

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Through Video Conference)

WPA 1008 of 2022

Maheswar Goura
Vs.
M/s Eastern Coalfields Limited & Ors.

Mr. Sharanya Chatterjee
... For the petitioner

Mr. Bijoy Kumar
... For the ECL

The petitioner, Maheswar Goura, claims to be the son of late Sadai Goura and Smt. Rangabati Goura. The petitioner was given appointment in Eastern Coalfields Limited (in short "ECL") as the son of Rangabati Goura, since deceased, who was a wagon loader in ECL and availed voluntary retirement. ECL, while the petitioner is in service received a complaint from one person who claimed that petitioner is actually Abhimanya Goura, son of one Nakul Goura, and not the son of late Sadai Goura and Rangabati Goura. The petitioner's claim that he was the son of late Sadai Goura and Smt. Rangabati Goura was, therefor, doubted by ECL which led to issuance of a show cause to the petitioner. The petitioner replied to the show cause which was considered to be unsatisfactory. ECL by that time conducted an enquiry through the police and the Block Development Officer which revealed that Rangabati

Goura was issueless. As a result whereof on 25th January, 2005, a charge-sheet was issued with the following charge:

“As such you are hereby charged under Section 26.1 for dishonesty in connection with employer and under clause 26.9 for giving false information regarding one’s name, age, father’s name, qualification etc. in connection with employment.”

A supplementary charge-sheet was issued on 27th December, 2005 wherein the petitioner was accused of having committed misconduct under clauses 26.1 and 26.9 of the Standing Order applicable to the Wage Board employees of ECL. The issuance of the two charge-sheets prompted the petitioner to file a Title Suit before the Court of learned Civil Judge (Junior Division), 2nd Court at Asansol which was numbered as Title Suit No.219 of 2006. In the said suit, amongst others, the following two issues were framed:-

- “4. Is the plaintiff son of Smt. Rangabati Goura and Late Sadai Goura?
5. Whether a declaration can be passed that the defendants given appointment the plaintiff under female V.R. Scheme as nominee of Smt. Rangabati Goura on the basis of confirmation of relationship with the plaintiff and identification of plaintiff as nominee made by Smt. Rangabati Goura before management of defendant company?”

The said two issues were decided in favour of the petitioner and by a decree dated 23rd December, 2015. It was declared that the plaintiff is the son of Smt. Rangabati

Goura and late Sadai Goura on contest. ECL preferred an appeal as against the said judgment and decree by filing Title Appeal No.7 of 2016. The said Title Appeal was decided by a judgment and order dated 16th August, 2019 by the learned Civil Judge (Senior Division), 2nd Court, Asansol. In the appeal, the declaration that the petitioner is the son of Smt. Rangabati Goura and late Sadai Goura was affirmed. However, the First Appellate Court rejected the prayer for aid and assistance of a learned advocate to be present in the defence of the petitioner in the departmental enquiry and that part of the decree was set aside.

The petitioner has filed the instant writ petition, inter alia, directing cancellation and/or setting aside of the charge-sheets dated 25th January, 2005 and 27th December, 2005.

The principal thrust of the petitioner in support of cancelling and/or setting aside the charge-sheets is the declaration in the Title Suit and its affirmation in the Title Appeal. The petitioner says that the enquiry on the basis of the two charge-sheets cannot be proceeded with any further in view of the declaration by the civil Court as affirmed by the First Appellate Court.

The petitioner has relied upon a judgment reported in 1985 Supreme (MP) 572 (Kailashnath Mishra v. Jiwaji University Gwalior). In the said case, a suit was filed by the employee against the employer for non-payment of his

salary and allowances for a particular period. While deciding the said suit, the learned 2nd Additional District Judge, Gwalior held that the plaintiff in the said suit did not take any job during the period for which the University did not pay him the salary and allowances. Subsequently, a departmental proceedings was initiated on two charges – one of which was unbecoming of an employee of the University for having violated certain statutory provision and for making defamatory allegations against the officers of the University. In such backdrop, the learned Single Judge of the Madhya Pradesh High Court held that the issue involved in the two proceedings, i.e., the civil suit and the departmental proceedings being identical and arising between the same parties, the same issue could not be litigated once again. The petitioner says that once there has been a declaration from a civil Court which is upheld by the First Appellate Court, the issue before the enquiry proceedings will amount to litigating on an issue already decided by a competent Court.

The petitioner has relied upon two other judgments – one reported in (1975) 4 SCC 690 (Bombay Gas Company Limited v. Jagannath Pandurang) and the other reported in 2017 Supreme (P&H) 2723 (Surinder Kumar Sharma v. Haryana Agro Industries Corporation Limited & Ors.) on the point that the departmental proceedings initiated on the basis of the two charge-sheets is barred by *res judicata*. The petitioner says that two simultaneous proceedings cannot be allowed to proceed before Court in

view of the principles analogous to Section 11 of the Code of Civil Procedure, 1908 by citing the latter two judgments.

In the instant case, there are two charges altogether against the petitioner before the Enquiry Proceedings/Disciplinary Proceedings. The first charge is of dishonesty in connection with the employer and misconduct. The factual allegation that the dishonesty in connection and the misconduct may arise from the assertion by the employer that the petitioner has fraudulently represented himself as the son of Smt. Rangabati Goura and late Sadai Goura, but on that basis the enquiry proceedings cannot be interfered with at this stage. Firstly, because the enquiry proceedings was a previous one and the suit was a result of such charge-sheet. If the enquiry proceedings is stalled, then it will amount to civil Court indirectly interfering with the enquiry proceedings on having decided a subsequent suit before the enquiry proceedings could be completed. That apart and in any event, the Enquiry/Disciplinary Proceedings is a quasi-judicial proceeding and not a suit where the statement of proof is different. The petitioner is free to rely upon the decree of the Civil Court in the Enquiry/Disciplinary Proceedings in accordance with the provisions of Indian Evidence Act, 1872. Secondly, the principles of *res judicata* is not applicable in the instant case where the charges against the petitioner are of dishonesty and misconduct, although the same may have been issued on a factual assertion, a portion of which has

been considered and decided by a civil Court. The charges of dishonesty and misconduct have not been considered and decided by the Civil Court. It may so happen that charges of dishonesty and misconduct are proved against the petitioner even if the finding of the Civil Court is accepted by the Disciplinary Authority. On the third count, the interference to an enquiry proceedings is very rare and that too if palpable illegality is foisted against the employee as held in (2015) 2 SCC 610 (Union of India v. P. Gunasekaran). Nothing of such nature has been demonstrated to have been done by the ECL, the employer as against the petitioner. Fourthly, a civil suit and a disciplinary proceedings stand on a different footing and are permitted to be continued parallelly. The disciplinary proceedings is on the basis of the employer losing confidence on the employee. It may be established in the enquiry proceedings that despite the declaration from the civil Court to that effect that the petitioner is the son of Smt. Rangabati Goura and late Sadai Goura, the employer has lost confidence in the petitioner to keep him engaged.

The petitioner has cited a judgment reported in (1983) 1 SCC 124 (The Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni & Ors.) in support of the proposition for appointing a legal practitioner as a defence counsel in the enquiry proceedings held in terms of the two charge-sheets dated 25th January, 2005 and 27th December, 2005. In the said judgment, the Hon'ble Supreme Court was considering the

provisions of Regulation 12(8) of the Bombay Port Trust Employees Regulations, 1976. The petitioner has not been able to show any provision *pari materia* to Regulation 12(8) to be prevalent in ECL to persuade this Court to accept the ratio as laid down in Dilipkumar Raghavendranath Nadkarni (supra). That apart and in any event, in the appellate decree dated 16th August, 2019, the First Appellate Court has specifically turned down the representation of the petitioner in the enquiry proceedings by a legal practitioner.

This being the position, unless the first appellate decree to the extent disallowing the petitioner to be represented by the legal practitioner in the enquiry proceedings is altered, there is no question of this Court sitting in writ jurisdiction to act as the second appellate court to allow the petitioner to be represented by a legal practitioner before the enquiry proceedings.

In the aforesaid facts and circumstances, the writ petition is devoid of merit and is accordingly dismissed.

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

(Arindam Mukherjee, J.)