petitioner is entitled to opportunity to show cause. The judgment in the case of Chairman & M.D. Andhra Bank v. Ramoo Ramesh reported in : (1997)11SCC610 does not apply in the present facts. The judgment in the case of Jatindra v. State of West Bengal reported in : AIR1969 Cal461 also does not apply as it did not consider Rule 72B of any similar provision in similar facts.

14. Though contention has been made on behalf of the respondents that suspension being automatic, full salary cannot be directed, but in view of our decision as above the authority is to take decision under Rule 72B, we are not deciding the matter as regards quantum nor we are dealing with the judgments relied on by the respondents.

15. In such circumstances, the writ petition is allowed and the impugned order of the Tribunal as also the order contained in memorandum dated August 27, 1998 at annexure P-5 to the writ petition to the extent it proposed withholding of pay and allowances are quashed and the respondents are directed to pass appropriate order after giving the petitioner opportunity to show cause, giving reasons and forming necessary opinion either under Sub-rule (3) or Sub-rule (5) of the Rule 72B as the concerned authority may decide in accordance with law. Such decision is to be taken expeditiously.

J. Banerjee, J.

16. I agree.