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Item : 09
Matter : WPST
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WPST 29 of 2022

The State of West Bengal & Ors.
Vs.
Ram Ratan Kuwar

Mr. Jahar Lal De, Advocate

Mr. Shamim UI Bari, Advocate

.....for the Petitioners/State

Mr. Supratim Dhar, Advocate

Mr. Kunal Ganguly, Advocate

Mr. Dhananjay Nayak, Advocate

Mr. Tirupati Mukherjee, Advocate

.....for the Respondent

The case has a checkered history. The litigation ensued in the year 2005, when a disciplinary proceeding was initiated on the basis of a show-cause issued upon the respondent for alleged dereliction of duty and unauthorized absence. The disciplinary proceeding culminated in an order of dismissal from service and the said order was duly affirmed by the appellate authority on March 28, 2006. Immediately the order of the disciplinary authority was assailed by the respondent before the Tribunal in OA 1902 of 2006. The said tribunal application came to be disposed of after a gap of nearly three years i.e. on August 18, 2009 and interestingly, the order disposing of the said tribunal application would reveal that the disciplinary authority was directed to reconsider the punishment in the event, the employee is acquitted from criminal charges. It would be profitable to quote

the relevant excerpts of the said order which runs thus:

“Accordingly, we dispose of the application with a direction upon the disciplinary authority to reconsider the punishment of the petitioner, if and when, the petitioner shall produce the copy of order of the Criminal Court and, in the event, the disciplinary authority shall examine the judgment and following the position of law, shall dispose of the same in accordance with rule.”

Obviously, such observation was made at a relevant point of time when the criminal proceeding launched on the selfsame charges, was pending before the learned Magistrate. Since, liberty was granted to the respondent to make an application after his acquittal from a criminal case, such application was made when the Judicial Magistrate, Third Court, Asansol in G.R. Case No. 650 of 2005 acquitted the respondent as the prosecution miserably failed to prove the charges against the respondent. Since the said application for reconsideration was kept pending by the authority, the Tribunal was moved with OA 771 of 2014 seeking direction upon the said authority to take a decision within the timeframe. The Tribunal disposed of the said proceeding directing the consideration and disposal of the said application within eight weeks from the date.

Pursuant to the said order, the concerned authority rejected the said application on August 8, 2014 holding that the moment the employer has lost confidence in the employee as he committed a theft

being a member of the Disciplined Force, the quantum is immaterial and the employer would not allow to tarnish the reputation of the department in any manner. The said decision was challenged before the Tribunal in OA 1189 of 2014 and by the impugned order the Tribunal not only set aside the said decision of the authority taken on August 17, 2014 but directed reinstatement of the respondent with all consequential benefits. However, the authority was directed to revisit its decision within a stipulated time.

Mr. De, learned Advocate appearing for the Petitioner/State submits that there is no infirmity and illegality in the decision dated August 27, 2014 by the competent authority as the manner of proving the guilt in a criminal proceeding as well as departmental proceeding are distinct and stands on different pedestal. Mr. De further submits that the moment in an earlier round of litigation, the order of the disciplinary authority is not interfered with, it cannot be reopened by granting a leave against the extant Regulation. He further submits that the Disciplined Force cannot be equated with the departments of the Government as any dereliction or departure from duty by a responsible officer of the Disciplined Force has always been viewed seriously and the punishment varies.

On the other hand, Mr. Dhar, learned Advocate appearing for the Respondent submits that the moment the decision of the disciplinary authority was kept in abeyance in terms of the leave granted in the earlier round of litigation, it cannot be construed to have reached finality. Furthermore, the authority cannot have taken a shelter on the charges which could not be proved in a criminal case and, therefore, there is no infirmity in the direction passed by the Tribunal for reinstatement.

As indicated above, the parties have been litigating since the year 2005 when a show-cause notice was issued on the ground of theft of money as well as unauthorized absence. The said proceeding culminated into an order of dismissal which was challenged before the Tribunal. However, the Tribunal at the first round of litigation found that the criminal case was pending on the selfsame charges i.e. the charges relating to theft and, therefore, it would not be advisable that any final decision is required to be taken on the procedure and the decision taken by the disciplinary authority at such stage. The Tribunal was aware of the fact that the decision of the criminal Court may have some impact on the disciplinary proceeding and since it was pending at the relevant point of time, no decision should be taken obviously for the reason that the manner of proving the charges in a criminal case and departmental proceeding are distinct and

separate. However, the Court uses the term that for the present no interference is called for because of the pendency of the criminal case, it does not foreclose the right of the respondent to reagitate the issue after the order of acquittal in the criminal proceeding. The moment the application is made annexing the copy of the judgment of the criminal Court, the authority ought to have applied its mind on the findings recorded in the judgment passed in the criminal case in order to ascertain whether it was an acquittal on technical ground or an honourable acquittal.

It goes without saying that in the event of a criminal case and a departmental proceeding are launched on the same charges and the manner of proof depends upon the same sets of documentary evidence, same set of witnesses, the honourable acquittal will have some impact on the disciplinary proceeding and the decision taken therein. The authority ought not to have squeezed its consideration taking a plea of a Disciplined Organization and accepting the guilt of theft when the said findings has not been proved in the criminal proceeding and the respondent was acquitted therein.

The distinction as indicated hereinabove, is required to be considered upon reading the judgment of the criminal Court and the authority

ought to have arrived at the independent findings on all the facets of the charges levelled against the respondents and should not have restricted its consideration on one of such charges which is otherwise not proved in a criminal case.

The Tribunal assumes jurisdiction in relation to the cause of action pleaded in the application and the subject matter of challenge before the Tribunal was the order of the said authority dated August 27, 2014 and, therefore, should not have expanded its horizon to such reliefs which are depend upon outcome of the decision to be taken on revisitation of the said order. The moment the Tribunal directed the authority to revisit its order, it should not have passed an order directing the reinstatement of the petitioner which appears to us, have been passed in excess of the jurisdiction in relation to subject matter of dispute.

We thus set aside the portion of the impugned order by which the Tribunal directed the reinstatement of the respondent with all consequential benefits and the remaining portion of the order is un-interfered with.

Since the matter is remitted to the authority for revisitation, such authority who passed the order, shall take a decision within four weeks from the date of communication of this order independently

without being swayed by any observations made in the impugned order as well as in the instant order.

With these observations, the writ-petition being **WPST 29 of 2022** is **disposed of**.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)