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W.P.A. 7476 of 2005
(IA NO: CAN 1/2005 (Old CAN 7301/2005), (CAN 3/2021)
(Through Video Conference)

Mangalacharan Chakraborty
-vs-
The Kolkata Municipal Corporation & Ors.

Mr. Gopal Chandra Ghosh

....for the petitioner.

Mr. Alak Kumar Ghosh,
Mr. Swapan Kumar Debnath

....for the KMC.

This is a writ petition at the instance of one Master Mechanic – II working in Kolkata Municipal Corporation. By presenting the writ petition the writ petitioner questioned the suspension order dated 4th June, 2003 issued against him as well as the initiation of disciplinary proceeding by the disciplinary authority of Kolkata Municipal Corporation upon issuance of charge sheet dated 15th December, 2003. There is a specific prayer made in the writ petition, prayer-(b), which is quoted herein below:

b) A writ of or in the nature of prohibition prohibiting the respondents from proceeding any further with the time barred disciplinary proceeding.”

The writ petition was heard at the motion

stage when the coordinate Bench passed an interim order on 28th June, 2005 in terms of the prayer-(b) as setout in the writ petition as well as hereinbefore. On perusal of the said interim order dated 28th June, 2005 it appears that the very initiation of disciplinary proceeding was stalled since the concerned authority of the Kolkata Municipal Corporation was restrained in taking any further steps in the matter of initiation of disciplinary proceeding against the writ petitioner. There was further direction in the interim order dated 28th June, 2005 by the coordinate Bench directing the parties to this writ petition to exchange their pleadings within certain time. Today matter has come up in the list for final consideration since the writ petition is ready for hearing upon exchange of pleadings. The affidavit-in-reply affirmed on behalf of the writ petitioner is filed and also taken on record. Since the writ petitioner is represented by Mr. Ghosh, learned advocate and Kolkata Municipal Corporation is represented by Mr. Alok Kr. Ghosh, learned advocate this Court proceeds to hear out the writ petition finally.

Mr. Ghosh at the very outset has submitted before this Court that one application being CAN 3

of 2021 has been filed by the writ petitioner praying for release of retiral dues in favour of the writ petitioner since he had retired on superannuation on 31st May, 2017. Considering the prayer made in the application it appears to this Court that no separate relief can be granted upon disposing of the connected application being CAN 3 of 2021 and the writ petition needs to be heard finally.

During course of hearing of the writ petition, Mr. Ghosh has submitted that the writ petitioner had retired on superannuation on 31st May, 2017 and in view of the pendency of the disciplinary proceeding as well as existence of the interim order passed on this writ petition on 28th June, 2005 the respondent authorities has released provident fund as well as provisional pension to the writ petitioner.

Mr. Ghosh has made an attempt before this Court to develop the case that the very initiation of the disciplinary proceeding against the writ petitioner upon issuance of charge sheet dated 15th December, 2003 is bad in view of Regulation 9(3) of the Calcutta Municipal Corporation Services (Classification, Control and Appeal Regulations) 1985 (for short "Regulations of 1985"). It is the contention made on behalf of the writ petitioner

that Regulation 9(3) prescribes a specific procedure which needs to be followed by the disciplinary authority while initiating proceeding against the employee of the Kolkata Municipal Corporation. Since the suspension order was issued on 4th June, 2003 and subsequently charge sheet was issued on 15th December, 2003, it appears that time which has been stipulated in terms of Regulation 9(3) has not been maintained and according to the petitioner such failure on the part of the respondent authorities in issuing the charge sheet within stipulated time of 90 days will not only impair the suspension order dated 4th June, 2003 but also vitiate the disciplinary proceeding which was initiated upon issuance of charge sheet dated 15th December, 2003. Therefore, it has been argued on behalf of the writ petitioner that since the suspension order has already been withdrawn by the Kolkata Municipal Corporation vide order dated 15th December, 2003 as a sequel thereto the charge sheet dated 15th December, 2003, Annexure – P2 to this writ petition, cannot survive. Lastly, it has been submitted that since the suspension order has been withdrawn the petitioner is asking for a declaration that the very initiation of the disciplinary proceeding is not maintainable in view

of the said Regulation 9(3) of the Regulations of 1985 and therefore necessary direction is required to be made upon the respondent authorities to release the entire retiral dues to the writ petitioner upon putting a quietus to issue relating to disciplinary proceeding.

Per contra, Mr. Alok Kr. Ghosh, learned advocate appears on behalf of the Kolkata Municipal Corporation and submits that suspension order was issued against the writ petitioner on 4th June, 2003 and that was subsequently withdrawn vide order dated 15th December, 2003 therefore there is no suspension in the eye of law subsisting during the tenure of the writ petitioner and writ petitioner was permitted to resume his duty as Master Mechanic – II and he worked till the last date of his tenure that was 31st May, 2017.

But Mr. Ghosh also relied upon Regulation 9(3) of the said Regulations of 1985 and submitted before this Court that it does not appear from Regulation 9(3) that failure on the part of the disciplinary authority to issue charge sheet beyond the time of 90/180 days vitiates the very initiation of disciplinary proceeding which was in effect initiated upon issuance of the charge sheet dated

15th December, 2003, page 23 of the writ petition. Therefore it is submitted on behalf of the respondent authorities that due opportunity may be given to the disciplinary authority to conclude the disciplinary proceeding which was initiated on 15th December, 2003 against the writ petitioner within a reasonable time upon giving necessary directions to the respondent authorities.

This Court has considered the rival submissions made on behalf of the respective parties to this writ petition and also examined the materials on record and also perused the averments made in the pleadings used by the respective parties. The fate of the writ petition wholly depends upon the interpretation of Regulation 9(3) of the said Regulations of 1985. For better understanding of the meaning and contour of the said regulation this Court finds it apposite to quote the same below:

3) The disciplinary authority shall deliver or cause to be delivered to the Corporation employee a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour prepared under clause (b) of sub-regulation (2) within 90

days from the date of issue of suspension order of the concerned employees, provided that in exceptional cases, the said time limit may be extended by further three months, and shall require the Corporation employee to submit to the inquiring authority within such time as may be specified a written statement of his defence and to state whether he desired to be heard in person.”

On mere reading of the said Regulation 9(3) it appears that in order to keep alive the order of suspension the disciplinary authority is required to issue charge sheet within the period of 90 days from the date of issuance of suspension order and in exceptional cases, such time limit can be extended for a further period of three months. Considering the provisions of time limit as embodied in the said Regulation 9(3) it appears that such time limit is relatable to the order of the suspension and it does not appear that failure to issue charge sheet within the period of 90/180 days would vitiate the very initiation of disciplinary proceeding as contended on behalf of the writ

petitioner. At best if the time limit indicated in the said Regulation 9(3) is not maintained by the authority the suspension order, if issued against the delinquent employee, may lose its force.

In view of aforesaid observation made on Regulation 9(3) this Court finds no reason to restrain the Kolkata Municipal Corporation from initiating and concluding disciplinary proceeding against the petitioner which was initiated upon issuance of charge sheet dated 15th December, 2003.

Accordingly this Court grants liberty to the concerned authority of the Kolkata Municipal Corporation to conclude disciplinary proceeding against the writ petitioner, if found necessary, within a period of six months from the date of receipt of reply to the charge sheet upon compliance of the procedure the disciplinary authority is required to follow in terms of the relevant provisions relating to disciplinary proceeding.

It has been submitted by Mr. Ghosh that though the charge sheet was issued on 15th December, 2003 but till date due to pendency of this writ petition and subsistence of interim order no reply has been offered by the writ petitioner and

has prayed for reasonable time to offer reply to the said charge sheet. Accepting the contention made on behalf of the writ petitioner this Court directs the writ petitioner to furnish comprehensive reply to the charge sheet dated 15th December, 2003 within the period of fortnight from this date and on receipt of the reply to the charge sheet the disciplinary authority shall take a decision on considering of such reply whether a proceeding is required to be initiated against the writ petitioner. If satisfactory reply is furnished by the writ petitioner according to the assessment of the disciplinary authority, the disciplinary authority may drop the proceeding which was initiated upon issuance a charge sheet dated 15th December, 2003; otherwise disciplinary authority shall take steps for appointment of enquiry officer and presenting officer for conducting enquiry in order to look into the veracity of the charge upon following the procedure and on due observance of principle of natural justice. Writ petitioner shall be provided due opportunities to present his case during the course of enquiry.

Writ petitioner is also directed to extent cooperation in order to facilitate the disciplinary authority to conclude the proceeding within the

period of six months from the date of receipt of the reply to the charge sheet. Writ petitioner shall not pray for undue adjournment if enquiry is conducted against him. In any event, the disciplinary authority is further directed to complete the above exercise not later than six months from the date of receipt of the reply to the charge sheet.

With the above direction, the writ petition as well as the connection application being CAN 3 of 2021 are disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)