

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 77 of 2023

State of West Bengal & Anr.

Vs.

Abhijit Acharya Bhaduri & Ors.

For the private respondent : Mr. D.N. Ray
Mr. Sankha Ghosh
Mr. M.N. Ray
Mr. Biswarup Nandy
Mr. S. Halder

Heard on : June 12, 2023 and June 22, 2023

Judgment on : June 22, 2023

DEBANGSU BASAK, J.:-

1. An order dated September 12, 2022 passed by the West Bengal Administrative Tribunal is under challenge in the present writ petition.
2. The writ petition was filed at the behest of the State through a learned Advocate. Such learned Advocate appears in Court and submits that, he is not longer in the panel.

3. The private respondent is represented.
4. Learned Advocate appearing for the private respondent submits that, there is no illegality in the impugned order of the Tribunal warranting an interference under Article 226 of the Constitution of India. He submits that, a final order of dismissal of the private respondent was set aside by the learned Tribunal on the ground that, the disciplinary authority did not publish the final order within the time-period specified by the earlier order of the learned Tribunal. He draws the attention of the Court to the earlier order of the Tribunal dated August 5, 2021 passed in OA- 494 of 2021. He submits that, such order in the earlier original application being OA-494 of 2021 was passed by consent of the parties. In support of such contention, he relies upon a portion of such order. He submits that, since the order was passed by consent, the question of enlarging time to comply with the order does not arise.
5. Learned Advocate appearing for the private respondent submits that, the suspension of the period of limitation granted by the Hon'ble Supreme Court on January 10, 2022

in Miscellaneous Application No.21 of 2022 in Suo Motu Writ Petition (C) No.3 of 2020 does not assist the disciplinary authority since it was limited to the Courts and Tribunals. A disciplinary authority cannot be construed to be either Court or a Tribunal. Moreover, the period of limitation was with regard to filing of proceedings before Courts or Tribunals. It did not deal with the period of limitation to be construed with regard to pendency of any proceedings.

6. Learned Advocate appearing for the private respondent relies upon 2021 SCC OnLine SC 610 (Neelima Srivastava vs. State of Uttar Pradesh and Others) submits that, a finality needs to be ascribed to every judicial order. The earlier order passed by the Tribunal attained finality. The time-period prescribed therein is final. The disciplinary authority did not act in terms of such final order. Therefore, the disciplinary authority lost its right to pass any final order of dismissal.
7. Learned Advocate appearing for the private respondent relies upon a decision of the Coordinate Bench dated May 8, 2023 passed in WP.ST 71 of 2023 (The State of West Bengal and others vs. Shubhendu Bhattacharjya and another) and

submits that, there also the Tribunal found the disciplinary proceedings not to be concluded within the time-frame prescribed.

8. By the impugned order, the learned Tribunal set aside the final order dated March 3, 2011 as well as March 31, 2022 passed against the private respondent in the disciplinary proceedings. Learned Tribunal took note of the order dated August 5, 2021 passed in OA-494 of 2021 which prescribed the time-limit for the purpose of conclusion of the disciplinary proceedings.
9. The order dated August 5, 2021 passed in OA-494 of 2021 required the Principal Secretary, Department of Finance (Revenue), Government of West Bengal to conclude the departmental proceedings and to take “a final decision by way of passing a reasoned and speaking order as per Rules and communicate the same within six months from the date of receipt of the order, in default, the proceedings should be vitiated”.
10. Apparently, the order dated August 5, 2021 was communicated by the private respondent by a letter dated

August 6, 2021 and was received by the disciplinary authority on August 9, 2021. The final order was passed by the disciplinary authority on March 31, 2022 which is a period in excess of six months from the date of receipt of the order dated August 5, 2021.

11. Since the disciplinary authority received the order dated August 5, 2021 on August 9, 2021, the six months period prescribed by such order expired on February 8, 2022.
12. Pandemic conditions prevailed in the country at that material point of time. Hon'ble Supreme Court lodged a Suo Motu Writ Petition (C) No.3 of 2020 with regard to limitation in respect of proceedings before Courts/Tribunals. From time to time various orders were passed. One of such orders is dated January 10, 2022 where, the Hon'ble Supreme Court issued the following directions:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we

deem it appropriate to dispose of the M.A. No.21 of 2022 with the following directions:

- I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all*

persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

- IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”*

13. In terms of the order dated January 10, 2022, the period of limitation from March 15, 2020 till February 28, 2022 was directed to be excluded under any general and special laws in respect of all judicial or quasi-judicial proceedings. Balance period of limitation was made available. Where limitation expired between March 15, 2020 till February 28, 2022 a period of 90 days of limitation was granted.
14. A departmental proceeding is a quasi-judicial proceeding. It is governed by the pronouncement of the Supreme Court dated January 10, 2022. In our understanding, the effect of the order dated January 10, 2022 read with the Tribunal's order dated August 5, 2021 is that, for the period from March 15, 2020 till February 28, 2022, there was a cessation of limitation. Department possessed 90 days from February 28, 2022 to complete the proceedings, which it did.
15. In such circumstances, the learned Tribunal erred in allowing OA No.303 of 2022 simply on the ground of the final order not being passed within the time-period stipulated by its earlier order dated August 5, 2021.

16. The Coordinate Bench in WP.ST 71 of 2023 did not consider the issue of limitation. It was not invited to do so. It proceeded on the basis of a finality of the order. Finality of an order was under consideration in *Neelima Srivastava* (supra). The order dated August 5, 2021 of the Tribunal in the earlier original proceedings directed the departmental proceedings to be concluded finally within a particular time- frame.
17. Intervention of the COVID made compliance with the time-limit prescribed in the order dated August 5, 2021, a supervening impossibility. Supreme Court took note of the covid pandemic conditions and regulated the effect of limitation by Their Lordships' order dated January 10, 2022.
18. In the earlier order dated August 5, 2021 of the learned Tribunal, the learned Advocate appearing for the disciplinary authority conceded that the disciplinary proceedings should be disposed of expeditiously. He did not agree to any time-frame. Therefore, the concession of such Advocate should be read in the context that it was made. We are not suggesting that the disciplinary proceedings were not required to be disposed of finally. In fact, the disciplinary proceedings were

disposed of finally. The issue is whether, the time-frame prescribed by the order dated August 5, 2021 breached by the disciplinary authority was of such consequence as to vitiate the final order or not.

19. In the facts of the present case and particularly in view of the discussions above, we do not find that the breach of the time-period prescribed by the order dated August 5, 2021 vitiated the final order of the disciplinary proceedings as in law there was no breach.
20. In such circumstances, we set aside the impugned order of the learned Tribunal. We remand OA 303 of 2022 to the Tribunal for disposal on any merits, if raised.
21. **WP.ST 77 of 2023** is disposed of accordingly.

(Debangsu Basak,J.)

22. I Agree.

(Md. Shabbar Rashidi, J.)