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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 12709 of 2021

Samir Kumar Bank
Vs.
Union of India & Ors.

Mr. Swarup Paul,
Mr. Guru Saday Dutta
... For the petitioner.

Mr. Sukanta Ghosh
... For the Union of India.

Mr. Kallol Bose,
Mr. Kansia Biswas,
Ms. Sujata Mukherjee,
Mr. Ajoy Agnihotri
... For the Port.

Affidavit of service filed in Court today is
taken on record.

The petitioner claims to have read upto class – IX, in Madhubati Surabala Vidyamandir, P.O. Balarambati, Hooghly, West Bengal. The petitioner at the time of entering into the service of the respondent no.2, produced a certificate issued by the Headmaster of the said school to the effect that the petitioner's date of birth is 14th January, 1963. The petitioner says that this date of birth is recorded in the service book of the petitioner. A departmental inquiry has been initiated as against the petitioner alleging that the petitioner has given an improper declaration as to his date of birth. The petitioner says that the whole basis of the departmental inquiry is the erroneous recording of the

date of birth of the petitioner in the Permanent Account Number (in short, PAN) card issued by the Income Tax Department. The petitioner says that this error in the date of birth mentioned in the PAN card has been subsequently corrected on detection of the mistake. The date of birth, in the petitioner's present PAN card tallies with the date of birth, in the service book. The petitioner therefor challenges the charge sheet and the continuance of the departmental inquiry said to have been initiated on that basis. The petitioner has further been issued a 'stop work notice' on 30th July, 2021, which has been also challenged by the petitioner in the instant writ petition.

On behalf of the respondent no.2, Syma Prasad Mukherjee Port, the contention of the petitioner is disputed. It is submitted that the petitioner, instead of bringing the departmental proceedings to a logical conclusion, is trying to stall the same in an indirect manner by filing the instant writ petition. The departmental proceedings after being initiated, according to the respondent no.2, can be interfered with on a very limited scope and none of the ingredients for such interference is present in the instant case. The petitioner, according to the respondent no.2 has also not filed his reply to the charge sheet though the time to file the same has expired. The said respondent, therefor, seeks dismissal of the writ petition.

After hearing the parties and considering the materials on record, I find that the issue of date of birth of the petitioner is the subject matter of the disciplinary proceedings. The disciplinary proceedings on the ground as alleged by the petitioner cannot be quashed and/or set aside at this stage. Any order of stay of the disciplinary proceedings at this stage will also amount to passing of final order without affording the respondents to contest the case by producing materials in support of their contention. The filing of the affidavits in view of the claim and counter claim is not likely to resolve the issue. The disciplinary proceedings has to be brought to a logical conclusion. The best course, according to me, which is open at the present is to direct the Disciplinary Authority, being the competent officer of the respondent no.2, to conclude the pending disciplinary proceedings within a time frame.

The petitioner apprehends that the disciplinary proceedings may be conducted without supplying the relevant documents including the medical examination conducted by the SSKM Hospital, Kolkata, at the instance of the respondent no.2 for the purpose of ascertaining the petitioner's proper and/or correct age. The petitioner further apprehends that the disciplinary proceedings will be concluded without the petitioner's reply to the charge sheet, inasmuch as, the petitioner has not replied to the same having challenged

such disciplinary proceedings by filing the instant writ petition.

I am told that the time to file reply to the charge sheet has expired on 15th August, 2021.

The petitioner by 27th August, 2021 shall inform the respondent no.2 as to the documents which according to the petitioner are required for his reply and are in the custody of respondent no.2 and seek inspection of the same. The respondent no.2 shall give inspection of those documents which are in their possession and inspection sought for by the petitioner by 6th September, 2021. The petitioner irrespective of inspection being afforded shall reply to the charge sheet by 16th September, 2021. It is made clear that the petitioner will be entitled to take benefit of any adverse presumption with regard to any document of which inspection is denied on being sought for despite the same being in the custody of the respondent no.2. The departmental proceedings shall be concluded within period of six months from 16th September, 2021, without granting any unnecessary adjournment to either of the parties. The Disciplinary Authority shall ensure that the principles of natural justice should be complied with and the disciplinary proceedings are held in accordance with the relevant rules.

The Disciplinary Authority shall pass a reasoned order and shall supply a copy of such order

immediately upon the same being made and passed to the petitioner.

I have not gone into the merits of the matter. The Disciplinary Authority shall be free to decide on all issues raised at the disciplinary proceedings without being influenced by any observation made herein.

The Disciplinary Authority and/or Inquiry Officer shall act on the basis of a server copy of this order without insisting upon production of a certified copy thereof.

Nothing further remains to be adjudicated in the writ petition and the same is accordingly disposed of without any order as to costs.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon compliance with the necessary formalities.

(Arindam Mukherjee, J.)