

22.02.2022
Sl. No.12
srm

W.P.A. No. 19898 of 2021
Arjun Pal @ Arjun Kumar Pal
Vs.
The State of West Bengal & Ors.

Mr. Nirmalya Kumar Das,
Mr. Jahangir Hossain

...for the Petitioner.

Mr. Prosenjit Mukherjee,
Mr. Arghya Kamal Das,
Ms. Tiya Ghosh

...for the Respondent Nos.5 to 7.

Affidavit of service is taken on record.

The petitioner was working as an Assistant Manager in the Boinchi C.A.D.C. Berela Sech 'O' S.K.U.S. Limited (hereinafter referred to as the said Society). The petitioner was served a show cause notice dated April 24, 2022. The petitioner was asked to show cause why appropriate action shall not be taken against the petitioner for misappropriating the funds of the said Society. By an order dated April 26, 2020, the written version of the petitioner dated April 25, 2020 was considered and the petitioner was placed under suspension on and from April 27, 2020. By an order dated May 18, 2020, the Secretary of the said Society intimated the petitioner that the Board had decided to terminate the

petitioner with retrospective effect from April 27, 2020, that is from the date of suspension.

The law does not permit termination of service of a person with retrospective effect. The allegation also is that the subsistence allowance was not paid to the petitioner since his suspension. Rules 13 to 17 of the West Bengal Co-operative Societies Rules, 2011 provide a procedure to be adopted in holding a disciplinary proceeding against an employee. In this case, rules were not followed and the order of termination was issued retrospectively.

It also appears that the petitioner had preferred an appeal before the appellate authority, which is pending since May 29, 2020. Although, the appeal is pending for two years, this Court is of the opinion that no useful purpose will be served by directing the appellate authority to consider the appeal in view of the facts and the law applicable in this case:

- (a) The petitioner was suspended in contemplation of a disciplinary proceeding, but subsistence allowance was not paid;
- (b) The disciplinary proceedings were neither initiated nor conducted as per the rules. No charge sheet was issued. No enquiry was conducted, no evidence was recorded, but the petitioner was terminated;

(c) The termination order was passed with retrospective effect;

(d) Serious procedural irregularities and infraction of law have been committed by the disciplinary authority.

It is settled law that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process. It is to ensure fairness in treatment.

In the decision of *Tata Cellular v. Union of India*, (1994) 6 SCC 651, the Hon'ble Apex Court held as follows:

"77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) **Illegality** : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) **Irrationality**, namely, **Wednesbury unreasonableness**.

(iii) **Procedural impropriety**.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696] , Lord

Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

Under such circumstances, the order of termination cannot stand due to the illegality, procedural impropriety and error of law. The order of termination is set aside. The appeal, which is pending, is disposed of. Accordingly, the petitioner will be treated to be “under suspension” with immediate effect. The petitioner will be paid his subsistence allowance along with the arrears in 10 equal monthly instalments. The current subsistence allowance shall be paid month by month beginning from March, 2022. First of such instalment will be paid within March 1, 2022 and thereafter month by month till the arrears are liquidated. The employer will be at liberty to conduct the disciplinary proceedings against the petitioner in terms of the rules.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)