

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Smt. Urmita Datta (Sen)
Member (J)**

-AND-

**The Hon'ble P. Ramesh Kumar,
Member (A)**

J U D G M E N T

-of-

Case No. O.A. - 361 of 2015

Debabrata SinghaApplicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. B.R. Neogi,
Mr. A.K. Das Sinha,
Advocates.**

**For the State Respondents :- Mr. S.K. Mondal,
Advocate.**

Judgment delivered on : 30th August, 2018

**The Judgment of the Tribunal was delivered by :-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed praying for following relief(s):

- “(a) An order quashing and setting aside the impugned order which is Annexure “J” of this application and further directing the respondents to reinstate the applicant in service and to pay the applicant all consequential service benefits including all arrears of salaries and allowances;
- (b) Issuance of any other order or orders and/or direction as this Hon’ble Tribunal may deem fit and proper.”

2. The case of the applicant is as follows:

(i) As per the applicant, he had initially joined as a General Duty Attendant in the year 1975 at Panihati State General Hospital.

(ii) By a letter dated 09.12.1984 issued by the Chief Medical Officer of Health, 24-Parganas, he was provisionally selected as General Duty Attendant i.e. G.D.A., Panchagram Primary Health Centre, 24-Parganas (Annexure ‘B’). Pursuant to the said appointment letter, the applicant joined the said post as G.D.A. on 10.02.1984.

(iii) He joined Dr. B.C.Roy Memorial Hospital on 28.02.1986 (Annexure ‘C’).

(iv) The applicant along with five others Group – IV staffs vide Memo dated 31.10.1987 were declared confirmed to the post w.e.f. 09.02.1987 (Annexure ‘D’).

(v) However, on 29.07.1998, the applicant was restrained from performing his duty and also to sign the Attendance Register. Being aggrieved with, he filed one O.A. No. 6039 of 1998, which was disposed of by judgement dated 28.03.2003, whereby

the respondent was directed to allow the applicant to join the duty as Group-D staff and to continue in such position till he is lawfully terminated or removed from service under due process of law(Annexure 'G').

(vi) the respondent filed a writ petition challenging the said order before the Hon'ble High Court in WPST No. 596 of 2003 and the Hon'ble High Court vide their judgement dated 20.03.2014, while disposing of the writ petition, had granted liberty to the respondents to take action against the applicant in accordance with the law.

The O.S.D. and Ex-officio Deputy Director of Health Services, Administration, West Bengal vide order dated 20.03.2014 directed the applicant to appear before the Director of Health Services and Ex-officio Secretary, Department of Health and Family Welfare. It was further directed that such action, if any, will be initiated by the State by 15th July, 2014 and till then the applicant will not be entitled to join duty or to arrears or salary or consequential benefits. However, it was further held that if the respondents do not initiate any action by the aforesaid date it will be presumed that they do not want to take any action against the applicant and in that event, the applicant shall be reinstated in service with continuity and full back wages. It is also observed that while taking action against the applicant, the State shall bear in mind the decision of the Judicial Magistrate passed in the criminal case as in the mean time, one criminal case was pending being No. 2129 of 1998 and the applicant was acquitted vide order dated 31.07.2008 (Annexure 'I').

(vii) However, the Director of Health Services and Ex-officio Secretary, Deptt. of Health and Family Welfare vide his order dated 31.07.2014 removed the applicant from service w.e.f. 29.07.1998 under Clause (2) of Sub-Rule 1 of Rule 11 of West Bengal Services (Classification, Control and Appeal) Rules, 1971

(Annexure 'J'). Being aggrieved with, he has filed this instant application.

(viii) It has been submitted that the respondent, instead of invoking Rule 10 procedure by way of show-causing the applicant, has resorted to the proceedings under Rule 11 (1) (ii) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. According to the applicant, even while invoking Rule 11(1)(ii) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, the Respondents never given any reasons why it was not practically possible to hold inquiry by the disciplinary authority though as per the said Rule, the respondents have to record in writing reasons for such impracticability of holding any regular enquiry.

(ix) Moreover the respondents have not considered the order of acquittal by the criminal court initiating the disciplinary proceedings.

In supporting of his submission, the applicant has referred the following case laws: –

- “(i) 2012(10)SCC 215 (Reena Rani –Vs- State of Haryana & Ors.) Paragraph 6 – 11.
- (ii) In the case reported in AIR 2015 SC 1796 (Paragraph nos. 22 & 23).
- (iii) In the case reported in 2015(2) SCC 365.
- (iv) In the case reported in 2015(2) SCC 377.
- (v) AIR 2017 SC 2564.”

3. The respondents have filed their reply, (i) wherein it has been categorically stated that there is no record showing that the applicant joined the service in the year 1975. (ii) During the course of the hearing on 07.05.2014, the applicant in his own hand writing given a statement wherein he has mentioned his date

of birth as 02.01.1964 that means he was merely 11 years of age in the year 1975 and no one can be allowed to work as Class-IV casual worker in any Government establishment at this age (Annexure 'A'). (iii) Moreover, on verifying all the papers of the Primary Health Centre, 24-Parganas including Attendance Register, it is found that there is no employee in the name of Shri Debabrata Singha working as G.D.A. or any other post at Panchagram Primary health Centre during the month of February, 1984 to 7th December, 1984. Therefore, if he had worked there as G.D.A. or any other post, his name must have been recorded in the Attendance Register at least for six months within the period from March, 1984 to December, 1984. Again there is no record to show any disbursement of salary in the name of Shri Debabrata Sinha during that period. "Issue Register" of the office of C.M.O.H., 24-Parganas shows that No. HC/815/1(2) dated 09.02.1984 was issued but not any appointment letter claimed by the applicant (Annexure 'B'). Therefore, the applicant somehow managed to work at Dr. B.C. Roy Memorial Hospital for Children absolutely on the basis of fake and fabricated documents. (iv) The respondent has further submitted that the applicant was asked to appear before the Directorate of Health Services and Ex-officio Secretary, Deptt. of Health and Family Welfare on 07.05.2014 for personal hearing in pursuant to the order dated 20.03.2014. (v) Thereafter, the Director of Health Services after being satisfied with the evidence available against the applicant and after hearing the applicant as well as considering his statement made on 07.05.2014, exercises the provision Rule 11(i)(ii) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, (Annexure 'C').

Accordingly, the respondent had prayed for dismissal of the Original Application.

4. The applicant has filed rejoinder to the said reply and has submitted that the applicant was appointed as casual worker in the year 1975 for which there is no age bar for such appointment. It is further submitted that under the provision of Rule 7 of West Bengal Services (Classification, Control and Appeal) Rules, 1971, the upper age limit for entering in Government service has been prescribed but no lower age limit has been prescribed. Similarly, in the provision Rule of 17, service rendered before attending the age of 18 in so far class (i) (ii) & (iii) Services, should not be counted for pension and in so far as class (v) service is concerned before attending the age of 16 years, the service rendered shall not be counted except for compensation gratuity.

5. It has been further submitted that from the perusal of the Xerox copy of the Attendance Register enclosed by the Respondent (Annexure 'B'), it would transpire that the said Register is for Primary Health Centre, Diamond Harbour, 24-Parganas, whereas the applicant was attached to Panchagram Health Centre, 24-Parganas. Moreover, the Original Service Book, was produced before the Criminal Court and the Criminal Court in its findings has specifically observed that all the development of service of the applicant since his joining on 10.02.1984 at Panchagram Primary Health Centre till his employment as G.D.A. till July, 1998 at B.C. Roy Memorial Hospital for Children (Annexure "H") was there. Moreover, the Hon'ble High Court vide their judgement dated 20.03.2014 had categorically directed that while deciding whether take action against the applicant or not, the State shall bear in mind the decision of Judicial Magistrate, First Court, Sealdah. Therefore, termination of the service of the applicant invoking Rules 11(i) (ii) of the West Bengal Services (Classification, Control and

Appeal) Rules, 1971 without following the direction of the Hon'ble High Court bad in law and they are liable to be quashed.

6. We have heard both the parties and perused the record. It is noted that the applicant had earlier challenged the action of the respondents before this Tribunal by which they had prevented the applicant to join the duty. Though this Tribunal had directed the respondents to allow the applicant to join the duty vide order dated 28.03.2003. However, being aggrieved with, the respondent had preferred one WPST No. 596/2003 in OA – 6039/1998 which was disposed of by judgement dated 20.03.2014 wherein the Hon'ble High Court held inter alia

“The termination of service occurred in 1998 and the respondent No. 1 has been out of service since then. There is no dispute that the Petitioners did not terminate the services of the respondent. They prevented him from working and signing the attendance register without holding a departmental enquiry. It may be the case of the Petitioners, as argued by Mr. Mukherji, that the respondent No. 1 was never their employee and that he had obtained employment on the basis of fake documents. However, there is no dispute that the Petitioners did pay salary to the respondent from 1975 to 1998. **Assuming the respondent had secured employment with the petitioners on the basis of fake documents, it was necessary for the Petitioners to hold a departmental enquiry and to prove the charges levelled against the respondent No. 1. An employee cannot be thrown out of service without holding a departmental enquiry.**

These Petitioners would have to prove that in the departmental enquiry the respondent had rendered service from 1975 to 1998 on the basis of fake documents and that, therefore, he could not be continued in service. Even though the misconduct as challenged against the respondent may have been detected by the State after several years it was till necessary for the State to hold departmental enquiry before terminating the service of the employee. But not permitting the employee to sign the attendance register to attend work, it could be deemed that the State had terminated the service of the employee especially since there was no order of suspension issued to the respondent No. 1.

In our opinion, therefore, it would be futile to remand the matter to the Tribunal at this stage. However, we leave it open to the Petitioners to take action against the respondent in accordance with law. Such action if any, will be initiated by the State by 15th of July, 2014. Till then the respondent will not be entitled to join duty or to arrears of salary or consequential benefits.

However, we make it clear that if the Petitioners do not initiate action by the aforesaid date, it will be presumed that they do not want to take any action against the respondent No. 1. In that event, the respondent shall be reinstated in service with continuity and full back wages and all other consequential benefits.

While deciding whether to take action against the respondent, the State shall bear in mind the decision of the Judicial Magistrate, 1st Court, Sealdah, 24th Parganas dated 31st July, 2008 where the respondent No. 1 has been acquitted in G.R. Case No. 2129 of 1998 of the charges under Sections 467/468/471/420/120B of the I.P.C. The observations made by the Tribunal or by us shall not influence the result of an enquiry, if any, initiated against respondent No. 1.

In the result the impugned order of the Tribunal is set aside.

The petition is disposed of with no order as to costs.”

From the perusal of the aforesaid judgement, it is clear that the Hon’ble High Court had clearly stipulated that an employee cannot be thrown out of service without holding a proper departmental enquiry. Further, it was also held that while to take decision whether to take action or not against the applicant, the State shall bear in mind the decision of the Judicial Magistrate passed in the criminal case. It is pertinent to mention Rule 11(i)(ii)(iii) stipulates inter alia

“(i) a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
(ii) the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for reasons to be recorded in writing, it is not reasonably practicable to hold such enquiry; or

(iii) the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold such enquiry.”

From the perusal of the Rule, it transpires that to invoke Rule 11 (i) (ii) (iii), reasons to be recorded in writing, whereas in the impugned order no such reasoning has been stated for what reasons, it was not possible to hold any enquiry before imposing the punishment though the Hon'ble High Court had clearly observed that departmental enquiry is necessary to come to the conclusion whether the applicant was appointed on the basis of forged and fabricated documents or not. It is also noted that in the impugned order, the authority did not consider the order of the Judicial Magistrate dated 31.07.2008, whereby the applicant was acquitted from the self-same charges. Rather from the perusal of the order dated 31st July, 2008 passed the judgement by the Judicial Magistrate in G.R. No. 2129/1998, it is noted that on the self-same cause of action, the Ld. Criminal court has held inter alia

“The service book material exhibit – I of accused shows all developments of his service since his joining on 10-2-84 at Panchagram P.H.C. till his employment as GDA till July 1998 at B.C. Roy Hospital for Children. Neither Police did take any step to ascertain that the entries made therein prior to joining at B.C. Roy Hospital are forged nor any of Prosecution witness whispers about those being forged.

The aforesaid circumstances including the Manners under which FIR was lodged, the investigation carried in furtherance thereto, the evidences led by Prosecution surprising to

accused and best evidences withheld by Prosecution leaves a shroud of doubt in the Prosecution's version.

The allegation brought against accused is serious, but the evidences led in support thereto are feeble.

It is settled principle of criminal jurisprudence that Prosecution has to prove its case beyond all reasonable doubt, which Prosecution fails to do in the case.

In view of aforesaid findings the point is answered in negative.

Hence, it is ordered

That the accused is found not guilty of the offence u/s 468,471,420 IPC and is acquitted u/s 248(1) Cr.P.C.”

Further, the respondents in their reply have claimed that from the perusal of the copies of the Attending Register of all the employees of Panchagram Primary health Centre, 24 Parganas during the months of February, 1984 and 7th December 1984 the name of the applicant would not traceable. Therefore, according to it, he did not work during that period (Annexure B to the reply). However, from perusal of the said documents, it is noted that the said documents is certified by the Chief Medical Officer of Health, Diamond Harbour, Dist. 24 Parganas. It is also observed that in reply, the respondents have stated that the Director of Health after being satisfied with the evidences available at the time of personal hearing, has come to the conclusion that charges are proved.

In view of the above, we are constrained to hold that the impugned order is illegal and bad and against the provision of the Rule stipulated in the West Bengal Services (Classification,

Control and Appeal) Rules, 1971. Accordingly the impugned order is quashed and set aside. The respondents are directed to reinstate the applicant with consequential benefit.

Accordingly, the O.A. is disposed of with the above observations and directions.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)