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IN THE HIGH COURT AT CALCUTTA
Constitution Writ Jurisdiction
ORIGINAL SIDE
(VIA VIDEO CONFERENCE)

W.P.O. No. 370 of 2020

CHUNILAL MUKHERJEE
Versus
GLUCONATE HEALTH LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 3rd November, 2020

(VACATION BENCH)

Appearance:

Mr. Soumya Majumder, Adv.

Mr. Victor Chatterjee, Adv.

Ms. Sanjukta Dutta, Adv.

...for the petitioner

Mr. Amitava Chaudhuri, Adv.

Mr. Debashis Saha, Adv.

...for the respondents

The Court : The primary grievance of the petitioner is that the respondent authorities, vide order dated October 9, 2020 (annexed at page 74 of the writ petition), suspended the petitioner and recorded that disciplinary proceeding was contemplated against the petitioner as per the decisions of the 95th and 118th meetings of the Board of Directors held on June 30, 2011 and June 28, 2016 respectively. Certain other consequential directions were passed in the impugned order dated October 9, 2020. By highlighting the appointment of an enquiry authority immediately thereafter, on October 10, 2020 pursuant to such impugned order (the appointment order being annexed at page 75 of the writ petition), learned counsel for the petitioner argues that such appointment pre-judged the merits of the petitioner's contentions.

Moreover, it is argued that the initial show-cause notice dated September 26, 2020, as well as the subsequent charge sheet dated October 9, 2020 (at page 38 of the writ petition), apparently pertain to certain acts of the stockist, for which the petitioner, being the sales manager of the respondent company, could not be held liable, even prima facie.

It is further contended that, on the basis of a decision dated June 30, 2011 (subsequent to which the charge-sheet was framed on October 9, 2020) wherein it was recorded that the petitioner was allowed to resume his duty by the company on good faith in the month of May 2014, the present disciplinary action and/or appointment of Enquiry Officer was not maintainable in law.

It is further argued that the purported allegations, made in the show-cause notice and/or the charge sheet, are vague and do not deserve any enquiry at all.

Learned counsel for the petitioner further argues that the petitioner was not given any opportunity to address the appointment of the Enquiry Officer and, immediately upon the charge-sheet being drawn up on October 9, 2020 and the order of suspension being passed on the same day, the Enquiry Officer was appointed on the very next date, i.e., October 10, 2020. Thus, such premature appointment, according to the petitioner, was a mere eye-wash.

Learned counsel for the respondent company, while pointing out to the show-cause notice initially issued by the company, also places the reply thereto, given by the petitioner. It appears that the petitioner had given a reply on October 3, 2020 to the show-cause notice dated September 26, 2020, thereby raising the petitioner's contentions.

Thus, as by the impugned order dated October 9, 2020 an Enquiry Officer has only been appointed to inquire into the charges which were not admitted by the petitioner, it would be rather premature to interfere at this stage.

In fact it appears that, although there might be substance in the contention of the petitioner on merits, particularly as regards the maintainability of the proceeding in respect of a decision of the year 2011, despite allowing the petitioner to resume his duty in May 2014, and in respect of whether the petitioner is answerable for the stockist's alleged action, it would be premature at this juncture to decided the fate of such allegation and the tenability thereof in law, in view of the appointment of Enquiry Officer, prima facie within the bounds of the powers of the respondent-company in law.

It is made clear that since the petitioner had an opportunity to reply to the initial show-cause notice and still has an opportunity of being heard by the Enquiry Officer and of ventilating all grievances on the merits of the allegations and their maintainability, as raised in the present writ petition, I am not inclined to interfere with the order of suspension and the appointment of enquiry authority, dated October 9, 2020 and October 10, 2020 respectively, at this premature stage. However, the merits of the contentions raised by the petitioner as regards the maintainability and legal/ factual veracity of the allegations levelled against the petitioner are not gone into by this court.

It may further be noted that the suspension shall not, ipso facto, be regarded as a stigma against the petitioner and is only subject to the final result of the enquiry and decisions of the disciplinary committee and/or of any further superior authority deciding a challenge, if any, to such final decision.

W.P.O. No. 370 of 2020 is accordingly disposed of with the aforesaid observations, without interfering with the impugned order and/or the appointment of Enquiry Officer.

The Enquiry Officer is requested to conduct and dispose of the proceeding and the disciplinary committee is also directed to complete the disciplinary proceeding against the petitioner at the earliest and to hear out the petitioner expeditiously on any prior interim prayer which the petitioner might have in such regard.

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

(SABYASACHI BHATTACHARYYA, J.)