

05. 17.05.2023  
Court No.6  
Tanmoy Ghosh

**MAT 872 of 2023**

**Chandan Kumar Das**  
**-Versus-**  
**The State of West Bengal & Ors.**

**With**  
**IA No: CAN/1/2023**

Mr. Biswaroop Bhattacharyya, Adv.,  
Mr. Billwadal Bhattacharyya, Adv.,  
Mr. Anish Kukar Mukherjee, Adv.

...for the appellant.

Ms. Tuli Sinha, Adv.

...for the State.

Mr. D.K. Sengupta, Adv.,  
Ms. Sweta Saha, Adv.

...for the Respondent Bank.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

An order dated May 10, 2023, *interim* in nature, in the sense that the writ petition of the appellant is still pending before the learned Single Judge, is the subject-matter of challenge in this appeal.

A Memorandum dated April 17, 2023, issued by the Chief Executive Officer of the concerned Co-operative Bank and the annexure thereto being Articles of charge, were under challenge before the learned Single Judge. The Bank proposed to hold disciplinary proceedings against the appellant/writ petitioner on the alleged ground that the appellant had furnished forged certificates for obtaining promotion in service.

It was argued on behalf of the appellant before the learned Single Judge, with reference to the language of the charge-sheet that the language indicates that the Authorities have already made up their mind as regards the alleged guilt of the appellant. Charge-sheet has been issued with a closed mind. The issues have been predetermined. The disciplinary proceedings would only be an eyewash and a futile formality. It was pointed out that on the very day that the Memorandum and Articles of charge were issued, an Advocate was appointed as Enquiry Officer. The letter appointing the Enquiry Officer also indicates the closed mind and bias of the Authorities, submitted learned Advocate for the appellant/writ petitioner. It was further pointed out that the Bank account of the writ petitioner has been freezed. The writ petitioner is in grave difficulty and on the verge of starvation

It was submitted on behalf of the Bank that the appellant had obtained housing loan from the Bank and an amount of approximately Rs.8 lakh is outstanding from the appellant on that account.

The learned Judge observed as follows:-

*“So far as the prayer of the petitioner for de-freezing of the Account is concerned, the same cannot be considered in view of the submission made by the learned Advocate appearing for the respondent/Bank on the basis of record that in compliance of the order of the Criminal Court, the Account in question was already de-freezed and subsequent order has been passed for recovery of the loan in question taken by the petitioner, who is an employee of the Bank in accordance with law though the petitioner shows his*

*ignorance about such second de-freezing order. It is admitted position that petitioner being an employee of the respondent/Bank has taken loan in the year 2016 and even till 2023, he has not fully repaid the same which is a public money and petitioner cannot take the shelter under the disciplinary proceedings that from his subsistence allowance it cannot be recovered and at the same time he will not pay from any other source or means. This conduct of the petitioner is not appreciated. He has taken loan being an employee of the Bank seven years back and till date he was not repaid the same though petitioner submits that his EMI is Rs.48,000/- per month. According to the respondent/Bank his due is still Rs.8 lakhs.*

*Mr. Bhattacharyya prays for time to come up with written instructions in the form of an affidavit/undertaking with regard to the mode of repayment of the loan and considering his such prayer, this matter is adjourned till 17.5.2023.*

*Question of de-freezing or payment of subsistence allowance to the petitioner will be considered on the next date of hearing. So far as the rest part of the order relating to the disciplinary proceedings shall remain.”*

Being aggrieved, the writ petitioner is before us by way of this appeal.

We have heard Mr. Bhattacharyya, learned Advocate for the appellant and Mr. Sengupta, learned Advocate for the respondent Bank. We are inclined to agree with Mr. Bhattacharyya that the language of the Memorandum and the charge-sheet would definitely tend to indicate closed mind on the part of the Authorities. It may be that the Authorities will do justice in spite of the unhappy language, as Mr. Sengupta assures that the Authorities shall conduct the disciplinary proceedings with completely open mind and impartially. However, justice must not only be done, but must be seen to be done. A third party looking at the language of the charge-sheet could well get

the impression that the Authorities have already come to the conclusion about the guilt of the appellant. The disciplinary proceedings would be an eyewash.

We accordingly set aside the Memorandum dated April 17, 2023 and the connected Articles of charge. The Authorities will be at liberty to issue fresh Memorandum and Articles of charge for holding disciplinary proceedings against the appellant. If the same is done, the proceedings will be held by the Enquiry Officer/Disciplinary Authority strictly observing the principles of natural justice, meaning thereby, the appellant shall be afforded full opportunity of hearing, filing such documents as he may be advised and making oral submission. Needless to say, the order passed by the Disciplinary Authority as well as the report of the Enquiry Officer will be supported by cogent reasons.

Since the appellant is under suspension in contemplation of disciplinary proceedings, he will be entitled to receive subsistence allowance in terms of paragraph 16(d) under Rule 106 of the West Bengal Co-operative Societies Rules, 2011. We are also of the opinion that the letter issued by the Bank appointing the Enquiry Officer should be set aside and we do so. The Bank, after issuing fresh Memorandum/charge-sheet, if any, and after receipt of the appellant's response thereto, will be at liberty to make fresh appointment of any person as Enquiry Officer, including the person who was earlier appointed by the letter dated April 17, 2023.

We have not addressed any of the other issues involved in the writ petition, since the writ petition is pending before the learned Single Judge. The parties will be at liberty to agitate all other points before the learned Single Judge who is requested to dispose of the writ petition in the manner His Lordship may deem fit and proper.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 872 of 2023 and the connected application being IA No: CAN/1/2023 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

**(Arijit Banerjee, J.)**

**(Apurba Sinha Ray, J.)**