

15 **20.01.
2022**

Ct. No. 04

Ab

WP.ST 92 of 2021

Subhendu Mondal

Vs.

State of West Bengal and others.

Mr. Partha Sarathi Bhattacharyya,

Mr. Raju Bhattacharyya.

... for the Petitioner.

Mr. Pinaki Dhole,

Mr. Avishek Prasad.

... for the State.

The petitioner has assailed the order no. 2 dated 21st April 2021 passed by the West Bengal Administrative Tribunal in OA 284 of 2021 solely on the ground that despite the pleading and the submissions made for passing an ad interim order, the tribunal directed the respondent authorities to take instruction and listed the matter thereafter, which tantamount to an implied refusal to pass an ad interim order.

We entertained the writ petition and invited the respondents to meet the point so urged only for the purpose of ascertaining whether any case for an interim order has been made out by the petitioner. There is no ambiguity to the proposition that if the application for interim order or a prayer for interim order is made before the Court or the tribunal and the same is not passed, sometimes there is no reflection whether the same is allowed or not, it would tantamount to refusal to pass an interim order and, therefore, we do not find any fetter on the part of the petitioner to move this Court against the said order.

The matter pertains to the order of suspension issued against the petitioner by the competent

authority. The earlier order of suspension was issued on 25th March 2019, which was the subject matter of challenge before the tribunal in OA 480 of 2020. The suspension order was issued as the petitioner was arrested in a criminal case registered against him and was detained in custody for more than forty-eight hours. However, the said suspension order was issued under the wrong provisions of law and the same was projected affront as a core weapon of attack before the tribunal and the petitioner succeeded in getting away with the order of suspension dated 25th March 2019. The tribunal disposed of the said tribunal application being OA 480 of 2020 holding that the order of suspension was issued under the wrong provisions of law and, therefore, cannot be sustained. Immediately thereafter, the impugned suspension order was passed without permitting the petitioner to resume the duty after the earlier order of suspension was revoked and/or quashed by the tribunal, which constrained the petitioner to file another tribunal application being OA 284 of 2021.

According to the petitioner, the suspension order dated 25th March 2019 suffers from serious infirmities in the sense that it runs counter to the spirit of the earlier order passed by the tribunal and, subsequently, the same has been issued in haste in order to prevent the petitioner to resume duty. The entire foundation is laid upon the observation of the tribunal in an earlier tribunal application wherein the earlier order of suspension dated 25th March 2019 was quashed and a direction was made upon the authorities to allow the petitioner to join. As indicated above, the petitioner vociferously submits that the subsequent order of suspension dated 22nd March 2021 is passed in clear violation of the said order and, more particularly, without permitting the petitioner to join his duty.

The respondent authorities have submitted that the subsequent order of suspension has been issued strictly in terms of the relevant rules, which mandate the suspension from date of the detention and, therefore, there is no ambiguity and/or infirmity in issuing the same. A plea is also taken by the respondent authorities that the manner in which the interim order is prayed in the tribunal application, if allowed it would virtually allow the tribunal application at the threshold, which is impermissible.

Giving our anxious consideration to the issues raised before us it is beyond cavil of doubt that the earlier order of suspension dated 25th March 2019 was issued under the wrong provisions of law. The said order would reveal that the petitioner was placed under suspension with effect from 7th March 2019 i.e. the date when the petitioner was detained in custody in terms of the provisions contained in para 3 of Rule 7 of the West Bengal Service (Death-cum-Retirement Benefit) Rules, 1971. Obviously, the aforesaid Rule does not have any manner of application to a disciplinary proceeding to be taken against the Government employee, as the same is governed by the West Bengal Services (Classification, Control and Appeal) Rules, 1971.

Our attention is drawn to Rule 7 sub-rule (3) thereof, which postulates that in the event of detention of the Government employee for more than forty-eight hour in custody, he shall be deemed to be under suspension with effect from the date of detention until further orders. It would not be preposterous to suggest that the earlier suspension order was quashed and set aside solely on the technical ground and not on merit, therefore, the subsequent order of suspension can be said to be in contravention to the order of the tribunal. Had it been a case that the earlier order of suspension is

quashed and set aside by the tribunal on merit, the position would have been different. The authorities committing mistake reserves power inhered in it to correct the mistake. The wrong should not be allowed to be perpetuated for all time to come.

So far as the issuance of the second suspension order is concerned, taking into account that the earlier order of suspension was revoked and/or quashed on technical ground, we do not find any difficulty in upholding the subsequent order of suspension. However, a plea is taken that while quashing and/or setting aside the earlier order of suspension, the tribunal directed the authorities to permit the petitioner to join and if the subsequent suspension order is issued immediately thereafter, it would be construed to have been passed in violation thereof. We do not find that because of the same, the order of suspension should fall.

We have perused the records filed before us including the nature of offences and the charging sections inflicted against the petitioner, we are of the view if the petitioner remain in the same position it would cause a serious prejudice to the administration and will affect the public at large.

Though the order was passed permitting the petitioner to join but simultaneously liberty was also granted to the respondent authorities to take appropriate steps in accordance with law. Such liberty would be rendered meaningless if the order of suspension cannot be passed unless the petitioner joins his post. The concept of deemed suspension apropos the detention for more than forty-eight hours would be rendered otiose and unworkable.

We, thus, do not find any merit in the writ petition. The writ petition is, thus, dismissed.

There shall, however, be no order as to costs.

The observations made herein above are mere tentative and shall not have any finality in any proceedings, as the same is made for the purpose of passing an interim order, as prayed for.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)