

22.07.2022
Court No. 19
Item no.06
CP

W.P.A. No. 15136 of 2022

Mahua Jana (Pal) allies Mahua Pal Jana
Vs.
The State of West Bengal & ors.

Mr. Soumay Majumder
Mr. Ravi Kr. Dubey
....for the petitioner.

Mr. Suman Dey
...for the State.

Mr. Sardar Amjad Ali, Sr. Advocate
Mr. Golam Mastafa
Mr. Tarakeswar Samanta
....for the respondent no. 5.

The writ petition has been filed for stay of the departmental proceedings arising out of a show cause notice dated April 5, 2022, in view of the pendency of the criminal proceedings arising out of Tamluk Police Station Case No. 375 of 2022. Further challenge is that an enquiry was held prior to issuance of the charge-sheet.

It is submitted by Mr. Majumder, learned advocate appearing for the petitioner, that by a letter dated June 21, 2022 the Chief Executive Officer of the Tamluk Co-operative Agriculture & Rural Development Bank Ltd., asked the petitioner to show cause within 7 days from the receipt of the said

notice, at to why the petitioner should not be discharged from service of the bank in terms of para 14(b)(vii) of the Appendix to Chapter V of the West Bengal Co-operative Societies Rules, 2011. Mr. Majumder urges that the enquiry report was served along with the charge-sheet and the second show cause notice. This, according to Mr. Majumder, was a procedural flaw and the proceeding must be set aside.

Mr. Ali, learned senior advocate, appearing for the cooperative society, fairly submits that there has been a procedural flaw, but he urges the court to grant liberty to proceed afresh in accordance with law, in view of the grave allegations against the petitioner.

Judicial review of a disciplinary proceeding is permissible under the law, if there are procedural irregularities. Admittedly, in this case, the petitioner was not served with the charge-sheet until the enquiry was over.

The report of the enquiry officer, the charge-sheet and the notice dated June 21, 2022, were issued simultaneously, thereby asking the petitioner to show cause as to why the proposed punishment would not be imposed. This, according to the court, was in complete violation of the service rules and the procedure suffers from irregularity and illegality. The

notice dated June 21, 2022, the enquiry report are set aside and quashed.

Liberty is granted to the society to proceed afresh, in accordance with law upon issuance of a fresh charge-sheet. The petitioner shall be permitted to file his written statement, adduce evidence, cross-examine witnesses and the entire proceeding must be held in accordance with the principles of natural justice. The documents relied upon must be supplied.

The other issues which have been raised in the writ petition, have not been gone into.

It would be open to the employer to decide whether to keep the petitioner under suspension in accordance with the service rules or allow him to join his services during this period.

As the notice dated June 21, 2022 and the enquiry report have been quashed and set aside, any decision that might have been taken to discharge the petitioner from his duties, cannot be sustained in law. Hence, if any order of discharge has been issued, the same is also set aside and quashed.

The writ petition is disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)