

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 4163 of 2007

**Purnima Chowdhury
Vs.
The State of West Bengal & Ors.**

For the petitioner	:	Mr. Swapan Kumar Nandi Mr. Debojyoti Ghosh Mr. Sizan Nandi
For the WBSEB	:	Mr. Sumit Kumar Panja Mr. Sujit Shankar Koley
Heard on	:	06.12.2022, 14.03.2023 and 11.04.2023.
Judgment on	:	11.04.2023

Raja Basu Chowdhury, J:

1. At the very outset, it is submitted by the parties that consequent upon the Electricity Act, 2003 being notified, by a notification published in the Kolkata Gazette on 25th January 2007, the Governor, in exercise of powers under Sub-Section (4) of Section 131 of the Electricity Act, 2003, had been pleased to notify a Scheme for providing and giving effect to the transfer and vesting of all properties and all interests, rights and liabilities of the Board in the State Government and re-vesting thereof by the

State Government in the West Bengal State Electricity Transmission Company (WBSETC) and West Bengal State Electricity Distribution Company (WBSEDC) along with other properties, interests, rights and liabilities of the State Government and for determining the terms and conditions on which such transfers or vesting or revesting shall be made.

2. By referring to the aforesaid notification it is submitted that consequent upon operation of the aforesaid scheme, the interest of the respondent no. 2 has been transferred to and is finally vested in the West Bengal State Electricity Distribution Company Limited (WBSEDCL). By relying on the aforesaid notification, Mr. Nandi, learned advocate appearing for the petitioner seeks leave to amend the cause title of the writ application by incorporating the name of West Bengal State Electricity Distribution Company Limited (WBSEDCL) in place and stead of West Bengal State Electricity Board (WBSEB).
3. Considering the submission made by the advocates for the parties, leave is granted to the petitioner's advocate-on-record to correct the cause title of the writ application, by substituting the name of the respondent no. 2/ West Bengal State Electricity Board (WBSEB), with West Bengal State Electricity Distribution Company Limited (WBSEDCL).
4. The present writ application has been filed challenging an order of dismissal dated 19th July, 2004, inter alia, on the ground that

the same was passed after the superannuation of the petitioner's husband (hereinafter referred to as the "deceased employee"). It is the petitioner's case that the deceased employee, namely, Biman Chowdhury was appointed in the post of peon by the West Bengal State Electricity Board (WBSEB) in the year 1972. At the relevant point of time, he was posted at Naihati electric supply office at Palbagan. In the year 1984, the deceased employee was transferred to the office of Naihati Division of the Board and was re-designated as selection grade peon.

5. The job of the deceased employee was a transferable job and on 19th September, 2000, he was transferred from Salt Lake to Jadavpur and had been working there. All on a sudden, on 1st August 2001 by order no. 135, he was placed under suspension for alleged defalcation of funds at Naihati Office. Subsequently, on 27th August, 2001, a charge sheet was issued against the deceased employee which was followed by a domestic enquiry. Before the enquiry proceedings could be concluded, the deceased employee reached the age of superannuation on 30th June, 2004. Subsequently, on 19th July, 2004, the deceased employee was served with a final order in the disciplinary proceedings, thereby awarding him with the following punishment:

1. "Dismissal from service and forfeiture of entire gratuity.

2. Suspension period in respect of Shri Biman Chowdhury is hereby confirmed. He will not earn anything beyond the subsistence allowance for the suspension period.”
6. Being aggrieved with the aforesaid order, the deceased employee during his life time had preferred an appeal before the Appellate Authority.
7. Before such appeal could be decided, said Biman Chowdhury died on 30th October, 2004. The factum of the death of the deceased employee was duly reported by the petitioner to the Secretary, West Bengal State Electricity Board, by a communication in writing dated 25th February, 2005 enclosing therewith a copy of the death certificate.
8. It is only thereafter, that the aforesaid appeal filed by the deceased employee was finally decided. Challenging the aforesaid orders, the present writ application has been filed.
9. Mr. Nandi, learned advocate appearing for the petitioner submits that the deceased employee having superannuated from service, the respondents did not have any right to continue with the disciplinary proceedings. The deceased employee was superannuated on 30th June, 2004. The final order dismissing the deceased employee from service was passed on 19th July, 2004. As such the aforesaid order cannot be sustained. The rules of the WBSEB do not authorize the Disciplinary Authority to continue with the disciplinary proceedings beyond the date of

superannuation. According to him, the order of dismissal should be set aside.

10. *Per contra* Mr. Panja, learned advocate appearing for the respondents, on the other hand has drawn the attention of this Court to internal page 3 of the final order passed by the disciplinary authority on 19th July, 2004. By placing the said order it is submitted that the deceased employee was given reasonable opportunity of hearing. The deceased employee participated in the enquiry proceedings. Most of the witnesses were examined in his presence. On certain days, since the deceased employee had willfully stayed away from the enquiry proceedings, enquiry had been conducted in his absence.

11. It is submitted that the deceased employee had also, duly been served with a copy of the enquiry report and was issued a show cause notice prior to inflicting punishment on the deceased employee. This was done as per the rules. He says that the Disciplinary Authority had the power and competence to continue with the disciplinary proceedings beyond the date of superannuation of the deceased employee. In support of the aforesaid contention, reliance has been placed on the office order no. 4231 dated 23rd November, 1987, inter alia, to contend that vide Board's resolution no.2(vi) dated 31st October, 1987, the West Bengal State Electricity Board Employees' Service Regulations (hereinafter the "said Regulations") has been

amended by inserting Regulation-70A after Regulation-70.

Regulation-70A is extracted hereinbelow:-

“70A: (i) *The Board reserves to itself the right to direct continuance of departmental/judicial proceedings in the event of an officer attaining the age of compulsory retirement before the conclusion of such departmental or judicial proceedings.*

(ii) *The Board reserves to itself the right to institute departmental proceedings/judicial proceedings against an officer after his retirement in respect of any event which took place not earlier than four years before the date of compulsory retirement of such officer if the cause of action arose or the event took place not more than four years before the compulsory retirement of the officer.*

(iii) *The Board shall have the right to recover in whole or in part from the officer concerned out of the gratuity or death-cum-gratuity any amount (which the officer concerned is found liable at any proceeding) to make good the pecuniary loss caused to the Board by any act of grave misconduct of the officer concerned.*

(iv) ***The aforesaid provisions contained in the foregoing Clause (i) to (iii) shall apply only to those employees who opted out of the provisions of West Bengal State Electricity Board Employees' (Death-cum-retirement) Benefit Regulations, 1985.***”

12. By relying on the aforesaid Regulation, he says that there is no irregularity on the part of the disciplinary authority in passing the final order. He says that it is true that the decision in the appeal filed by the deceased employee was made after the

demise of the deceased employee. However, the same could not be said to be an irregular act.

13. By referring to sub-paragraph (e) of paragraph 4 of the affidavit-in-opposition, it is submitted that the respondents after compliance of all formalities have released Rs.54,872/- towards final payment of GP fund accumulations, standing in the credit of the deceased employee and a sum of Rs.22,240/- was also paid to the petitioner towards arrear salary payable to the deceased employee. According to Mr. Panja, nothing more is due and payable to the petitioner on account of the deceased employee.

14. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find from the final order passed by the Disciplinary Authority on 19th July, 2004 that the deceased employee was issued a charged-sheet dated 27th August, 2001 alleging, that during his incumbency at Deulpara Sector Office, while entrusted with the job pertaining to the jobs allied to meter reading and billing and collection of revenue from the consumers time to time against issuance of Board's money receipt, defalcated in total a sum of Rs.6,84,733.72/- by adopting mal practice in the following ways:

“1. *By showing lesser amount in the 2nd copy and 3rd copy of the money receipts than the actual amount shown in the original copy of money receipts and making fraudulent entries in the Revenue Control*

Ledger to square up the dues towards energy bills in respect of different consumers.

2. *By making false/fake posting of payments of energy bills in Revenue Control Ledger in respect of a good number of consumers to square up their dues by way of showing references to the money receipts which were issued/drawn for collection of amount for energy bills.*
3. *By showing lesser amount in the 2nd and 3rd copy of original money receipt than the amount shown in the original money receipt and making fraudulent entries in the Revenue Control Ledger and also by destruction of the pages of the Revenue Control Ledger for the purpose of hiding his misdeeds.*
4. *Expropriation of Board by manipulating the amount shown in 2nd and 3rd copy of the original money receipt and making fraudulent entries in the Revenue Control Ledger by way of showing posting of full payment of the amount demanded to square up the dues in respect of consumers and thereby causing huge loss to this Board.”*

15. The aforesaid chargesheet followed a regular domestic enquiry against the deceased employee. The final order reveals that the deceased employee was afforded with a reasonable opportunity of hearing. Unfortunately, before the enquiry could be concluded by passing the final order the deceased employee reached the age of superannuation on 30th June, 2004. The final order was passed thereafter on 19th July, 2004. By the final order, the deceased employee was dismissed from service. The

question that falls for consideration in the present writ application is whether subsequent to cessation of employee-employer relationship, could the Disciplinary Authority proceed with the enquiry, pass the final order against the deceased employee and inflict him with penalty of dismissal.

16. I find that Mr. Panja, learned advocate representing the respondents by relying on Regulation 70-A of the said Regulation has tried to justify the final order passed by the Disciplinary Authority, inter alia, including the punishment inflicted by the Disciplinary Authority on the deceased employee. A perusal of the Regulation 70-A would reveal that the “Board reserve itself the right to direct continuance of departmental/judicial process in the event of an officer attaining the age of compulsory retirement before the conclusion of departmental/judicial proceedings.....”. The said Regulation also reserves the right of the Board to institute disciplinary proceedings / judicial proceedings against an officer after his retirement in respect of any event which took place not earlier than four years before the age of compulsory retirement. I, however, find that clause 70-A (iv), of the Regulation inter alia, provides that the provisions contained in the foregoing clause (i) to (iii) shall apply only to those employees who have opted out of the provisions of the WBSEB Employees’ (Death-cum-Retirement Benefit) Regulations, 1985 (hereinafter referred to as the “1985 Regulations).

17. It is not the case of the respondents that the deceased employee had opted out of the 1985 Regulations. On the contrary, I find in paragraph 4 (f) of the affidavit-in-opposition, the respondents have, inter alia, claimed that post retirement benefits of the deceased employee had been released in terms of the 1985 Regulations. By referring to the 1985 Regulations, it has been stated that in terms of the aforesaid Regulations, the deceased employee is not entitled to pension and earn leave. It is, thus, not the case of the respondents that the deceased employee has opted out of the provisions of the 1985 Regulations.

18. Apart from the above, I also notice that in Regulation 70-A clause (i) of the said Regulation, a right has been conferred to the Board, to direct continuance of disciplinary proceedings even after the employee attains the age of superannuation. From a perusal of the final order passed in the disciplinary proceedings, it does not appear that the Board had directed continuance of disciplinary proceedings of the deceased employee beyond the age of superannuation. In my view, liberty reserved to the Board in Regulation 70A clause (i) has to be exercised for continuance of disciplinary proceedings beyond the date of superannuation. The respondents have not been able to disclose any order issued by the Board, for continuance of the disciplinary proceedings beyond the date of superannuation.

19. Admittedly, in this case, the employee-employer relationship had ceased on the superannuation of the deceased employee. The Disciplinary Authority did not have any right to inflict any punishment on the deceased employee after cessation of employee employer relationship. The aforesaid act on the part of the Disciplinary Authority appears to be without jurisdiction. A jurisdictional error committed by a disciplinary authority or a quasi-judicial body is also amenable to writ jurisdiction. Such an error can be corrected by this Court by issuing a writ of certiorari. This Court, while exercising its jurisdiction of judicial review, is authorized not only to take into consideration the violation of principles of natural justice but also whether the authority had exceeded its jurisdiction or failed to exercise jurisdiction vested in it.

20. In this case, it is apparent and clear that the disciplinary authority had exceeded its jurisdiction in purporting to inflict punishment on the deceased employee, admittedly when the employee-employer relationship between the deceased employee and the respondents has ceased to exist.

21. In view thereof, the final order of dismissal passed by the Disciplinary Authority on 19th July, 2004 and the order passed by the Appellate Authority, cannot be sustained and the same are accordingly set aside and quashed. The respondents are directed to forthwith recompute the terminal benefits payable to the

deceased employee, by treating him to be in regular service as on the date of superannuation and disburse the same in favour of the petitioner within a period of 8 weeks from the date of communication of this judgment. In the event the deceased employee was enjoying pensionable service, the respondents are directed to take steps and disburse pension in favour of the petitioner. Such exercise must be completed within a period of 8 weeks from the date of communication of this judgment.

22. The writ petition being WPA 4163 of 2007 is accordingly ***disposed of.***

23. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on priority basis upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)