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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 72/2021 & C.M. No. 6140/2021(for stay) & C.M. No.
7414/2021 (for urgent hearing)
BISWASRI MUKHERJEE

..... Appellant
Through: Mr. Dinesh Kumar Sabharwal, Ms.
Heena Ahluwalia and Mr. Sameer
Bhatnagar, Advocates.

Versus

PUNJAB AND SIND BANK

..... Respondent
Through: Mr. Rajesh Kumar Gautam, Mr.
Anant Gautam, Mr. Nipun Sharma
and Mr. Madhur Tewatia, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE AMIT BANSAL

ORDER
% **25.03.2021**

1. The intra-court appeal impugns the judgment dated 3rd February, 2021 of dismissal of W.P.(C) 5292/2020.
2. W.P.(C) 5292/2020 was preferred by the appellant, a Clerk/Cashier since the year 2013 in the respondent Punjab and Sind Bank, against the rejection of her request to allow her to engage an advocate in the disciplinary proceedings initiated against her in terms of the charge sheet dated 24th April, 2020.
3. The Single Judge, in a judgment running into as many as 28 pages,

has given plethora of reasons why the appellant is not entitled to representation through an advocate in the disciplinary proceedings initiated against her.

4. We have however enquired from the counsel for the respondent bank, whether an opportunity of availing of a defence assistant in the disciplinary proceedings had been given to the appellant.

5. The counsel for the respondent bank states that though in accordance with the bilateral agreement between the respondent bank and its Union, the appellant has a right of representation through the Union but the respondent bank by way of abundant caution, had permitted the appellant to be represented in the disciplinary proceedings by any co-worker whatsoever, but the appellant is insisting upon representation through an advocate.

6. On further enquiry of the status of the disciplinary proceedings, attention is invited to page 408 of the file, being a letter dated 17th February, 2021 of the Inquiry Officer to the appellant and the counsel for the respondent bank states that on the failure of the appellant to appear in the disciplinary proceedings, the appellant has been proceeded against ex-parte but the Inquiry Report has not been submitted as yet. It is however informed that in response to the aforesaid letter dated 17th February 2021, the appellant has filed written submissions before the inquiry officer.

7. *De hors* the reasoning given by the Single Judge for denial of right of representation through advocate to the appellant, we have enquired from the counsel for the appellant, how such petitions, during the pendency of disciplinary proceedings, are maintainable. Attention of the counsel for the



appellant has been drawn to *D.P Maheshwari Vs. Delhi Administration* (1983) 4 SCC 293; deprecating the practice of taking preliminary pleas/objections in disciplinary proceedings and inviting decision thereon and carrying the matter to the High Courts under Article 226 of Constitution of India and at times even till the Supreme Court and all of which delays decision of the real dispute for years, at times for over a decade and holding that the high courts, in exercise of jurisdiction under Article 226, before entertaining such challenge, should ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to woeful consequence. In *State of Uttar Pradesh Vs. Brahm Datt Sharma* (1987) 2 SCC 179, dealing with a challenge at show cause notice stage, it was held that interference by the Court before a final decision is taken in disciplinary proceedings, is premature. Reference may also be made to *Special Director Vs. Mohd. Ghulam Ghouse* (2004) 3 SCC 440 and *Union of India Vs. Kunisetty Satyanarayana* (2006) 12 SCC 28. The counsel for the respondent, after the hearing, has forwarded to us a copy of *Chanan Singh Vs. Registrar, Co-op. Societies, Punjab* (1976) 3 SCC 361, holding that till a punitive action is taken against an employee, writ petition is premature in as much as it is not known, what the outcome of disciplinary proceeding will be and which even if against the employee, has a remedy of departmental appeal thereagainst, and of *Air India Ltd. Vs. M. Yogeshwar Raj* (2000) 5 SCC 467, reiterating the same.

8. The counsel for the appellant, avoiding our query, has contended that considering the nature of the charges against the appellant, she cannot



defend herself and right of representation through advocate is necessary. It is argued that though the appellant, since 2013 is working as a Clerk/Cashier on being promoted, but was originally inducted into the bank on compassionate grounds, as a Peon.

9. With respect to the query, why the appellant has not taken the assistance of a Union or a co-worker as is informed to have been offered to her, it is stated that the Union refused to help her and the appellant did not approach any co-worker.

10. The settled principle being, that the challenges to disciplinary proceedings at interim stage cannot be entertained, we are not inclined to keep this appeal pending and dismiss the appeal with liberty to the appellant to raise all pleas, including the pleas that have been taken in this appeal, in case the decision in the disciplinary proceedings is against the appellant, in appropriate proceedings.

11. We may however record that the counsel for the respondent bank has informed that the charge against the appellant is of defalcation of Rs. 75 lacs of the customers of the respondent bank and though appellant was asked to furnish information with respect to unexplained entries in the accounts of herself and her son, but has not furnished any such information.

12. There is no merit in the appeal.

Dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MARCH 25, 2021/sr
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