

SL- 22.07.2022
01 Ct.15
rkd

W.P.A. 6304 of 2019

Sri Rajesh Banerjee

-vs-

The Calcutta Municipal Corporation & Ors.

Ms. Soma Chakraborty,

....for the petitioners.

Mr. Alope Kumar Ghosh,

Mr. Arijit Dey

....for the KMC.

By presenting this writ petition the order of dismissal dated 10th June, 2015 and the order of the Appellate Authority dated 24th July, 2018 confirming the original order of dismissal dated 10th June, 2015 passed against the petitioner have been questioned.

The order of dismissal dated 10th June, 2015 issued by the Joint Municipal Commissioner (P) and Disciplinary Authority being the respondent no.4 has been brought to the notice of this Court by the learned advocate representing the petitioner.

On perusal of such order of dismissal dated 10th June, 2015, it appears that there was an allegation of misappropriation of municipal fund against the petitioner for which an Enquiry Committee comprising Joint Municipal Commissioner (Rev) as Chairman, CMF&A, Ch. Manager (P) and D.G. (SWM). Before the said Committee based on the allegation of

misappropriation of municipal fund an enquiry was conducted wherein petitioner participated and confessed his involvement in defalcation of municipal fund to the tune of Rs.11,84,008/-. It was also confessed by the petitioner as it emanates from the said enquiry report as well as the order of dismissal that he was solely responsible for that incident and the other employees who signed the bills are innocent. Based on such confession, he prayed for time to deposit the said amount of Rs.11,84,008/- in favour of the Kolkata Municipal Corporation.

On the previous date on perusal of order of dismissal dated 10th June, 2015, this Court directed Mr. Ghosh, learned advocate representing the Kolkata Municipal Corporation to produce the enquiry report which has been referred to in said order of dismissal. Accordingly, the proceeding of the enquiry dated 22nd May, 2015 has been placed before this Court and the copy of the same has been provided to the learned advocate representing the petitioner.

Today the matter has been heard at length in presence of the learned advocates representing the petitioner as well as the Kolkata Municipal Corporation being the principal respondent.

It appears that though submission has been made orally before this Court in reference to the proceeding of the enquiry dated 22nd May, 2015 that the incident of defalcation of fund took place in the financial year 2014-15 and the petitioner joined the relevant post in the month of March, 2015 but it appears from the affidavit-in-opposition affirmed on behalf of the KMC that the petitioner joined the KMC on temporary basis as Junior Assistant on 28th August, 1998 and thereafter he was substantively appointed on and from 28th August, 2000. Subsequently, petitioner was promoted to the post of Upper Division Assistant on 20th February, 2008 and thereafter he was promoted to the post of Head Assistant on 9th March, 2015.

It is also revealed from the relevant part of the affidavit-in-opposition that on receipt of information regarding misappropriation of municipal fund aforesaid Enquiry Committee was constituted which asked the petitioner to appear before the said Committee. It further appears that the petitioner confessed before the said Committee that he had generated and passed such supplementary bills in the financial year 2014-15 against the leave encashment/short drawn on different dates in favour of unauthorized persons

who were not the actual legal heirs of the deceased persons and it was also submitted by the petitioner before the Enquiry Committee that he would deposit the alleged defalcated sum of Rs. 11,84,008/-. Subsequently, based on such confession before the aforesaid Enquiry Committee petitioner deposited said sum of Rs. 11,84,008/- in three instalments. Based on such confession of the petitioner and admission of guilt to the extent of defalcation of fund of Rs. 11,84,008/- the Disciplinary Authority issued order of dismissal against the petitioner vide order dated 10th June, 2015 which was questioned by the petitioner by preferring departmental appeal before the Appellate Authority. For non-disposal of said departmental appeal petitioner preferred one writ petition being WPA 22940 of 2016 which was disposed of 13th June, 2018 by a coordinate Bench whereby the Appellate Authority was directed to communicate the decision on the said appeal as preferred by the petitioner against the order of dismissal. Ultimately the Appellate Authority by an order dated 24th July, 2018 dismissed the appeal preferred by the petitioner thereby confirming the original order of dismissal dated 10th June, 2015.

In the aforesaid backdrop as narrated

above it has been argued by the learned advocate representing the petitioner that the Enquiry Committee was not formed in accordance with the relevant procedure and furthermore it has been submitted that the written admission dated 14th May, 2015 of the petitioner which was considered by the Enquiry Committee was on the threat of the members of the Enquiry Committee. Therefore, it has been contended that such written admission dated 14th May, 2015 ought not to be relied upon while deciding the issue involved in this writ petition.

In addition thereto it has also been submitted before this Court that there was a requirement in terms of the report of the Enquiry Committee to maintain a gap of fortnight in between the date of enquiry and the order of dismissal dated 10th June, 2015 issued against the petitioner which has not been done which vitiates the decision making process as well as the decision to dismiss the petitioner from his service, itself.

On considering the submissions made on behalf of the petitioner, it appears that the petitioner appeared before the Enquiry Committee on 22nd May, 2015 whereby the written admission on confession of guilt of the petitioner is dated 14th

May, 2015 therefore it cannot be inferred in view of date of enquiry as well as the date of written confession of the petitioner that as per direction of the Chairman of the said Enquiry Committee such written confession was made by the petitioner since such written confession was signed by the petitioner before the date when he appeared before the Enquiry Committee.

In addition thereto on the point of requirement of maintaining gap of 15 days in between the date of enquiry and issuance of impugned order of dismissal, on perusal of the minutes of proceeding dated 27th May, 2015, it is clear as crystal that the members of the said Enquiry Committee found it fit that further enquiry is required in order to ascertain the involvement of other employees, if any, in such defalcation charge chiefly levelled against the petitioner and perceived by the said committee that further 15 days time is required.

This Court is at a loss that how requirement of 15 days for the purpose of ascertaining the involvement of other employees in the said case of defalcation can save the petitioner and improve the case of the petitioner. On mere reading the minutes of the proceeding dated 27th

May, 2015 no person of ordinary prudence can come to the conclusion that for deciding the fate of the petitioner the Enquiry Committee decided to sit again after fortnight.

Lastly, since allegation of defalcation of municipal fund has been admitted by making specific confession by the petitioner before the Enquiry Committee and to that extent a written admission dated 14th May, 2015 was submitted before the authority all technical points relating to observance of procedure for concluding the disciplinary proceeding in order to impose the punishment of dismissal against the petitioner which are required to be observed in normal situation as canvassed on behalf of the petitioner, pales into insignificance.

In view of aforesaid facts, this writ petition does not merit consideration and accordingly, the same stands dismissed.

However, There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)