

S/L 79
17.06.2022
Court. No. 19
GB

WPA 8135 of 2022

Sri Gautam Maity
VS
The State of West Bengal & Ors.

Mr. Subhatjit Panja.

...for the Petitioner.

*Mr. Sudipto Panda,
Ms. Munmum Tewary.*

...for the State.

*Mr. Srijan Nayak,
Ms. Rituparna Maitra.*

...for the Respondent Nos.2 & 3.

*Mr. Milan Ch. Bhattacharjee,
Ms. Sulagna Bhattacharya.*

...for the Respondent Nos.4 & 6.

The petitioner has challenged the order of suspension dated June 25, 2021 and the ongoing disciplinary proceeding initiated by issuance of a charge-sheet dated January 31, 2022. The allegations are as follows:-

- i) The order of suspension was issued without hearing the petitioner and without recording the reasons as to why the explanation given by the petitioner in the preliminary enquiry, was not satisfactory in the estimation of the employer.
- ii) The venue of the enquiry proceeding was the office of the Assistant Registrar of the Co-operative Societies, which was far away.
- iii) Legal assistance was denied without any reasons.

It appears that there were some allegations against the petitioner. An internal enquiry was conducted. The

petitioner was issued a show cause notice dated June 4, 2021. The petitioner replied to the said show cause on June 20, 2021 and thereafter the society decided to initiate a disciplinary proceeding as the explanation of the petitioner was not, prima facie, satisfactory.

Although, allegation has been made that the suspension order has been issued with a closed mind and the guilt of the petitioner had been pre-judged, this Court is of the view that the proceeding, which was initiated prior to the issuance of the suspension order, can at best be a preliminary enquiry. The report of the said enquiry can be used as a supporting document in the disciplinary proceeding, which has been initiated, provided the same is supplied to the petitioner. The employer's right to proceed against an employee under the service rules cannot be denied, in case there are, prima facie, materials to proceed against the employee. The petitioner has not made out a case for a stay of the disciplinary proceeding.

The observations in the order of suspension are all prima facie and shall be treated to be prima facie in the enquiry proceeding. The enquiry shall proceed independently and the allegations of the petitioner with regard to issuance of a close minded charge-sheet, the power of the board to issue the charge-sheet, etc. are matters to be decided in the departmental proceeding. The petitioner can raise these points.

It is submitted by Mr. Bhattacharjee, learned senior advocate that as the petitioner and his associates created a

disturbance in the office of the society, the venue was fixed in the office of the Assistant Registrar of Co-operative Society. This Court directs that the petitioner will co-operate with the proceeding and the venue shall henceforth be within the premises of the Co-operative Society.

The petitioner is entitled to be represented by a person of his choice, but, as the presenting officer is not a legally trained person, assistance of a learned advocate is not necessary in this case, at the moment. The enquiry officer shall conduct the disciplinary proceeding in a free and fair manner without being influenced by the observations in the order of suspension. His endeavour shall be to unearth the truth. The ongoing disciplinary proceeding shall be concluded within a period of three months from date of communication of this order. Principles of natural justice shall be followed. All opportunities shall be available to the petitioner.

The petitioner is granted liberty to file additional written statement within a period of two weeks from date. Such written statement shall be accepted by the enquiry officer and treated to be a part of the original written statement.

Accordingly, the writ petition is disposed of.

However, there will be no orders as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)