

07.06.2023
Item No.5
Ct. No.5
CHC
(disposed of)

W.P.S.T. 84 of 2023

**Piyali Pahari
Vs.
The State of West Bengal & ors.**

Mr. D. N. Ray,
Mr. M. N. Ray,
Mr. Shankha Ghosh,
Mr. B. Nandy,
Mr. R. K. Shah
...for the petitioner

Mr. Raja Saha,
Mr. Biswabrata Basu Mallick,
Mr. Sanjib Das
...for the State

An order dated May 4, 2023 passed by the West Bengal Administrative Tribunal is under challenge in the present writ petition.

By the impugned order, the Tribunal was pleased to dispose of the Original Application of the writ petitioner by setting aside the final order, the second show cause notice of the enquiry report passed by the disciplinary authority upon the writ petitioner with a direction to the disciplinary authority to make a *de novo* enquiry proceeding from the enquiry stage itself by appointing a new enquiry authority. Whole departmental proceedings starting from the enquiry stage till the final order including obtaining of advice of the Public Service Commission

was directed to be completed within six months from the date of communication of the order.

Learned advocate appearing for the petitioner submits that, the charges as against the petitioner are vague. The petitioner should not be prejudiced for the second time. The authorities proceeded against the petitioner in a departmental proceeding culminating into a final order of punishment. The Tribunal should not allow the authority to correct their mistakes. Therefore, with the Tribunal setting aside the final order as against the petitioner, the direction for *de novo* proceeding was not called for.

Learned advocate appearing for the State draws the attention of the Court to the materials on record. He submits that, the final order in the departmental proceeding from the stage of the enquiry was set aside only on the ground that the person who lodged the complaint as against the writ petitioner was appointed as the enquiry officer. He submits that the charges as against the petitioner are yet to be decided finally with the order being set aside by the learned Tribunal. There are grave charges as against the petitioner in her dealing as an employee of the State as delineated in the charges and the Article of Charges.

The writ petitioner was working as the Block Land and Land Reforms Officer, Chinsurah Block. Writ petitioner was issued a chargesheet on November 29, 2021 which contained three charges of misconduct and misuse of power and authority. The writ petitioner was imposed punishment on January 11, 2023 on conclusion of the departmental proceeding. The punishment was stoppage of three increments for the next three years.

Writ petitioner challenged the order dated January 11, 2023 before the West Bengal Administrative Tribunal in O.A. 187 of 2023.

The learned Tribunal, considered the rival contentions of the parties. The learned Tribunal was pleased to hold that, the disciplinary authority failed to observe a legal requirement of not seeking the advice of the Public Service Commission in respect of the punishment of the writ petitioner. The learned Tribunal also found that the writ petitioner was entitled to be supplied with the copy of the advice of the Public Service Commission and afforded an opportunity to file representation stating her contention relating to the specific punishment. Such advice was not obtained. Therefore, no copy of such advice was supplied to the writ petitioner. Hence such opportunity was denied to the charged officer. As noted above, the learned Tribunal quashed and set

aside the final order dated January 11, 2023 with a direction to the disciplinary authority to make a *de novo* enquiry proceeding from the enquiry stage itself by appointing a new enquiry authority.

We find that, the order of punishment as against the petitioner was set aside primarily on two grounds. One ground is the non consultation with the Public Service Commission and denial of an opportunity of hearing to the petitioner on such score and the other being again an issue of violation of principles of natural justice in the sense that, the complainant was appointed as the enquiry officer as against the writ petitioner in the departmental proceeding.

There is substance in the contention of the State that, the charges as against the writ petitioner are yet to be adjudicated upon by the competent authority. The adjudication resulting in the order of punishment dated January 11, 2023 was set aside by the Tribunal with the direction for *de novo* proceeding.

The charges as against the petitioner requires to be considered by an appropriate authority. The contention of the petitioner that the charges being considered by the authority once, cannot be revisited by the authority in the facts and circumstances of the present case is without any

substance. The authority will consider the charges by appointing a new Enquiry Officer. It is not a question of revisitation by the same Enquiry Officer. The petitioner cannot be said to be prejudice by any of the directions given. The decision of the authority was set aside on the ground of principles of natural justice being vitiated so far as the petitioner is concerned. Therefore, we find no infirmity in the impugned order of the learned Tribunal.

At this stage, learned advocate appearing for the petitioner points out that the time to complete the proceeding should be extended since a portion of the time fixed by the learned Tribunal expired subsequent to the order dated May 4, 2023.

We accept such contention. Time to complete the proceeding as directed by the impugned order dated May 4, 2023 is extended for a period of six months from the date of communication of this order.

W.P.S.T. 84 of 2023 is disposed of accordingly.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)