

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

**07.09.2022
Crt. No.1.
K.B./b.r.
Item No.5.**

**MAT 75 of 2022
with
IA No. CAN 1 of 2022
with
CAN 2 of 2022**

***Jayanta Kumar Pathak*
-Vs.-
*Union of India and ors.***

**Mr. Bikramaditya Ghosh
Ms. Supriya Singh
.....for the appellant.**

**Mr. Sudipto Kumar Mazumder, Ld. A.S.G.
Mr. Ajoy Kumar Singhania
..... for the Union of India.**

Party/parties is/are represented in
the order of their name/names as printed
above in the cause title.

The short issue in this appeal
pertains to the Order of the Hon'ble Single
Bench dated the 4th of August, 2022 in
WPA 232 of 2020 along with its connected
applications.

The writ petitioner represented by Mr. Bikramaditya Ghosh, Learned Counsel, takes the point that the Hon'ble Single Bench failed to appreciate all previous Orders of the Hon'ble Court passed in both Single and Division Benches which had only permitted the Respondents/the Union of India/Sashastra Seema Bal (SSB) to conclude the Disciplinary Proceeding (*DP*) against the writ petitioner but not to pass a Final Order without the leave of the Hon'ble Court.

It is submitted that by allowing the Respondents/*SSB* to publish the final Order in the *DP* only on the ground that the final Order has been prepared, has not only done away with the pronouncements of the Hon'ble Single and Division Benches earlier made but has also resulted in irretrievable prejudice to the writ petitioner.

Mr. Ghosh draws the attention of this Court to the opening Order of the Hon'ble Single Bench dated 28th January,

2020 by which the Hon'ble Single Bench was pleased to recognise the point of jurisdiction raised by the writ petitioner *qua* the amended charges brought against the writ petitioner following the Court of Enquiry under the SSB Act, 2007. The Hon'ble Single Bench recognised the arguments of the writ petitioner that evidence collected *qua* a particular charge in a Court of Inquiry could not be subsequently altered on the mere desire of the Disciplinary Authority in the trial to follow in a the General Forces Court.

Accordingly, the Hon'ble Single Bench was, *inter alia*, pleased to direct the parties to exchange affidavits and the matter was fixed for hearing upon completion of the affidavits.

Mr. Mazumder, Learned Counsel appearing for the Respondents/SSB with Mr. Singhania, Learned Advocate, takes the point that since the *DP* was completed the next natural course of action was to

promulgate and/or publish the final findings of the *DP*. Accordingly, there is no error in pronouncement and/or publication of the Final Order as permitted by the Order impugned dated 4th August, 2022.

Mr. Mazumder also submits that under the *SSB* Rules there is a provision for preferring a statutory appeal.

Having closely heard the parties and anxiously considering the materials placed, this Court is not *ad idem* with the stand taken by Learned Counsel for the Respondents. In the event, the Order of the Hon'ble Single Bench dated 4th of August, 2022 is sustained, all other Orders of the Hon'ble Single and Division Benches permitting the writ petition to be finally heard on the point of jurisdiction shall be rendered *otiose*.

This Court is of the view that the direction not to publish the Final Order passed by the Hon'ble Court must be understood in the context of the intention

expressed by the Court to finally hear the writ petition on the point of jurisdictional maintainability.

Accordingly, the Order impugned of the Hon'ble Single Bench dated 4th August, 2022 stands set aside.

It is made clear that the Final Order as stated to have been passed by the Disciplinary Authority shall not also be given effect to without the leave of the Hon'ble Court and the *status quo ante* prior to the passing of the Final Order shall prevail until the leave of the Hon'ble Court is obtained.

In the event, the Final Order has been promulgated and/or published and/or given effect to, the same shall not be given effect to without the leave of the Hon'ble Single Bench.

This Order will continue until further Orders to be passed by the appropriate Hon'ble Single Bench.

With the above observations and directions, the writ petition is remanded to the Hon'ble Single Bench for consideration on merits.

MAT 75 of 2022 with IA CAN 1 of 2022 and CAN 2 of 2022 stand accordingly disposed of.

In view of the discussion above, affidavits are not invited. Accordingly, all other allegations are deemed to be denied and disputed.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Krishna Rao, J.) (Subrata Talukdar, J.)