

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**WP.ST 896 of 2004
IA NO: CAN/3/2023**

**Sri Dhiresh Ranjan Chakraborty
Vs.
The State of West Bengal & ors.**

For the writ petitioner : Md. Kalam, Advocate,
Mr. Bidhayak Lahiri, Advocate

For the State : Mr. Biswabrata Basu Mallick,
Ld. A.G.P.

Hearing on : 13.09.2023

Judgment on : 13.09.2023

DEBANGSU BASAK, J.:-

1. C.A.N.3 of 2023 is an application for restoration.

2. For the ends of justice and in view of the pleadings made in the application, the order of dismissal of the writ petition dated August 23, 2023 is recalled.

3. WP.ST 896 of 2004 is restored to its file and number.

4. C.A.N.3 of 2023 is **allowed**.

5. The writ petition is directed against an order dated April 2, 2004 in O.A.112 of 2002.

6. By the impugned order, challenge to an order of dismissal of the writ petitioner from service was negated by the Tribunal.

7. Learned advocate appearing for the writ petitioner submits that, the writ petitioner superannuated from service on January 31, 2001. The writ petitioner was not served with any order of dismissal from service or of retention in service till January 31, 2001. Subsequently, the writ petitioner received orders dated January 31, 2001 and February 1, 2001, the first being one of retention and the second being one of suspension, on February 28, 2001. Moreover, the order of retention was dispatched on February 2, 2001 after the date of superannuation of the writ petitioner. Consequently, in view of the ratio laid down in **AIR 1970 SC 214 (State of Punjab vs. Khemi Ram)** the order of retention or the order of suspension or the order of dismissal passed by the authorities, is of no consequence.

8. Learned advocate appearing for the State submits that, the order of retention from service of the writ petitioner was passed on January 31, 2001 before the superannuation of the writ petitioner.

9. Learned advocate appearing for the State submits that, challenging the disciplinary proceeding the writ petitioner filed an Original Application being O.A.4293 of 1999. In such Original Application, there was an order restraining the State respondent from awarding or causing service upon the writ petitioner the final order without taking leave of the Tribunal. Consequently, the State filed a petition before the Tribunal praying for leave to cause service of the final order dated January 22, 2001 upon the writ petitioner. Ultimately, Tribunal granted an order on February 28, 2001 permitting the State to cause service of the final order dated January 22, 2001 upon the charged officer. He submits that, prior to the date of superannuation, there was a final order of dismissal which could not be served in view of an order passed by the Tribunal obtained by the writ petitioner. He submits that, writ petitioner cannot take benefit of the order of the Tribunal and contend that, the order of punishment was not served upon the writ petitioner prior to his superannuation and therefore, was *non est*. The State was prevented by the writ petitioner albeit an order passed by the Tribunal, from communicating the order of dismissal to the writ petitioner. The writ petitioner cannot take benefit of such a situation.

10. It appears from the records that, a disciplinary proceeding was initiated as against the writ petitioner. Such disciplinary proceeding was challenged by the writ petitioner in O.A.4293 of 1999 in which, the Tribunal passed an order restraining communication of any final order of dismissal without taking leave of the Tribunal.

11. The disciplinary proceeding culminated into an order of punishment dated January 22, 2001 being passed. The same could not be communicated in view of the fact that, there was an order of injunction passed by the Tribunal restraining the State from communicating such order of dismissal to the writ petitioner without obtaining leave of the Tribunal.

12. The State applied for leave to cause service of the order dated January 22, 2001 which was granted by the Tribunal by an order dated February 28, 2001. Thereafter, the order dated January 22, 2001 was served upon the petitioner.

13. In the interregnum, the writ petitioner superannuated on January 31, 2001. On that date, an order of retention of the writ petitioner was passed by the authorities. The authorities also suspended the writ petitioner with effect from February 1, 2001.

14. In either view of the situation, the writ petitioner cannot take shelter of non communication of the order of dismissal to him prior to the date of superannuation. Firstly, there was an order of injunction obtained by the writ petitioner. The Tribunal granted leave to the State to

communicate the order of dismissal whereupon, the State did so. Therefore, the writ petitioner cannot cite the ground that, order of dismissal was served upon the writ petitioner subsequent to his superannuation.

15. Secondly, there was an order of retention of service of the writ petitioner passed on January 31, 2001 and the writ petitioner was placed under suspension on February 1, 2001. Therefore, even on the date of service of the order of dismissal, the writ petitioner was deemed to be in service by virtue of the order of retention.

16. **Khemi Ram (supra)** considers a situation where, the order of dismissal was dispatched that is to say that, it was placed beyond the control of the State. It observed that, such order of dismissal need not be actually and physically served upon the delinquent within the period of his service. What was required was that the order of the dismissal should be dispatched so as to place it out of the control of the State, prior to the date of superannuation.

17. In the facts of the present case, the order of dismissal was passed on January 21, 2001 prior to the date of superannuation of the writ petitioner. The State suffered a legal inability to serve the order of dismissal upon the writ petitioner prior to his date of superannuation by reason of an order of the Tribunal obtained at the instance of the writ petitioner. Such order was subsequently modified to permit the State to serve order of dismissal upon the writ petitioner which the State did.

18. Consequently, we find no merit in the present writ petition.
19. **WP.ST 896 of 2004** is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

20. I agree.

(Md. Shabbar Rashidi, J.)

CHC