

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

Hon'ble Justice Partha Sarathi Sen

W.P.A No. 7271 of 2020

Samir Kumar Halder

-Versus-

The State Bank of India And Ors.

For the Petitioner : Mr. Sayan Chattopadhyay, Adv.,
Mr. Kaustav Sen, Adv.

Heard on: : 02.05.2023

Judgment on. : 10.05.2023

PARTHA SARATHI SEN, J. : –

1. In this writ petition as filed under Article 226 of the Constitution of India, the writ petitioner has prayed for quashing and/or cancellation of the restoration of termination order as passed by the respondent no.6 vide his office memo no.1707/Pan/X/21/13 dated 13.05.2020. By the impugned memo the respondent no.6 decided to uphold the previous termination order as against the present writ petitioner as has been issued vide memo no. 1204/Pan/IV/116/2010 dated 17.05.2013 whereby and whereunder the present writ petitioner was terminated from the post of 'Sahayak' on account of his involvement in Memari P.S Case No. 18 of 2006 dated 30.01.2006 under Sections 420/417/493/376 of the Indian Penal Code.

Q. Have you ever been arrested detained or convicted by a Court for any offence? If the answer is 'Yes' the full particulars of the arrest or detention or conviction and the sentence should be given.	Answer: No.
---	---------------------------

3. After joining in the post of 'Sahayak' in the office of the Zila Parisad, Bardhaman it has come to the notice of his employer that the present writ petitioner was involved in the aforementioned P.S case though he was subsequently acquitted from the said case vide judgement dated 30.11.2011 as passed by the learned Additional Sessions Judge, Fast Track 2nd Court, Burdhaman in ST 1(12)09/SC 144/2008. The respondent no.6 however found in the said judgement dated 30.11.2011 that the present writ petitioner was arrested and produced before the said Court in connection with the said case and subsequently he was granted bail after suffering a considerable period of custody.

4. In view of such position respondent no.6 also found that the present writ petitioner has made a false statement in column no. 14 of the police verification form and thus on account of such false statement, cancelled the appointment of the writ petitioner by issuing the aforementioned memo dated 17.05.2013. Aggrieved with the decision the respondent no.6 vide its order dated 17.05.2013, the writ petitioner had approached before this Court by filing WPA No.21192(W) of 2013 and while disposing the said writ petition on 05.03.2020, a Co-ordinate Bench of this Hon'ble Court directed the respondent/authorities of the said writ petition to revisit the decision dated 17.05.2013.

5. The respondent no.6 after revisiting the previous order dated 17.05.2013 as directed by this Hon'ble Court decided to uphold its previous termination order dated 17.05.2013 which has been assailed before this Court by filing the instant writ petition.

6. Mr. Chattopadhyay, learned advocate for the writ petitioner in course of hearing has handed over a server copy of the order dated 30.03.2023 as passed in CRR 3021 of 2016 as passed by a Co-ordinate Bench of this Court whereby and whereunder the relevant portion of the page no.3 of the judgement as passed in ST 1(12)09/SC 144/2008 dated 30.11.2011 by the learned Additional Sessions Judge, Fast Track 2nd Court, Bardhaman was modified in the following manner.

“Considering the above fact, it is found required that the impugned judgement be interfered with, to modify the findings of the trial Court as above, and to record that the petitioner, in

connection with the present case has never under gone incarceration and on the date of his surrender in the Court i.e., on 18.02.2006, he has been enlarged on regular bail by the Judicial Magistrate.”

7. It is contended by Mr. Chattopadhyay that in view of the changed position as reflected from the order dated 30th March, 2023 as passed in CRR no. 3021 of 2016 it cannot be said that the present writ petitioner was in custody in connection with the aforesaid Session Case arising of Memari P.S Case no. 18 of 2006 dated 30.01.2006 and therefore under no stretch of imagination it can be said that his answer **‘no’** in reference to column no.14 of police verification form is incorrect. It is argued by Mr. Chattopadhyay, learned advocate for the writ petitioner that the reason as assigned by the respondent no.6 while passing the impugned memo is not justifiable in law and the said impugned memo may be quashed with a direction to the respondent/authorities to reinstate the present writ petitioner in the post of ‘Sahayak’ Abujhali I Gram Panchayat in the district of Purba Bardhaman.

8. On conjoint perusal of the judgement dated 30.11.2011 as passed in ST 1 (12)09/SC 144/2008 and the order dated 30.03.2023 as passed in CRR 3021 of 2016 it has become palpably clear that the finding of the learned Additional Sessions Judge, Fast Track 2nd Court, Bardhaman in its judgement dated 30.11.2011 in ST 1(12)09/SC 144/2008 that the present writ petitioner was arrested, produced before the said Court and subsequently he was granted bail is incorrect in view of the modified

finding as observed by a Co-ordinate Bench of this Court in CRR no. 3021 of 2016.

9. At his juncture the moot question arises for consideration as to whether in the changed circumstances as discussed hereinabove the answer as given by the writ petitioner in respect of the query under Column no.14 in his police verification form is correct or not.

10. On perusal of the judgement as passed in WP no. 21192(W) of 2003 dated 05.03.2020 as filed by the instant writ petitioner against the self same respondents it reveals that in the said judgement a Co-ordinate Bench of this Hon'ble Court placed his reliance upon two reported decisions namely; ***Niranjan Singh vs. Probhakar Raja Ram Kharote*** reported in ***AIR 1980 SC 785 and Kakon Kumar Roy vs. State of West Bengal and Ors.*** reported in ***(2007) 3 LLN 792: (2007) SCC Online Cal 275.***

11. In considered view of this Court in order to reach at a logical conclusion of the instant writ petition a look to paragraph 8 and paragraph 11 of the judgement dated 05.03.2020 as passed in WP 21192 (W) of 2013 is very much necessary and those paragraphs are reproduced hereunder in verbatim:-

“8. In this connection, 1980 ***AIR SC 785 (Niranjan Singh—v—Probhakar Raja Ram Kharote)*** paragraph 7 was also relied upon to the effect:

Paragraph 7. “When is a person in custody, within the meaning of Section 439 Cr.P.C. ? When he is in duress either because he is held by the investigating agency or other police or allied

authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on 5 this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.”

Paragraph 8. “Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail Under Section 438) is physical control or atleast physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

11.In none of the cases was the Hon’ble Supreme Court called upon to decide whether applying for anticipatory bail and obtaining it would imply that a person had been arrested. A bench decision of this Court being **2007 (3) L.L.N. 792 between *Kakon Kumar Roy and State of West Bengal and Others*** held that:

Paragraph 9. “Although Mr. Ganguly tried to impress upon us that his client never obtained

separate bail and was at large by the strength of the said anticipatory bail and "should be deemed to have never been arrested", we are not at all impressed by such submission. It appears from the order-sheet submitted by the writ petitioner himself that on the date of acquittal, he was present in Court and the learned Court had recorded that all the thirteen accused persons were present and were on bail. Moreover, in criminal proceedings, it is preposterous to suggest that an accused person without obtaining bail faced trial and was acquitted. Once anticipatory bail is given, the person obtaining anticipatory bail is required to take regular bail from the Court during the subsistence of the period by which he is protected by the anticipatory bail. Therefore, in the case before us, it was the duty of the writ petitioner to disclose that a criminal case under Sections 379/304A of the Indian Penal Code was pending where he was released on bail at the relevant point of time and was facing trial. Suppression of such fact, in our view, was sufficient to disentitle him to be considered even though he was subsequently acquitted. Our aforesaid views find support from the decision of the Supreme Court in the case of Kendriya Vidyalaya Sangathan and Ors. v. Ram Ratan Yadav (supra)."

12. On conjoint perusal of the aforesaid two reported decisions as mentioned in the preceeding two paragraphs it appears to this Court that if the principles of law as decided in the aforesaid two reported decsison

are applied in the facts and circumstances of the instant case it would reveal that though in connection with ST 1 (12)09/SC 144/2008 the present writ petitioner was enlarged on anticipatory bail and was not arrested in connection with the said case at any point of time but under no stretch of imagination it cannot be said that he was not under the control of the said trial court in connection with the aforementioned sessions case since before the said sessions case in connection with the aforementioned case he surrendered and was enlarged on regular bail.

13. In considered view of this Court the view taken by the Hon'ble Court in the reported decision of **Kakon Kumar Roy** at paragraph 8 is also very much pertinent in connection with the instant writ petition and the said paragraph no. 8 is reproduced hereinbelow in verbatim:-

“8. After hearing the learned counsel for the parties and after going through the materials on record we agree with Sri Ganguly that merely because a citizen has been implicated in a false criminal case, the pendency of such a case would not be a disqualification in a Government service so long he is not proved to be guilty. However, if in the application form, there is at specific column “enquiring” whether the candidate was with a criminal case and if the answer is description of the case, in such a situation, a person, who has obtained anticipatory bail and consequently been released on regular bail and was facing trial, had a duty to disclose such fact. It is true that subsequently, he was acquitted; but he well knew at the time of filling up the Verification roll that he was an accused person in the then pending criminal case and got an anticipatory bail for a particular duration and thereafter obtained regular bail.”

14. In view of such discussion as made hereinabove and in view of the propositions of law as enunciated in the reported decisions of **Kakon Kumar Roy (supra)** this court is in agreement with the respondent no.6 that the present writ petitioner while giving answer to column no.14 of his police verification form ought to have disclosed that at that material time he was involved in the aforementioned sessions case in not doing so, he has intentionally suppressed a material fact in the police verification form as submitted with his employer.

15. In view of the discussion made hereinabove this court finds no illegality and /or irregularity in the order impugned.

16. This court thus finds that the instant writ petition is devoid of any merit and is hereby dismissed.

17. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)