

**30.11.
2022**

Ct. No. 04

Ab

WP.CT 99 of 2022

Union of India and others

Vs.

Sabyasachi Saha.

Ms. Sarda Sha.

... for the petitioners.

Mr. Abhratosh Majumdar,

Mr. Barun Chatterjee.

... for the respondent.

Though we concur with the ultimate conclusion arrived at by the Tribunal, but we do not accept the reasons provided therefor. There is no fetter on the part of the Writ Court to supplement the reasons if the ultimate conclusion is found to be correct.

A disciplinary proceeding was initiated against the delinquent/respondent, which culminated into an order of dismissal. The said order is assailed before the appellate authority and we are given to understand that the appeal is pending.

Amidst the pendency of the said proceeding, the petitioners intended to forfeit the General Provident Fund accrual as against the alleged embezzlement of money. It is definitely a serious allegation as nobody should be permitted to squander the public money nor the embezzlement can be so lightly viewed. The disciplinary authority while imposing the punishment did not direct recovery of the embezzled amount, but appears to us passed an order of dismissal simplicitor.

We invited the arguing Counsels to place the relevant Rules empowering the authority to withhold the General Provident Fund accrual or any other ground admissible upon imposition of the penalty by way of dismissal. After hearing the authority, we did not find

any such provisions contained in the Rules or the regulations, which may permit the authority to withhold the accrual on General Provident Fund in the event the penalty of dismissal is passed simplicitor.

There may be a case that any benefits attached to the said post can be withheld on an imposition of penalty by way of dismissal but in absence of any such powers the authority cannot usurp the power to have inbuilt and inhered in the said Rule.

Fundamentally, the authority cannot do any act, which is not permitted in the statutory document nor can assume such power in the administrative domain as it cannot travel beyond the peripheral of the statutory provisions. In absence of any Rules providing for such course to be adopted and/or taken, even if we find that the allegation is of serious nature but cannot countenance the action of the authority in taking a decision not provided in law.

We, therefore, do not find any infirmity and/or illegality in the impugned order.

The writ petition is dismissed.

Since the time fixed in the impugned order passed by the Tribunal has expired because of the pendency of the instant writ petition, such time is extended by eight weeks from date.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

