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Court : Kolkata

Decided On : Mar-11-1954

Reported in : AIR1955Cal365,58CWN656

Judge : Sinha, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Matter No. 78 of 1953

Appellant : Surya Kumar Chatterjee and anr.

Respondent : S.N. Banerjee and ors.

Advocate for Def. : G.P. Kar and ;Arun Mukherjee, Advs.

Advocate for Pet/Ap. : B.M. Sen, ;S.K. Mukherji and ;S.K. Bhattacharya, Advs.

Judgement :

Sinha, J.

1.The petitioners before me are two clerks employed in the Mission Row Post Office (subordinate service). It appears that on 5th of September 1950, a memorandum was issued by the Superintendent of Post Office, South Calcutta Division, to the following effect:

'The under-mentioned officials having been arrested by the police under Sections 261, 262 and 420, I.P.C. Section 5(2) of Act II of 1947 and conspiracy under section 120B, I.P.C. are placed under suspension with effect from the afternoon of 2-9-1950.

(1) Sri Hemanta Kumar Bhattacharjee, S. P. M., Mission Row.

(2) Sri Surya Kumar Chatterjee, Clerk Mission Row, T. S. O.

(3) Mahadeo Singh, clerk, Mission Row, T. S. O. For the first year of their suspension Sri Hemanta Kumar Bhattacharjee and Sri Surya Kumar Chatterjee will receive- as their subsistence grant half the average pay drawn by them during the 12 months preceding the date of suspension. They will get no allowance. During the subsequent period of suspension they will get 3/8th of the above-mentioned average pay.

Mahadeo Singh will receive as subsistence grant for the first year of his suspension half the average pay drawn by him during the 12 months preceding the date of suspension and allowance as admissible to him. During the subsequent period of suspension he will get 3/8th of the above-mentioned average pay.'

2. It will thus appear that three officials including the petitioners had been charged with certain offences and had been arrested by the police. By this memorandum, they were placed under suspension. These persons were sent up for trial before the Chief Presidency Magistrate, but all of them were discharged on 13-10-1950.

On 24-6-1953, they were served with summons to appear before the Special Judge Sri B. C. Ghosh, Special Court. Criminal Jurisdiction, Calcutta, to answer various charges. One of the accused, Hemanta Kumar Bhattacharjee, made an application to this High Court challenging the jurisdiction of the Special Judge. He also made an application challenging the order of his suspension. In respect of the first application, it was held by a Special Bench consisting of the learned Chief Justice Sir Arthur Trevor Harries, Das and Das Gupta JJ. that the Special Judge had no jurisdiction.

With regard to the second application, the matter was decided by Bose J., -- 'Hemanta Kumar v. N. N. Sen Gupta', : AIR1953 Cal504 (A). The learned Judge considered regulations 17 and 21 of the general regulation contained in the Posts and Telegraphs Manual, Vol. II, and came to the conclusion that the order of suspension was made under regulation 21(e)(iii) and as the petitioner Hemanta Kumar Bhattacharjee was not then in police custody or undergoing imprisonment this suspension order could not be supported. As regards regulation 17, the learned Judge held that there was no evidence that investigations were continuing. The postal authorities were directed to forbear from giving effect to the order of suspension dated the 5th of September 1950 or keeping the petitioner under suspension by virtue of that order. It is unnecessary for me to consider the other facts which had taken place in respect of the criminal action against the petitioners.

It is admitted that they are neither under arrest nor undergoing imprisonment although the proceedings are still pending. In fact, they have not been under arrest nor have they been in prison since the first arrest mentioned above which gave rise to the memorandum dated 5-9-1950. So far as the decision of Bose J. mentioned above is concerned, it appears that the attention of the learned Judge was not drawn to the fact that the rules contained in the general regulations, Vol. II of the Posts and Telegraphs Manual are not statutory rules but are merely departmental instructions. This appears from the preface which runs as follows:

'The Volumes of the Posts and Telegraphs Manual contain mainly the rules intended for the guidance and instructions of Officers of the department for the purpose of their administrative and executive duties.'

It has not been argued here that these Rules have been framed by any statutory authority or in exercise of any statutory power. So far as Reg. 17 is concerned, it also appears that the attention of the learned Judge was not drawn to the fact that it applied merely to departmental proceedings and not proceedings in a court of law. Mr. Kar conceded that Reg. 17 applied to departmental proceedings, but he argues that the learned Judge was in error in considering merely Reg. 21 (e) (iii) without considering 21(b) which would apply to the facts of this case. He however

maintained that these regulations cannot form the subject-matter of mandamus proceedings inasmuch as they are not statutory rules. I think that he is right. By mandamus the Court will enforce statutory rules or rules which have the force of a statute; or in other words a statutory body must be kept within the bounds of statutory rules. Mere departmental instructions cannot be the foundation for the issue of mandamus.

In the present case however this is not the end of the matter. Rules have been framed under statutory powers and are fully applicable to the facts of this case. These rules have been discussed in the case of -- 'Hemanta Kumar Bhattacharjee v. S. N. Mukherjee', : AIR1954 Cal340 (B). The Rules have been referred to in detail in pages 5 and 6, and it is unnecessary for me to repeat them here. It would however be convenient if I set out the two Rules which are applicable to this case which are to be found in Section IV, Appendix 3 of the Rules, Vol. II, Appendices and Forms, 3rd Edition, as amended on the 12th of May 1948. They are as follows:

'A servant of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principles laid down in Articles 193 and 193-A of the C.S. Rules) for such periods, until the final termination of the proceeding taken against him. An adjustment of his allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him, were for his arrest for debt); of its being proved that the officer's liability arose from circumstances beyond his control.

2. A servant of Government against whom a criminal charge or a proceeding for arrest for debt is pending should also be placed under suspension by the issue of specific orders to this effect during periods when he is not actually detained in custody or imprisoned (e.g., whilst released on bail), if the charge made of

proceeding taken against him is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties as such or involves moral turpitude. In regard to his pay and allowances, the provisions of paragraph 1 shall apply.'

3. The position under these rules seems to be, quite clear, A Government servant against whom proceedings have been taken for arrest for a debt or for a criminal charge, is automatically considered to be under suspension, during the time he is detained in custody or is undergoing imprisonment. But if he is to be suspended for a period during which he is not in custody or undergoing imprisonment, it is necessary to make a specific order to this effect 'during the period he is actually detained in custody or imprisoned.' In this particular case, the petitioner was suspended inasmuch as he was arrested, and the memorandum directing his suspension is on the footing that he was arrested by virtue of certain charges having been preferred against him. This order cannot therefore be taken to be a specific order which directs his suspension during a time when he is not detained in custody or imprisoned. It follows therefore, that while no specific order was necessary for suspension during the period of his detention in custody or imprisonment, a specific order was necessary for a suspension during the period when he was not actually detained in custody or imprisoned. There is no such order in existence. The result must be that the petitioner cannot be taken to be under suspension after the period of his detention in custody or imprisonment. It appears that 13-10-1950 is the date when all the three persons concerned ceased to be in custody. That must be the date when the suspension order had ceased to be operative. I am informed that certain other amendments have been made in 1951 but even under such amendment, specific orders have to be passed but no such orders have been passed.

4. Therefore I shall make the same order, as was made by Bose J. in the case cited above, that the Rule be made absolute and the respondents be directed to forbear from giving effect to the order of suspension of the petitioners dated 5-9-1950, or keeping the petitioners under suspension by virtue of that order. This will not in any way prejudice any new order that may be made in accordance with law. There will be no order as to costs.

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