

21.12.2022

WPCT 124 of 2022

Court : 04
Item : DL-36
Matter : WPCT
Status : DwC
Transcriber: nandy

Samrat Mallick
Vs.
Union of India & Ors.

Mr. Barun Chatterjee, Advocate

.....for the Petitioner

Mr. Pramit Kumar Ray, Senior Advocate

Ms. Sarda Sha, Advocate

.....for the Respondent/UoI

The recalcitrant litigant has approached this Court with the writ-petition challenging the order of the Tribunal dated 24.11.2022 disposing of the tribunal application by directing the departmental proceeding to arrive at its logical end and simultaneously bearing in mind the apprehension shown by the writ-petitioner that during the pendency of the departmental proceeding as well as the tribunal application, a show-cause notice has been issued upon the petitioner with an intent to rebut him back to his original post.

The Tribunal after considering the facts, protected the interest of the writ-petitioner by directing the show-cause notice to be kept in abeyance till the disposal of the departmental proceeding. Obviously, the moment the departmental proceeding is set in motion and has not been fructified into a final decision, the reversion would have a cascading effect on the service career of the employee yet the petitioner felt aggrieved as he thought such show-cause notice should be cancelled, quashed or set aside or the interim order which was operative till the conclusion of the departmental proceeding, should have been passed, to operate eternally and/or perpetually.

Such litigant should not get any encouragement nor the Court is pleased to pass an order on the *ipse dixit* of the submission made at the Bar or what the litigant perceived.

The case has to be decided on the basis of provisions of law. Using the tool of interpretative process does not mean that it has to be applied and extended to please the litigant who showed his helplessness and/or incapacitation to meet the stand of his employer. Neither sympathy nor compassion can change the law nor should play a role in dispensation of justice. There was a serious allegation made against the petitioner constituting misconduct and the departmental proceeding is still pending. Obviously, the Court or the Tribunal should be slow in interfering at the stage of the article of charges or the departmental proceeding having been initiated except on an exceptional and extraordinary circumstances, more particularly, violation of the statutory Rules as well as the constitutional rights. The Tribunal did not find any such element to remain present in the said proceeding yet showed its compassion in keeping the show-cause notice in abeyance whereby and whereunder the party intends to revert to its previous post.

The Union of India has not challenged the said order. Therefore, we are not in a position to interfere with that portion of the order despite having found that such portion of the order is unreasonable.

We thus do not find any grounds warranting interference with the impugned order.

The writ-petition being **WPCT 124 of 2022** is thus **dismissed** with costs assessed at Rs.50,000/- (Rupees Fifty Thousand only) to be deposited with the State Legal Services Authority within three weeks after reopening of this Court following Christmas Vacation for the year 2022.

In the event, such costs is deposited, the same shall be kept in an account earmarked for juvenile.

In default, liberty is granted to the Union of India or the concerned Department where the petitioner is presently posted to realize the said amount from his salary either at one go or at a periodical monthly basis and deposit the same in the manner as indicated hereinabove.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)