

07 **01.05.
2023**

Ct. No. 04

Ab

WP.ST 56 of 2023
Dr. Sajal Biswas
Vs.
The State of West Bengal and others.

**Mr. D. N. Roy,
Mr. M. N. Roy,
Mr. Biswaroop Nandy,
Mr. Rajesh Kumar Shah.**
... for the petitioner.

**Mr. Raja Saha,
Mr. Biswabrata Basu Mullick,
Mr. Sayan Ganguly.**
... for the State.

Leave is granted to the State respondents to file affidavit. The copy whereof has been served upon the petitioner herein.

By the said affidavit, the State wanted to disclose the documents relating to initiation of a disciplinary proceeding, which culminated into an order of dismissal from service with effect from the date of imposition of penalty.

The instant writ petition was filed assailing an order of the Tribunal dated 21st December 2022 impliedly refusing to pass an interim order against the departmental proceeding initiated against the petitioner. After recording the submissions of the respective Counsels, the Tribunal surreptitiously arrived at the decision that the said matter should be heard by a Bench comprising of two Members, one judicial and other administrative, for better adjudication and liberty was granted to the petitioner to mention the matter when the said Bench is available.

At the time of admission of the instant writ petition, it was submitted on behalf of the petitioner that so far as the departmental proceeding is concerned, it is the

subject matter of the tribunal application to be decided at the time of final hearing, but at least the petitioner should be allowed to resume the duty after he has withdrawn the resignation letter.

Our attention was drawn on the last occasion two memos issued by the Governor permitting the petitioner to resume duty and subsequently withdrawing the same on the same day. However, an accommodation was sought by the State respondents to take necessary instruction and thereafter the matter has been listed.

On the last occasion when the matter came up before us, an oral submission on behalf of the State that the disciplinary proceeding has culminated into a final order of dismissal from service and in view of such submission having been made, we invited the State respondents to put on records by way of an affidavit all the documents relating thereto. The aforesaid affidavit has been filed enclosing the documents including the order of dismissal passed in a disciplinary proceeding.

The moment the order of dismissal has been passed, the interim protection in the form of resumption of duty becomes infructuous as this Court cannot direct the terminated employee to resume the duty. Since the purpose of granting interim order is frustrated by virtue of subsequent order passed by the disciplinary authority terminating the service, there is no purpose of keeping the instant writ petition alive, which, in our opinion, has become infructuous.

However, liberty is granted to the petitioner to take appropriate steps against the order passed by the disciplinary authority before the appropriate forum.

Nothing observed herein above shall have any persuasive impact on any of the points available to the parties and if urged before the appropriate forum, which shall be decided independently.

After the order is dictated, the learned Advocate for the petitioner vehemently submits that he should be paid salary for the period preceding the date of the order of termination.

We find that the order of termination would take effect from the date of imposition of the penalty and the records do not reveal such date when the penalty is imposed.

We do not intend to go into the aforesaid aspect. However, liberty is granted to the petitioner to raise the issue before the appropriate forum and if raised, shall be decided after affording an opportunity of hearing to the contesting respondents in accordance with law.

With these observations, the writ petition is disposed of.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)