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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 10177/2016 & CM 40220/2016, 30378/2017**

PRIYANKA DAS ..... Petitioner

Through Mr Anish Gupta, Ms Bani Brar, Advocates.

versus

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA ..... Respondent

Through Mr Harvinder Singh, Mr R.D. Makheeja, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **16.11.2017**

1. The petitioner has filed the present petition, *inter alia*, impugning the office order bearing no. 133/2016 dated 13.10.2016 and office order bearing no. 135/2016 dated 19.10.2016 (hereafter 'the impugned orders') issued by the respondent (hereafter 'ICSI').

2. The petitioner is employed with the Western India Regional Council (hereafter 'WIRC') of ICSI as an Executive (Finance & Accounts) since 12.03.2013. By way of the Office Order no. 133/2016 (hereafter 'the impugned suspension order'), ICSI has placed the petitioner under suspension in terms of Rule 64 of the Institute of Company Secretaries of India Service Rules, 1979 (hereafter 'ICSIS Rules'). By way of the Office Order bearing no. 135/2016 (hereafter 'the impugned order no. 135'), ICSI has constituted an Investigation Committee to investigate into the financial

and other irregularities.

3. The petitioner has assailed the impugned order of suspension principally on two fronts. First, it is contended that the impugned order of suspension is contrary to Rule 64 of the ICSIS Rules in as much as the said order can be passed only where disciplinary proceedings are contemplated against the employee. Mr Anish Gupta, learned counsel appearing for the petitioner contended that the impugned order no. 135, whereby, a Committee was constituted to investigate into the financial irregularities, was passed subsequently and thus, disciplinary proceedings against the petitioner could not be contemplated prior to the said committee submitting its report. He contended that the impugned order of suspension was, thus, premature and not sustainable.

4. Secondly, Mr Gupta contended that suspending an employee amounted to imposing penalty under Rule 60 of the ICSIS Rules and such penalty could not be imposed without following the procedure as specified under Rule 62 of the ICSIS Rules. He further submitted that the impugned order of suspension was stigmatic and no such order could be passed without first determining whether the petitioner was guilty of any misconduct or irregularity.

5. A plain reading of the impugned order of suspension indicates that a Draft Audit Report for financial year 2015-16 had been placed before the Council of ICSI. The said draft report allegedly contained certain observations regarding financial irregularities at the office of WIRC. In view of the said observations, the Council of ICSI decided to constitute an Investigation Committee to investigate into the financial and other irregularities and to recommend suitable action. This is apparent from the

opening two paragraphs of the impugned order of suspension, which reads as under:-

> "1. Whereas the Council of the Institute in its 238th (adjourned) meeting held on Saturday, the 17th September, 2016, took a serious note of various instances of financial and other irregularities as reported through the Draft Audit Report for FY-2015-16, a copy of which consequent to such serious observations was shared with the HQ, and stated to have taken place at the office of the WIRC i.e. Western India Regional Office (WIRO).
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> 2. And whereas keeping in view the best interests of the Institute and in order to find out for itself, the correct position with regard to the pointed out irregularities in the WIRC/WIRO which, inter-alia, are with respect to the following:
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> (i) Mis-appropriation of Funds;
> (ii) Falsification of Accounting Records;
> (iii) Personal expenses charged to WIRO accounts;
> (iv) Non-adherence to the Purchase Policy and other Policies;
> (v) Payment of conveyance expenses to staff in lieu of overtime;
> (vi) Various instances of payment of expenses exceeding Rs.20,000/- in cash in violation of the Policy and Section 40(A) (3) of the Income Tax Act, 1961.
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> and critical in nature, the Council, therefore, has decided to constitute an Investigation Committee (i) to investigate into all such financial and other irregularities, and (ii) to make recommendations on taking the appropriate administrative, disciplinary, legal and/or other suitable actions."

6. Admittedly, the petitioner was the Executive In-charge of finance and accounts at WIRC, and since certain alleged financial irregularities had been reported in respect of affairs of WIRC, disciplinary proceedings against the

petitioner were contemplated by the Council of ICSI. Paragraph 4 of the impugned order of suspension is relevant and is set out below:-

> "And whereas disciplinary proceedings are contemplated against Ms. Priyanka Das, Executive In-Charge of Finance & Accounts, WIRC, in connection with such serious financial and other irregularities reported to have been committed at WIRC/WIRO and which are prima-facie and significantly attributable to her critical responsibilities, directly or indirectly."

7. At this stage, it is relevant to refer to Rule 64 of ICSIS Rules, which is set out below:-

"**64 Suspension**

(1) The appointing authority or any authority to which the appointing authority is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President by general or special order may place an employee under suspension:

(a) Where a disciplinary proceeding against him is contemplated or is pending; or

(b) Where a case against him in respect of any criminal offence (except in the due performance of official duties) is under investigation or trial.

(2) Where a penalty of dismissal or removal or compulsory retirement from service imposed upon an employee under suspension is set aside on appeal or on review under these rules and the case is remitted back for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal or removal or compulsory retirement and shall remain in force until further orders.

(3) Where a penalty of dismissal or removal or compulsory retirement from service imposed upon an employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty or dismissal or removal or compulsory retirement was originally imposed, the official shall be deemed to have been placed under suspension from the date of the original order of dismissal or removal or compulsory retirement and shall continue to remain under suspension until further orders.

(4) An order of suspension made or deemed to have been made under those rules may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

(5) An order of suspension made or deemed to have been made shall continue to remain in force until it is modified or revoked."

8. Since financial irregularities had been reported, the contemplation of disciplinary proceedings against the petitioner who was the Executive In-charge of finance and accounts at WIRC cannot be held to be unsustainable. Plainly, if disciplinary proceedings are contemplated against an employee, he/she could be suspended under Rule 64 and, this is what was done by the Council of ICSI.

9. The contention that no disciplinary proceedings could be contemplated prior to the Investigation Committee submitting its report is not persuasive. The word 'contemplated' as used in Rule 64 (1)(a) of ICSIS Rules must be construed in its normal sense. Since financial irregularities were been reported, it is understandable that the Council of ICSI would contemplate disciplinary proceedings as well as take steps to conduct an

investigation. Both these actions are not mutually exclusive. It is equally relevant to mention that contemplating disciplinary action does not necessarily mean that such proceedings would necessarily have to be initiated. It is possible that investigation may reveal that an employee against whom disciplinary proceedings are contemplated is not involved; and, in such case, disciplinary proceedings may not be initiated at all.

10. The contention that the impugned order of suspension amounts to imposing a penalty under Rule 60 of the ICSIS Rules is also not merited. Rule 60 of ICSIS Rules contemplates imposing certain penalties and that also includes suspending an employee from service. However, such order of suspension would be as a punitive measure after the employee has been found guilty of the misconduct alleged. The nature of an order under Rule 60 of ICSIS Rules imposing a penalty is materially different from the nature of an order under Rule 64 of the ICSIS Rules; an order under Rule 64 of ICSIS Rules is not an order of penalty. Therefore, the procedure as contemplated under Rule 62 of the ICSIS Rules - which provides for the procedure to be followed for imposing penalties - is not required to be followed in such case.

11. In view of the above, this Court finds no infirmity in the impugned orders and the petition and pending applications are dismissed.

VIBHU BAKHRU, J

NOVEMBER 16, 2017
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