

**Bata Krishna Barman Vs. Assistant Secretary, (Department of Civil Supplies) and ors.**

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**Court :** Kolkata

**Decided On :** Nov-29-1956

**Reported in :** (1957)IILLJ260Cal

**Judge :** Bose, J.

**Appellant :** Bata Krishna Barman

**Respondent :** Assistant Secretary, (Department of Civil Supplies) and ors.

**Judgement :**

Bose, J.

1. This is an application under Article 226 of the Constitution for an appropriate writ directing the opposite parties to cancel or withdraw certain orders passed by the Director of Transportation directing payment of only subsistence allowance to the petitioner as a disciplinary measure during the period of the petitioner's suspension.

2. The case of the petitioner is that by a memorandum dated 29 June 1945 the petitioner was appointed as a sub-inspector in the Department of the Director-General, Transportation and Storage, Government of West Bengal. On 21 December 1951, the petitioner was placed under suspension pending certain allegations against him. This order of suspension further directed that the petitioner would get 25 per cent of his basic pay as subsistence allowance during the period of his suspension. On 19/21 January 1952 there was served upon the petitioner a notice to show cause as to why the petitioner should not be dismissed from service or otherwise dealt with. The charges against the petitioner were that the petitioner while attached to the movement section of the Directorate of Transportation had published a pamphlet under the title of 'Bharatiya Jatiya Congresser Parinam' without obtaining the prior sanction of the Government and this was in contravention of Sub-rule (2) of Rule 20 of the Government Servants' Conduct Rules. The further charge against the petitioner was that the said publication contained criticism of the Government which was capable of embarrassing the relation between the Government and the people of India and as such the petitioner was guilty of breach of Sub-rule 1(a) of Rule 20 of the Government Servants' Conduct Rules. There was also another charge to the effect that the said publication disclosed that the petitioner had been taking part in active politics and that it was a propaganda literature relating to the general elections and this constituted a breach of Rule 23 of the Government Servants' Conduct Rules. On 25 January 1952 the petitioner made a representation replying to the said charges.

3. On 7/9 June 1952 the Director of Transportation however withdrew the suspension order and allowed the petitioner to resume his duties with effect from the date on

which the order was served upon him. It was also stated in the said order that for the period of his suspension the petitioner would get only the subsistence allowance at the rate admissible under the rules, as a disciplinary measure and the period of his suspension would be treated as on duty. By the said order the petitioner was also warned not to take part in any political activities and his attention was drawn to Rule 23 of the Government Servants' Conduct Rules. It appears that this attitude of the Director of Transportation was taken as a result of the answer given by the petitioner to the charges which were brought against him, and inasmuch as the investigation held did not furnish adequate materials to establish all the charges.

4. On 18 June 1952 the petitioner made a representation to the Director of Transportation stating that the order of 9 June depriving him of his full pay and allowance was against all justice, equity and fairplay. On 23/24 July 1952 the petitioner was informed by the Administrative Officer, Directorate of Transportation, that his representation for granting him full pay and allowances for the period of his suspension had been rejected. On 12 August 1952, 26 May 1953 and 28 August 1953 the petitioner submitted further representations but with no effect. On 1 March 1954 fresh representation of the petitioner was made but on 26 June 1954 the same was rejected. The petitioner's case is that Rules 20 and 23 of the Government Servants' Conduct Rules are repugnant to Articles 19(1)(a) and 19(2) of the Constitution of India and as such void under Article 13(1) of the Constitution. It is further the case of the petitioner that the order depriving the petitioner of his full pay and allowances during the period of his suspension is unwarranted and it infringes Rules 72 and 73 of the West Bengal Services Rules framed under Section 241 of the Government of India Act, 1935.

5. In the affidavit in opposition affirmed by the Director of Transportation it is stated that upon receipt of information that the petitioner was the publisher of a political pamphlet, the petitioner was kept under suspension with effect from 22 December 1951. Thereafter on 21 January 1952 charges were framed against him. On 25 January 1952 the petitioner submitted a written explanation stating that he was not guilty of any of the charges and that he wanted to be heard in person. On 4 March 1952 departmental enquiry was conducted by the Director of Transportation in the presence of the petitioner. The documentary and oral evidence adduced in the said enquiry showed

(a) that the petitioner was the secretary of the Arya Samaj at whose instance the pamphlet had been printed and the petitioner's name was printed as the publisher,

(b) it was admitted by the petitioner that the Arya Samaj had its books and pamphlets printed at the Satyanarain Press, and

(c) that the petitioner had actively been participating in politics.

6. It is further stated in this affidavit that upon the materials collected at the enquiry the Director of Transportation came to the conclusion that the petitioner was politically connected although it was difficult to establish the same from the available records; and as a disciplinary measure the petitioner was granted a subsistence allowance during the period of his suspension and warned not to take part in any political activity. The case further made in the affidavit is that as the appointment of the petitioner was purely temporary, it was liable to be terminated at any time without notice. It is also pointed out in the affidavit that the petitioner has an

effective remedy by way of suit to claim full pay during the period of suspension and so the application under Article 226 for such relief is not maintainable. A definite assertion is also made in the affidavit to the effect that the petitioner was found guilty of being politically connected. It also appears from this affidavit that the petitioner had made several representations against the order complained of but they were all rejected.

7. The first point urged by Mr. Arun Kumar Dutt, the learned Advocate for the petitioner, is that Rules 20 and 23 of the Government Servants' Conduct Rules are ultra vires as offending Articles 19(1)(a) and 19(2) of the Constitution and therefore void under Article 13(1) of the Constitution.

8. Rule 20 is as follows:

Criticism of Government and publication of information or opinion upon matters relating to foreign countries-

(1) No Government servant shall in any document publish under his own name or in any public utterance delivered by him make any statement of fact or opinion which is capable of embarrassing

(a) the relation between Government and the people of India or any section thereof, or

(b) the relations between His Majesty's Government or the Governor-General in Council and any foreign country or the ruler of any State in India.

(2) A Government servant, who intends to publish any documents under his own name or to deliver any public utterance containing statements in respect of which any doubt as to the application of the restrictions imposed by Sub-rule (1) may arise, shall submit to the Government under which he is serving a copy or draft of the document which he intends to publish or of the utterance which he intends to deliver and shall not publish the document or deliver the utterance save with the sanction of the Government under which he is serving and with such alteration, if any, as the Government may direct.

The relevant portion of Rule 23 is as follows:

Taking part in politics and election-

(1)(i) Subject to the provision of Rule 22 and of any general or special order of the local Government no Government servant shall take part in, subscribe in aid of or assist in any way, any political movement in India or relating to Indian affairs.

Explanation.--The expression 'political movement' includes any movement or activity directly or indirectly to excite disaffection against or to embarrass the Government as by law established or to promote feelings of hatred or enmity between different classes of His Majesty's subjects or to disturb the public faith.

9. The contention of the learned Advocate Mr. Dutt is that Rule 20(1) of the Government Servants' Conduct Rules, 1926, constitutes an unreasonable restriction on the fundamental rights granted to the petitioner under Article 19(1)(a) of the

Constitution as it is entirely vague and uncertain to say that a Government servant cannot say anything or write anything which is 'capable of embarrassing' the relation of the Government and its people or of the Government and a foreign country or the ruler of a State.

10. In support of his proposition the learned advocate placed reliance on the decision of Sinha, J., in *Krishna Ch. Chatterjee v. Chief Superintendent, Central Telegraph Office, Calcutta* 58 C.W.N. 1026, in which Sinha, J., made the following observations in relation to the words 'capable of embarrassing':

The words used have no determinative meaning. The language is so general and indefinite that no one can foresee the scope of it and no one can know when he might be held to have ignored a prohibition not knowing or not having the means of knowing what the prohibition consists of.

11. Then further down in the judgment the learned Judge made the following observation:

The fundamental right of freedom of speech and expression is thus made subject to the arbitrary subjective satisfaction of a few persons in authority, and mainly of a hierarchy of Government officials and this is against the letter and spirit of the fundamental right of free speech and expression guaranteed by the Constitution.

12. Sinha, J., further pointed out that the fact that in case of a doubt a Government servant can refer to the authority the question whether a particular speech or a document comes within the mischief of the rule does not avoid the infirmity because the decision of the authority concerned will not be based on any determinable factor and might be wholly arbitrary and unreasonable.

13. Against this decision of Sinha, J., an appeal was preferred and Chakravarti, C.J., presiding over the appeal court, although setting aside the judgment of Sinha, J., left this question of the constitutionality open—*Chief Superintendent v. Krishna Kumar* 60 C.W.N. 24.

14. Mr. Dutt has also drawn the attention of the Court to the case of *American Communications Association v. Douds* 94 Lawyers Edition 926 and *Pnnkamp v. State of Florida* 90 Lawyers Edition 1295 and has referred to the 'clear and imminent danger' test or rule laid down in the last case.

15. It may be noted, however, as pointed out by the Allahabad High Court in the case of *Ram Mohan Lohia v. Superintendent, Central Prisons, Fatehgarh* : AIR1955All193 , that the law in America as regards the freedom of speech as also on many other points is different from the law laid down by our Constitution. The first and the fourteenth amendments of the American Constitution do not impose any restrictions on the freedom of speech and the Courts therefore had to make their own rules as regards the reasonableness or the existence of that freedom, and as regards limitation which could be imposed by the State in the exercise of its 'police powers.'

16. Now the decision of Sinha, J., declaring the invalidity of Rule 20 of the Government Servants' Conduct Rules, is based principally on the uncertainty as to the exact connotation of the words 'capable of embarrassing' as occurring in that rule and upon the fact that the whole thing rests on the subjective satisfaction of a

hierarchy of Government officials. It is however a cardinal rule of interpretation of statute that statutory expressions should be interpreted in their primary and ordinary sense. The learned Judge has no doubt quoted the ordinary dictionary meaning of the words 'embarrass' which is as follows:

To confuse, fluster, disconcert, abash, deprive of freedom of movement, involving difficulty, hamper, impede, obstruct, render difficult, complicate, hinder, perplex.

17. These are ordinary words conveying some definite sense to the persons familiar with the English language. If a particular speech or discourse is reduced to writing or verbally uttered and is condemned by the authorities concerned as coming within the mischief of Rule 20 of the Government Servants' Conduct Rules, the subjective determination made by such authority can be effectively scrutinized by the Court as soon as the writing or the utterance is placed before the Court for its scrutiny. The Court has the dictionary meaning of the word 'embarrass' before it and it has also the document or the speech before it and therefore there cannot be any difficulty experienced by the Court in coming to a determination as to whether the particular writing or the speech offends against the rule in question. It cannot therefore be said that the words 'capable of embarrassing' create such an insoluble uncertainty as to render Rule 20 of the Government Servants' Conduct Rules void on the ground of vagueness and ambiguity. The task of deciding as to whether a particular article or speech falls within the mischief of the rule may at times no doubt be difficult but nevertheless the Court have to undertake that responsibility and decide on the facts of each case whether the publications have crossed the line or not.

18. The expressions 'tending to embarrass the administration of justice' and 'calculated to prejudice the fair trial of a case' are well-known judicial expressions used in contempt of court cases, In my view, therefore, the expression 'capable of embarrassing' cannot present any insurmountable difficulty as it is apprehended to do.

19. Mr. Arun K. Dutt has also directed his attack on the validity of Rule 23 of the Government Servants' Conduct Rules based on the same ground of uncertainty which is alleged to pervade the word 'embarrass' which also finds place in the explanation appended to Rule 23 but I am unable for the reasons which I have given in upholding the validity of Rule 20 of the Government Servants' Conduct Rules to declare Rule 23 as being ultra vires the Constitution.

20. It may not be out of place in this connexion to refer to a decision of Chakravarti, C.J., and Lahiri, J., in the case of Md. Sarafatulla Sarkar v. Surja Kumar Mondal and Ors. 59 C.W.N. 652 where in interpreting the nature of the Government Servants' Conduct Rules the learned Chief Justice expressed himself thus:

The Government Servants' Conduct Rules are only rules of internal discipline operating within the spheres of Government service and limited in their operation to that sphere. They specify certain acts which can be done by Government servants only in a certain way and other acts which may not be done by them at all, consistently with the conduct they are required to maintain as Government servants. Further, the rules cannot and do not go (sic.) They cannot and do not create a legal disability in Government servants to do effectively the acts forbidden by the rules, if they are otherwise competent to do them, whatever the consequences of transgression in this regard may be to their career as Government servants. While,

therefore, a Government servant offering himself for election to one of the bodies mentioned in Rule 23 may bring upon himself disciplinary action which may go as far as dismissal, the consequence cannot also be that his election will be invalid or that the validity of his election will be affected by the breach. The disqualification imposed by Rule 23 is of the nature of a personal bar which can be overstepped only at the Government servant's peril, as regards his membership of a service under the Government.

21. It may be noted that there is no fundamental right of a person to obtain employment under the Government. The moment he enters Government service he becomes bound by the conditions of service and rules which regulate such employment. It is against this background that the reasonableness of the restrictions imposed by Rules 20 and 23 of the Government Servants' Conduct Rules have to be tested.

22. As observed by the Supreme Court in the case of State of Madras v. V.G. Row 1952 S.C.A. 399 : 1952 S.C.R. 597:

It was important in this context to bear in mind that the case of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.

23. The Government servants form a class by themselves with certain rights, privileges, and disabilities attached to their service. So if a certain standard of conduct is expected from them and certain rules are framed for the purpose of regulating<sup>1</sup> such conduct or for compelling the Government servants to conform to such standard of conduct, these can hardly be regarded as unreasonable restrictions on the fundamental rights guaranteed to such servants in their capacities as citizens of the Indian Union.

24. This disposes of the constitutional point.

25. The next point that has been urged by Mr. Dutt is that the order of 7/9 June 1952 directing that the petitioner will get only subsistence allowance at the rate admissible under the rules, as a disciplinary measure during the period of his suspension is not warranted by the West Bengal Service Rules as framed under Section 241 of the Government of India Act, 1935, with effect from 1 January 1941 and continued in force by Article 313 of the Constitution of India. This contention of Mr. Dutt does not however appear to be a sound one. Rule 71 of West Bengal Service Rules is as follows:

A Government servant under suspension is entitled to subsistence allowance at such rate as the suspending authority may direct, but not exceeding one-fourth of the pay of the suspended Government servant.

26. This rule therefore indicates that a suspended Government servant is only entitled to subsistence allowance during the period of his suspension and he is entitled to such grant at the rate which the suspending authority in the exercise of his discretion

may choose to fix but with this limitation that in no case the amount fixed can exceed one-fourth of the pay of the Government servant.

27. Mr. Dutt has also placed reliance on Rule 72 which runs as follows:

When the suspension of a Government servant is held to have been unjustified or not wholly justifiable; or when a Government servant who has been dismissed, removed or suspended is reinstated (the punishing, appellate or revising authority) may grant to him for the period of his absence from duty-

(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed, removed or suspended and by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal, removal or suspension; or

(b) if otherwise, such proportion of such pay and allowance as (the punishing appellate or revising authority) may prescribe.

In a case falling under Clause (a) the period of absence from duty will be treated as a period spent on duty. In a case falling under Clause (b) the period may be treated as duty or leave but it will not be so treated unless (the punishing, appellate or revising authority) directs accordingly.

28. It is argued by Mr. Dutt with reference to this rule that as the petitioner has been reinstated and has been honourably acquitted of the charge framed against him he is entitled to his full pay during the period of the suspension; but it must be remembered that although all the charges have not been established, the definite case made in the affidavit in opposition is that it has been satisfactorily proved that the petitioner is politically connected. Moreover the rule itself makes the matter of granting full pay or proportionate pay as one resting entirely on the discretion of the punishing, appellate or revising authority. It will thus appear that the order dated 7/9 June 1952 is fully warranted by the terms of Rules 71 and 72 of the West Bengal Service Rules.

29. The next point argued by Mr. Dutt is that the petitioner having been reinstated in service there was condonation of his misconduct, if any, and therefore he could not be punished by way of cutting down his pay during the period of his suspension. Reference is made to the cases of *Middleton v. Playfair* : AIR1925Cal87 and *District Council, Amraoti v. Vithal Vinayak Bapat* A.I.R. 1941 Nag. 125 at 127. It appears to me that there is no force in the argument of Mr. Dutt, inasmuch as, in the first place, there was no total condonation of the misconduct of the petitioner but he was given a warning not to take part in politics in future, and his attention was also drawn to Rule 23 of the Government Servants' Conduct Rules. Further, the authority investigating into the charges thought that as all the charges had not been satisfactorily proved against the petitioner he should be allowed to resume his duties in the office. The suspension order was made pending investigation into the charges, and after investigation was concluded and it was decided to restore the petitioner to his office, the suspension order had naturally to be withdrawn.

30. This disposes of all the points raised by the petitioner.

31. Mr. Dutt also referred to : 1950CriLJ1514 ; and Mr. Majumdar referred to :

[1955]1SCR1004 , but it is not necessary to deal with these cases in any detail.

32. In my view this petition must fail. The rule is accordingly discharged. There will be no order as to costs.

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