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26.04.2022
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 6486 of 2022

Md. Ashique Hossen Shah
Vs.
The State of West Bengal & Ors.

Mr. Mukteswar Maity
....for the petitioner.

Mr. Biswabrata Basu Mallick,
Mr. Sayan Ganguly
.... For the State.

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

The petitioner while working as a Civic Volunteer under Dholahat Police Station, District – South 24 Parganas, though was not named in the First Information Report but in course of investigation in a criminal case, being Dholahat P.S. Case No.320/2020 dated 11th November, 2020 was arrested on 24th July, 2021. The petitioner was subsequently enlarged on bail on 26th July, 2021. It is the allegation of the petitioner that he was falsely implicated in the said criminal case but due to such reason without any show-cause, the petitioner has been restrained from joining his duties. The petitioner had made a representation to allow him to join duties but was not allowed to do so. The petitioner

challenges such action on the part of the respondents.

On behalf of the respondents it is submitted that prior to being arrested the petitioner stopped attending his duties. After his arrest there was no question of the petitioner joining the duties. In such circumstances the petitioner has been demobilized. After completion of investigation the charge sheet has been also filed under sections 420/406/384/34 of Indian Penal Code, 1860 (in short, IPC)

The fact remains that a Civic Volunteer, on a contractual engagement which is also on temporary basis like the petitioner, cannot question the action on being demobilized when he was admittedly arrested in a criminal case. The employer on an employee being implicated in a criminal case is likely to lose confidence in him. Even without going into the veracity of the allegation that the petitioner was not allowed to join or into the counter allegation that the petitioner stopped coming to his duties it can be said that the nature of engagement of the petitioner does not allow for giving the petitioner a show-cause or a hearing before demobilizing him. There is neither any rule nor is the employer under any obligation to give the petitioner a show-cause or hearing before demobilizing the petitioner on the basis of the terms of the appointment. The petitioner's representation

made on 24th March, 2022 before the Superintendent of Police, South 24 Parganas also does not warrant any consideration. Relying upon the findings arrived at by a Full Bench of this Court in the decision reported in (2015) 2 CHN 461 (Tanmay Ghosh & Ors. v. State of West Bengal & Ors.), it can also be held that the petitioner is not holding a civil post. As a Civic Volunteer the petitioner though can file a writ petition before this Court to ventilate his grievances as held in Tanmay Ghosh (supra), but in the instant case, the petitioner is unable to demonstrate infringement of any right guaranteed under Part-III of the Constitution of India as envisaged under Article 226(1) of the Constitution of India. The petitioner is also unable to show any act of his employer which allows him to maintain a writ “for any other purpose” as provided in Article 226(1) of the Constitution of India.

The writ petition is devoid of merits and is accordingly dismissed without any order as to costs.

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

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

(Arindam Mukherjee, J.)