

Abhijit Bhattacharjee Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Aug-21-2009

Judge : Pranab Kumar Chattopadhyay and ;Kishore Kumar Prasad, JJ.

Acts : [Jadavpur University Act, 1981](#) - Section 28(3); ;Dowry Prohibition Act - Sections 3 and 4; ;Indian Penal Code (IPC) - Sections 34 and 498A; ;Jadavpur University Service Rules; ;[Constitution of India](#) - Article 311(2)

Appeal No. : F.M.A. 513 of 2009

Appellant : Abhijit Bhattacharjee

Respondent : State of West Bengal and ors.

Advocate for Def. : Chameli Majumder and ;B.K. Bandopadhyay, Advs. for Jadavpur University

Advocate for Pet/Ap. : Kamalesh Bhattacharyya and ;Bratati Dutta, Advs.

Disposition : Appeal allowed

Judgement :

ORDER

WHEREAS by a letter dated 23.09.2002 bearing Ref. No. P-1/994/02 explanation was sought for from Sri Abhijit Bhattacharya, Jr. Assistant-cum-Typist attached to the Purchase Section, JadavpurUniversity asking him to intimate the reason for his

unauthorised absence since 12.09.2002.

WHEREAS it appears from the reply of Sri Bhattacharya that he was arrested on 12.09.2002 and was in Jail Custody till 23.09.2002 where after he has reportedly fallen ill.

AND WHEREAS it appears from a letter dated 26.09.2002 received from Jadavpur Police Station addressed to the Registrar, Jadavpur

University that Sri Abhijit Bhattacharya was arrested on 12.09.2002 in connection with Jadavpur P.S. Case No. 285 dated 12.09.2002 Under Section 498A/34 of I.P.C. and 3 & 4 of Dowry Prohibition Act on an allegation that Sri Abhijit Bhattacharya was allegedly misbehaving with his wife Smt. Pratiksha Bhattacharya often inflicting ill- treatment and subjecting her to cruelty and torture and consequently he was forwarded to the Court on 13.09.2002 and was in jail custody till 23.09.2002.

AND WHEREAS it is quite clear from the aforesaid letter bearing D.R. No. 3091/02 dated 26.09.2002 of Jadavpur Police Station that a criminal investigation in connection with the aforesaid case is pending.

NOW THEREFORE, in exercise of the powers conferred upon the under signed, being the Disciplinary Authority as per provisions of Statute 113 of Jadavpur University First Statutes, 1982, it is hereby directed that Sri Abhijit Bhattacharya, Jr. Assistant-cum- Typist attached to the Purchase Section, J.U. be placed under suspension with immediate effect in accordance with Statute 114(1)(b) of Jadavpur University First Statutes, 1982 under the [Jadavpur University Act, 1981](#) since a criminal investigation is pending against him for alleged commission of criminal offence.

During the period of suspension, Sri Abhijit Bhattacharya, Jr. Assistant-cum-Typist, Purchase Section, Jadavpur University, shall be entitled to a subsistence allowance in accordance with Statute 114(2)(d) of Jadavpur University First Statutes, 1982 under the [Jadavpur University Act, 1981](#) (as amended up to date).

Sd/-

(R. Bandyopadhyay)

Registrar & Disciplinary Authority.

11. While the appellant was under suspension another letter dated 25th/28th March, 2003 was issued to the appellant by the said Registrar of the Jadavpur University extending the probationary period for six months w.e.f. 30th April, 2003. The said letter of the Registrar dated 25th/28th March, 2003 is set out hereunder:

Ref. No. P-1/596/03

Dated : 25/28.03.2003

Sri Abhijit Bhattacharya

10/46, Bijoygarh

P.O. Bijoygarh Kolkata - 700 032

Dear Sir,

In continuation to our earlier letter No. P-1/127/02 dated 27/29.4.02, it is informed that your probationary service period has been extended for six months w.e.f. 30.4.2003 pending the criminal proceeding against you. Yours faithfully,

Sd/-

(REGISTRAR)

12. From the aforesaid written communication of the Registrar dated 25th/28th March, 2003 it is clear that the probationary period of the appellant was extended due to the pendency of the criminal case and not for the purpose of improving the performance of the said appellant.

13. Scrutinising the records produced before this Court we find that the competent authority of the Jadavpur University on assessing the performance of the appellant never found anything unsatisfactory either during the period of probation or even during the extended probationary period. On examination of the entire records

produced before this Court we also do not find any unsatisfactory remark regarding the performance of the appellant by any superior authority.

14. Ms. Chameli Majumder, learned Counsel representing the respondent-University authorities fairly submitted that the university authorities are not expected to wait for an indefinite period for taking decision regarding confirmation of the employee concerned. Ms. Majumder further submitted that the university authorities cannot confirm the appellant during the pendency of the criminal case. According to Ms. Majumder, sufficient time was granted to the appellant in order to be exonerated from the pending criminal case.

15. From the records as well as from the aforesaid submissions of the learned Counsel of the University authorities we find that the appellant herein was discharged from the services of the University due to the pendency of the criminal case and not on account of any unsatisfactory performance during the period of probation. The order of termination is couched in very innocuous words and the same admittedly does not attach any stigma but the form of the order does not reflect the true nature of the order as we find on examination of the records and upon considering the submissions of the learned Counsel representing the respondent- university authorities.

16. Therefore, going behind the words and forms in order to decide whether the discharge of the appellant from the services of the University was a discharge simpliciter or not we find that the real basis of the order has not been reflected in the order of termination issued to the appellant.

17. In the present case, the Registrar being the Disciplinary Authority undisputedly placed the appellant under suspension by issuing a specific office order on October 3, 2002 and extended the probationary period for a period of six months due to the pendency of the criminal proceeding. However, subsequently the appellant was discharged from service by the order dated 28th October, 2003 which is couched in innocuous terms. Therefore, following the decision of the Supreme Court in the case of Jarnail Singh and Ors. v. State of Punjab and Ors. reported in : AIR 1986 SC 1626 it is incumbent on the court to lift the veil and see the real circumstances as well as the basis and foundation of the order

complained of. In the aforesaid decision, Hon'ble Supreme Court held:

32. The position is now well-settled on a conspectus of the decisions referred to hereinbefore that the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad hoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court, in such case, will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency or not. In the instant case we have already referred to as well as quoted the relevant portions of the averments made on behalf of the State respondent in their several affidavits alleging serious misconduct against the petitioners and also the adverse entries in the service records of these petitioners which were taken into consideration by the Departmental Selection Committee without giving them any opportunity of hearing and without following the procedure provided in Article 311(2) of the [Constitution of India](#) while considering the fitness and suitability of the appellants for the purpose of regularising their services in accordance with the Government Circular made in October, 1980. Thus the impugned orders terminating the services of the appellants on the ground that 'the posts are no longer required' are made by way of punishment.

18. From the facts narrated hereinbefore, we find that the Disciplinary Authority of the appellant did not discharge him from the service of the University on consideration of his work during the period of probation and as a matter of fact, the real reason behind the termination was the pendency of the criminal proceeding against the said appellant, as we have already held hereinbefore upon examination of the records and considering the submissions of the learned Counsel of the University.

19. When the Registrar being the Disciplinary Authority placed the appellant under suspension and extended the probationary period on the sole ground of pendency of the criminal proceeding then there could be no valid reason to issue the order of termination to the said appellant invoking the power in terms of Section 28(3) of the [Jadavpur University Act, 1981](#). In the present case, the real basis of the order of termination has to be taken into consideration by this Court.

20. There is no doubt that the order of termination issued to the appellant is couched in innocuous terms but going through the records produced before this Court we are satisfied that the appellant was not discharged from service of the University on consideration of his work during the period of probation. The decisions cited by Ms. Majumder, learned Counsel of the respondent- Jadavpur University authorities are not at all applicable and clearly distinguishable in the facts of the present case.

21. It is well settled that the form of the order is not conclusive and the Court is entitled to go behind the orders to decide whether the discharge is a discharge simpliciter or not. In the present case, we have already held on examination of the records that the real reason behind the order of termination of the appellant has not been mentioned in the impugned order of termination dated 28th October, 2003, which is couched in innocuous terms. Since we have already held that real reason for discharging the appellant from the services of the University was the pendency of the aforesaid criminal proceeding, we are unable to accept the order of termination issued by the Disciplinary Authority as a termination simpliciter in accordance with the terms of appointment as claimed by the respondent-University authorities. The Supreme Court considering the earlier decisions settled the principle in this regard in the case of Jarnail Singh and Ors. (Supra), which we have already referred to hereinbefore. In the aforesaid circumstances, before discharging the appellant from the services of the University, Disciplinary Authority should have initiated appropriate disciplinary proceedings as we are of the opinion that the impugned order of termination was issued to the appellant by way of punishment.

22. For the aforementioned reasons, the order of termination issued to the appellant cannot be sustained in the eye of law as the same is punitive in nature and without observing the principles of natural justice and procedural justice such punitive order cannot be issued to an employee even during the period of probation.

23. Therefore, the order of termination dated 28th October, 2003 issued by the Registrar, Jadavpur University to the appellant herein is liable to be quashed and the same is quashed accordingly.

24. We have already held that the concerned authority of the respondent-University found the appellant unsuitable due to pendency of the criminal case although nobody should suffer prejudice due to mere pendency of the criminal case.

25. Following the principle of presumption of innocence the appellant should have been presumed to be innocent as every person should be presumed to be innocent until the contrary is proved. In the case of *Harendra Sarkar v. State of Assam* reported in : (2008) 9 SCC 204 Supreme Court observed:

51. Presumption of innocence is a human right. Such a legal principle cannot be thrown aside under any situation. (See *Narendra Singh v. State of M.P.* and *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*).

26. In the present case, admittedly, the appellant was exonerated from the criminal case by the order dated 18th May, 2005 passed by the learned Judicial Magistrate, 3rd Court, Alipore in B.G.R. No. 3121 of 2002 and T.R. 550 of 2003 although the said appellant had to suffer serious prejudice during the pendency of the aforesaid criminal case.

27. The learned Single Judge, in our considered opinion, failed to appreciate the real issues involved in the writ petition filed by the appellant herein and erroneously rejected the said writ petition.

28. For the aforementioned reasons, the impugned order under appeal passed by the learned Single Judge cannot be sustained in the eye of law and the same is

accordingly set aside.

29. The respondent-Jadavpur University authorities are directed to forthwith allow the appellant to resume his duties in the post of Junior Assistant-cum- Typist as the order of suspension issued earlier by the respondent-Disciplinary Authority had already merged with the final order of termination, which we have quashed.

30. In the facts of the present case, we are, however, not inclined to issue any direction regarding payment of back wages.

31. With the aforesaid observations and directions, this appeal stands allowed.

32. There will be no order as to costs.

33. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Kishore Kumar Prasad, J.

34. I agree.

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