

WPA 15864 of 2015

**Sonali Kundu nee Dutta
Vs.
The State of West Bengal & Ors.**

**Mr. Srinjoy Das
Mr. Jiban Hari Mallick
Ms. Sanjukta Mukherjee
..for the Petitioner**

**Mr. Tapan Kumar Mukherjee, Ld. AGP
Ms. Saheli Mukherjee
..for the State**

The writ petition relates to issuance of suspension of order dated 22nd June, 2015 issued by the Executive Officer, Joypur Block, District- Purulia whereby the petitioner was placed under suspension pending initiation of departmental proceeding against her. After the said order of suspension, charge sheet was issued on 15th July, 2015 against the petitioner and on receipt of such charge sheet, reply to the said charge sheet was furnished by the petitioner on 29th July, 2015. It is required to be noted herein that prior to issuance of suspension order dated 22nd June, 2015, the District Magistrate, Purulia and Executive Officer, Purulia Zilla Parishad issued transfer order in favour of the petitioner on 9th March, 2015 thereby transferring her from Joypur Block to Arsha Block with the direction upon the Block Development Officer and Executive

Officer Joypur Block to make arrangement for release of the petitioner within seven days from the date of issuance of the order of transfer. It has been submitted by Mr. Srinjoy Das, learned advocate representing the petitioner that in spite of issuance of such order of transfer dated 9th March, 2015, the same was not given effect to within the specified period.

On the contrary, petitioner was placed under suspension vide order dated 22nd June, 2015 pending drawal of disciplinary proceeding and subsequently, charge sheet has been issued on 15th July, 2015. It has also been submitted that in spite of such charge sheet issued against the petitioner on 15th July, 2015 and after furnishing reply to the said charge sheet on 29th July, 2015 till 2022, no subsequent steps were taken by the respondent authorities for holding enquiry against the petitioner in order to conclude the disciplinary proceeding.

The present writ petition was filed on 10th July, 2015 and the same is being heard by this Court recently upon inclusion of the matter in the list at the instance of the learned advocate representing the petitioner. When the Court was in seisin of the matter after seven years from the date of issuance of charge sheet, suddenly, the respondent authorities woke up from slumber and fixed date of enquiry for the first time

on 8th April, 2022 upon issuance of enquiry notice dated 1st April, 2022. It has been submitted on behalf of the petitioner that it was open to the respondent authorities to conclude the disciplinary proceeding within the reasonable time after issuance of charge sheet on 15th July, 2015. But, the respondent authorities decided not to hold enquiry therefore at this belated stage when the matter is being considered by this Court, the respondent authorities should have restrained themselves at least till the view expressed by this Court on this writ petition at the motion stage.

Another limb of submission of the petitioner is in view of said transfer order dated 9th March, 2015 from Joypur Block to Arsha Block, it was not within the authority of the Executive Officer of Joypur Block to initiate disciplinary proceeding against the petitioner upon placing him on suspension. In this regard, reliance has also been placed on Rule 52 (8) (a) of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 (hereinafter referred to as the 'Rules of 2004').

Lastly, it has been submitted by the petitioner that if any proceeding was required to be initiated against the petitioner, it was within the domain of the appropriate authority of the Block where petitioner was transferred vide transfer order dated 9th March, 2015

and the Executive Officer of Joypur Block was not authorised at the material point of time to initiate such proceeding. Accordingly, the prayer has been made for setting aside suspension order and subsequent initiation of disciplinary proceeding against the petitioner.

Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader appears on behalf of the State-respondents and has filed a report in the form of affidavit affirmed today which is taken on record.

In order to defend the action of the respondent authorities while initiating disciplinary proceeding against the petitioner, Mr. Mukherjee has also placed reliance on said Rule 52 (8) (a) of the Rules of 2004 and it has been submitted that necessary leave be granted to the respondent authorities to conclude the proceeding in accordance with law.

At this juncture, this Court has posed query to Mr. Mukherjee that why proceeding which was initiated on issuance of charge sheet dated 15th July, 2015 was kept pending for seven years, unfortunately, this Court does not receive any satisfactory reply from the learned advocate representing the respondents.

In addition thereto, though reliance has been placed on said Rule 52 (8) (a) of the Rules of 2004 but on perusal of the said rule, it appears that proceeding

was initiated by the Executive Officer of Joypur Block upon placing the petitioner on suspension on 22nd June, 2015 though he was transferred to Arsha Block on 9th March, 2015.

This Court has considered the rival submission made on behalf of the learned advocates representing the parties and issued relevant documents and pleadings available on record.

For better understanding of the issues this Court finds it proper to quote Rule 52 (8) (a) of the said Rules of 2004 below:-

“(8) (a) The Block Development Officer and ex-officio Executive Officer of the Panchayat Samiti may place an employee of a Gram Panchayat within the jurisdiction of the concerned Panchayat Samiti, under suspension, when-

(I) a disciplinary proceeding or departmental enquiry against him is contemplated or is pending,

(ii) he has been detained in custody for a period exceeding forty-eight hours under any law providing for preventive detention or as a result of a proceeding either on a criminal charge or otherwise, or

(iii) he has been implicated in a proceeding initiated against him in charge of a criminal offence involving moral turpitude punishable with imprisonment for a period of more than six months.

(b) During the period of suspension, such employee shall be entitled to subsistence allowance and to pay and allowance on reinstatement in respect of the period of suspension at such rate as is admissible to a Government servant on an

identical or comparative scale of pay under rule 71 and 72 of the West Bengal Service Rules, part-I:

Provided that in a case where an employee is detained in custody under any law providing for preventive detention, the subsistence allowance admissible under the said rule shall be reduced by the amount of allowance if any paid to the detainee under the relevant laws or rules for the time being in force.”

On perusal of such Rule 52 (8) (a), it appears that the Block Development Officer and ex-officio Executive Officer of the concerned Panchayat Samiti may place an employee of Gram Panchayat under suspension provided such employee was working within the jurisdiction of the concerned Panchayat Samiti.

In the present case, petitioner was transferred on 9th March, 2015 by the District Magistrate, Purulia from Joypur Block to Arsha Block with the direction upon the Executive Officer, Joypur Block to give effect to such transfer order within seven days whereas suspension order was issued on 22nd June, 2015, i.e., three months after the said order of transfer and charge sheet was issued on 15th July, 2015 by the Executive Officer of Joypur Block. On application of said Rule 52 (8) (a) Executive Officer of Joypur Block was not empowered to take steps against the petitioner by placing him under suspension. It appears that the steps taken by the

Executive Officer of Joypur Block against the petitioner was dehors the relevant rules of the said rules of 2004 and accordingly, the same ought not to be permitted to stand.

In view of above discussion, the suspension order dated 22nd June, 2015 issued by the Executive Officer of Joypur Block and subsequent initiation of disciplinary proceeding upon issuing charge sheet dated 15th July, 2015 stand set aside.

The concerned respondent authorities are directed to allow the petitioner to resume her duty as Nirman Sahayak in the transferred post in Beldih Gram Panchayat under Arsha Block within fortnight from date.

On resumption of duty by the petitioner pursuant to the direction passed by this Court, the concerned respondent authorities shall be at liberty to initiate proceeding against her, if required, strictly in accordance with law.

With the above observation and direction, the writ petition stands disposed of.

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.)

