

08.09.2020
Item No.03
Ct. No.11
Krishnendu

**W.P.A. No. 6924 (W) of 2020
With
C.A.N. No. 1 of 2020
(Via Video Conference)**

**In re: Haripada Banik
- Versus -
The State of West Bengal &
Ors.**

**Mr. Soumya Majumder
Mr. Puspall Chakraborty
For the Petitioner
Dr. Chapales Bandyopadhyay
Ms. Anandamayee Dutta
For the Respondent Nos. 6-8**

In view of the express undertaking of the petitioner to comply with all the formalities regarding filing including stamping of the petition immediately upon resumption of normal Court business and in view of the urgency pleaded, the application, being CAN 1 of 2020, is allowed and the writ petition is taken up for hearing.

The present writ petition has been preferred challenging, *inter alia*, a disciplinary proceeding including an order of suspension dated 3rd March, 2020.

Mr. Majumder, learned advocate appearing for the petitioner submits that after issuance of an order of suspension on 3rd March, 2020 the petitioner was communicated a memo dated 24th June, 2020 issued by Sri Murari Mohan Ghosh, District & Sessions Judge (Retired), Enquiry Officer. In the said memo there were four annexures. The first annexure was pertaining to the charges levelled and the second annexure was pertaining to the imputations. In terms of the prevalent rules, only the disciplinary authority could have issued a charge sheet. The impugned order suffers from a jurisdictional error inasmuch as no authority has been

conferred upon an enquiry officer to communicate a charge sheet.

Dr. Bandyopadhyay, learned advocate appearing for the college authorities, in his usual fairness, submits that there are irregularities in the charge sheet and that the disciplinary authority ought to have drawn up the charge sheet in consonance with the statutes.

It is well-settled that where a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. The statutes *inter alia*, provide that the disciplinary authority can only draw up or cause to be drawn up a charge sheet and to deliver and cause to be delivered upon the delinquent. The enquiry officer has no jurisdiction to issue or communicate such charge sheet.

A perusal of the charge sheet further reveals that the charges levelled are lacking particulars and are cryptic in nature. It appears therefrom that the authorities had already arrived at a finding of guilt against the petitioner.

In view thereof, the disciplinary proceeding and the memo dated 24th June, 2020 are not sustainable in law and the same are, accordingly, set aside and quashed. As a consequence thereof, the order of suspension also does not survive and the same is also set aside.

Accordingly, the petitioner becomes entitled to the difference of salary for the period from the date of issuance of the order of suspension till date. The college authorities shall compute and disburse the said amount in favour of the petitioner within a period of three weeks from

the date of communication of this order.

The college authorities are also directed to allow the petitioner to join the concerned post within a period of one week from the date of communication of this order.

Needless to observe the college authorities would be at liberty to initiate a fresh disciplinary proceeding against the petitioner, if so advised and in accordance with law.

With the above observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

All concerned parties shall act in terms of the copy of the order downloaded from the official *website* of this Court.

(Tapabrata Chakraborty, J.)

