

23.11.2022.
Item No.10
Court No.550
Saswata

W.P.A. 24511 of 2022

**M/s Peerless Hospital & B.K.Roy Research Centre
(A unit of Peerless Hospitex and
Research Centre Limited)
Versus
State of West Bengal & Ors.**

Mr. Ranjay De

... For the petitioner

Mr. Balai Paul

Ms. Ruma Sarkar

...For the respondent no. 3

By consent of the parties, the aforesaid writ application is taken for final hearing. The present writ application has been filed challenging the order dated 6th May 2022 passed by the Learned 2nd Industrial Tribunal, West Bengal (hereinafter referred to as 'the Tribunal') being case no. VIII-35/2012.

Mr. Dey, learned advocate appearing in support of the instant writ application submits that the petitioner runs a hospital and research centre and the husband of the private respondent (hereinafter referred to as the 'employee') was attached with the petitioner. The employee, in course of his employment, 9th March 2022, had unauthorizedly visited the paediatric ward of the hospital, went to bed no. 1062, where one Miss Sangita Naskar, aged about 9 years was awaiting for her discharge. He says that the employee has forcibly took away the said female child out of the said ward and from the hospital premise without the permission of the sister-in-charge. Since, the aforesaid constituted grave misconduct, by a letter dated 12th March 2002, the management of the writ petitioner had, while

suspending the employee, contemplated disciplinary action with immediate effect.

Drawing the attention of this Court to a letter dated 14th March 2002, it is submitted that immediately upon receipt of the aforesaid letter of suspension, the employee regretted his conduct and prayed that his conduct may be condoned. A charge sheet was, thereafter, issued to the said employee on 13th March 2002, calling upon the said employee to explain as to why disciplinary action should not be initiated against him. It is submitted on behalf of the petitioner that consequent upon receipt of the said aforesaid charge sheet the employee, by a communication in writing dated 18th March 2002, while expressing profound regret for his impulsive act, requested the management of the petitioner to condone his conduct. Mr. Dey submits that following receipt of the aforesaid communication, the said employee was served with a notice of enquiry dated 23rd March 2002. A regular domestic enquiry was conducted, wherein, the said employee participated. After conclusion of the enquiry, by communication in writing dated 22nd April 2002, the disciplinary authority forwarded the enquiry report to the employee. The disciplinary authority, after considering the reply of the said employee, by a letter dated 13th May 2002, which was communicated to the said employee, dismissed him from service.

Mr. Dey, submits that since an industrial dispute was raised by the said employee, the appropriate government by order dated 5th July 2012 referred the

aforesaid dispute to the Tribunal by framing the following issues:-

“I S S U E (S)”

1. *Whether the dismissal of Shri Subhas Chandra mukherjee w.e.f. 13-05-2002 by the mangement of M/s. Peerless Hospital & B.K.Roy Research Center is justified?*
2. *Tow hat relief if any, the workman is entitled?*

Both the petitioner as also the employee had filed written statements. The parties also led evidence on the validity and/or invalidity of the domestic enquiry as a preliminary issue. Mr. Dey, while referring to the order impugned in the present proceeding, submits that the Tribunal, while deciding preliminary issue, exceeded its jurisdiction in concluding that the charges are not legally sufficient to hold any clear meaning of the allegations and proceeding on such premise, concluded that three of the charges had not been framed clearly. This, according to Mr. Dey is beyond the jurisdiction of the Tribunal. Once a matter of this nature is referred to the Tribunal, the Tribunal, at the first instance, is required to consider whether the domestic enquiry conducted by the management is legal and/or whether the same stands vitiated on any count. In the event, the Tribunal is of the view that the domestic enquiry stands vitiated and/or legally tenable, in such circumstances, the Tribunal may permit the parties to lead evidence if evidence is found wanting or if any of the parties apply before the Tribunal for leading evidence. It is only at the final stage while

considering the matter on merit that the Tribunal assumes the jurisdiction to consider the relevancy of the charges and/or whether the charges can be sought to have been proved. The Tribunal, however, has no jurisdiction at the stage of ascertaining whether the enquiry conducted by the management stands vitiated or not to hold that the charges are vague or that the charges are improperly framed.

In support of the aforesaid proposition, Mr. Dey places reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***M. L. Singla -vs- Punjab National Bank & Anr.*** reported in ***(2018) 18 SCC 21***. He submits that the aforesaid order passed by the Tribunal can no longer said to be an interlocutory order in light of the findings rendered by the Tribunal, as regards validity of the charges. Once the Tribunal concludes as regards validity and/or invalidity of the charges at a stage when the Tribunal was only considering the validity and/or invalidity of domestic proceedings, nothing further remains to be enquired into by the Tribunal. The consequential directions issued by the Tribunal for adducing evidence on the merits of the charge are in the manner of post-decisional enquiry whether the Tribunal, at the first instance, has already decided on the issue as regards validity and/or invalidity of the charges. Mr. Dey submits that the aforesaid order passed by the Tribunal cannot be sustained and the same should be set aside.

Per contra, Mr. Paul, learned advocate representing the private respondent submits that during pendency of the proceeding, the said employee has died. The private

respondent happens to be the unfortunate widow of the employee who has been rendered remediless by reasons of the protracted litigation. He submits that the Tribunal is in seisin of the matter and this Court ought not, at this stage, to interfere with the jurisdiction and/or authority of the Tribunal to adjudicate on the reference. He submits that the present writ application deserves to be dismissed.

I have heard the advocates appearing for the respective parties and have considered the materials on record. From the submissions advanced by the advocates for the parties, the only question that falls for consideration in the present writ application is whether the Tribunal is competent to adjudicate on the validity and/or invalidity of a charge in relation to a domestic enquiry without, at the first instance, determining the validity and/or invalidity of such domestic enquiry.

Learned advocates have made elaborate submissions and have taken me through the relevant documents, inter alia, including the order of suspension, the response thereto by the employee, the charge sheet, the response thereto by the employee, the notice of enquiry proceedings, the notice of enquiry report and the order passed by the disciplinary authority.

Mr. Dey attempted to impress upon this Court that the employee had admitted his guilt. I am of the view that such question cannot be raised by the petitioner in a writ application arising out of an interlocutory order passed by the Tribunal. I, however, find from a perusal of the order passed by the Tribunal - while deciding the validity and/or

invalidity of enquiry proceeding conducted by the petitioner, wherein evidence has been led by the parties on the preliminary issue on the validity and/or invalidity of such enquiry - that the Tribunal had proceeded to decide upon the validity and/or invalidity of the charges levelled against the employee. In my opinion, the validity and/or invalidity of a charge can only be considered by the Tribunal after the Tribunal answers the question on the preliminary issue whether the domestic enquiry is legal and proper, depending upon the answer to the aforesaid question that the Tribunal may proceed further to decide the question as regards the validity and/or invalidity of the charges. Such a question, in my opinion can only be answered at the time of final hearing while deciding the matter on merits.

I find from the order impugned in the aforesaid proceedings that the Tribunal, while deciding upon the validity and/or invalidity of the domestic enquiry, has returned the following finding:-

“Accordingly, I hold that the said three headings of charges are not legally sufficient to hold any clear meaning of the allegations and the allegations in respect of each charge in full should have been mentioned alongwith the headings of charges to help the petitioner understand the meaning of the charges completely because he had to give reply to the said charges.”

The Tribunal has not stopped there. It has gone on further and concluded to hold that three charges have not been framed clearly and legally. This, in my opinion, is clearly an act which is beyond the jurisdiction of the

Tribunal to decide at the initial stage. For reasons indicated hereinabove, I am of the view that the aforesaid order cannot be sustained and the same is accordingly set aside.

I, further direct the Tribunal to decide and/or adjudicate on the reference and/or decide the preliminary issue as regards validity and/or invalidity of the domestic enquiry at the first instance and, thereafter to proceed further in the matter.

It is made clear that the parties have already their arguments. So far as hearing of the preliminary issue as regards validity and/or invalidity of the domestic enquiry is concerned, the Tribunal shall only decide on such issue from the stage of arguments by treating that the evidence has been closed. The Tribunal is requested to take a decision as expeditiously as possible, preferably within a period of 3 months from date.

With the above directions, the writ application being WPA 24511 of 2022 is disposed of.

No order as to costs.

All parties are to act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Raja Basu Chowdhury, J.)