

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Rai Chattopadhyay

W.P.S.T. 243 of 2013

Sri Alak Ranjan Das

VS.

The State of West Bengal & ors.

For the Writ
Petitioner

: Mr. Biswaroop Bhattacharyya,
Mr. Sakti Pada Jana,
Mr. Subhajyoti Das
Advocates

For the State

: Mr. Tapan Kumar Mukherjee
Sr. Government Advocate & A.G.P.
Md. Hasanuzzaman,
Mr. Somnath Naskar
Advocates

Hearing on

: 04.07.2023

Judgment on

: 04.07.2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against the order dated June 11, 2013 passed in O.A.442 of 2013.

2. By the impugned order, the learned Tribunal rejected the challenge of the disciplinary proceedings initiated as against the writ petitioner.

3. Learned advocate appearing for the writ petitioner submits that, there is gross delay on the part of the administration in concluding the disciplinary proceedings. He submits that delay is of two aspects. One is the delay in the initiation of the proceedings. The other is the delay with regard to the conclusion of the proceedings.

4. Learned advocate appearing for the writ petitioner draws the attention of the Court to the fact that, the writ petitioner superannuated on March 31, 2013. He was paid his retiral benefits including a cheque for gratuity. However, the cheque for gratuity could not be encashed since, the administration issued stop payment instructions in respect of such gratuity cheque.

5. Learned advocate appearing for the writ petitioner relies upon **(1998) 4 Supreme Court Cases 154 (State of Andra Pradesh vs. N. Radhakishan)** and **2022 SCC OnLine Cal 4036 (Kolkata Municipal Corporation and Others vs. Dilip**

Kumar Das and Others) and submits that, in view of the delay in disposal of the disciplinary proceedings, the same became stale. In the event, the writ petitioner is to face the disciplinary proceedings today, he would be prejudiced. He will be without any witness in respect of a charge of 2013. Consequently, the submits that, the disciplinary proceedings as against the writ petitioner be quashed.

6. Learned Senior Advocate appearing for the State relies upon **(2015) 2 Supreme Court Cases 496 (State of West Bengal and Others. Vs. Pronab Chakraborty)** and submits that the issue as to whether, the disciplinary proceedings can be continued subsequent to the superannuation of an employee in terms of Rule 10(1) of the West Bengal Services (Death Cum Retirement Benefit) Rules, 1971, was settled by the Hon'ble Supreme Court on October 15, 2014. Therefore, he contends there was no delay on the part of the administration. The present the writ petition is pending since 2013. One of the issues raked up was initiation of the departmental proceedings and the continuation thereof subsequent to the superannuation of the writ petitioner.

7. In reply, learned advocate appearing for the writ petitioner submits that, there was no stay in the writ petition. Therefore, there was no impediment in the administration concluding the disciplinary proceedings.

8. The writ petitioner superannuated on March 31, 2013. A memorandum dated March 26, 2013 containing the charges as against the writ petitioner was served upon the writ petitioner on March 28, 2013.

9. One of the issues raised before the Tribunal, at the behest of the writ petitioner was continuation of departmental proceedings in view of Rule 10 of the West Bengal Services (Death Cum Retirement Benefit) Rules, 1971.

10. The Original Application being O.A.442 of 2013 was disposed of on June 11, 2013. Immediately, thereafter, the present writ petition was filed. In the present writ petition also, the continuation of disciplinary proceedings subsequent to superannuation of the writ petitioner was also raised as a ground particularly Ground (III). In course of hearing today, learned advocate appearing for the writ petitioner submits that he is not pressing the writ petition on the ground of

continuation of disciplinary proceedings subsequent to superannuation.

11. The issue of continuation of disciplinary proceedings subsequent to superannuation received consideration of the Hon'ble Supreme Court in **Pronab Chakraborty (supra)** where their Lordships held that a departmental proceedings can continue against a delinquent employee after superannuation.

12. In **N. Radhakishan (supra)** the Supreme Court considered the question of delay of conclusion of a departmental proceedings. It observed that, a pre-determined principle applicable to all cases and situations cannot be laid down for the purpose of considering whether there was delay in concluding the disciplinary proceedings. However, their Lordships observed that the delay should not be abnormal and that there should be explanation for the delay.

13. In **Dilip Kumar Das and Others (supra)** the coordinate Bench, considered the disciplinary proceedings against the delinquent who was taken into custody on March 15, 2012. The delinquent was enlarged on bail on May 10, 2012. He was granted promotion to higher post during the pendency of the

criminal proceedings. No disciplinary proceedings was started against the delinquent although he was in custody for more than 48 hours. The delinquent thereafter superannuated from service on July 31, 2021. In such context, the Division Bench found on consideration of various authorities including **N. Radhakishan (supra)** that there was abnormal delay in the initiation of the disciplinary proceedings and the therefore, quashed the same.

14. The factual matrix in the present case is not same. The charges relates to period of 2010. Charge-sheet is dated March 26, 2013. The writ petitioner questioned the disciplinary proceedings first before the Tribunal and then before the High Court *inter alia* on the ground of Rule 10 of the West Bengal Services (Death Cum Retirement Benefit) Rules, 1971 with regard thereto and kept the writ petition pending from 2013 till date. Administration cannot be faulted for the pendency of the writ petition.

15. In such circumstances, we are of the view that, the delay was not occasioned by the administration. In fact, it was the writ petitioner who raised issues with regard to the

disciplinary proceedings and ensured that the same was not disposed of within a reasonable period of time since its initiation.

16. A charge-sheet *per se* does not give rise to any right to approach the Writ Court unless, it is established that, the charge-sheet was issued by an authority without jurisdiction or was vitiated by *mala fides*. In the facts of the present case, it cannot be said that, charge-sheet was issued by an authority without jurisdiction. In fact that is not the case of the writ petitioner also. *Mala fide* is yet to be established.

17. In such circumstances, we find no merit in the present writ petition.

18. **W.P.S.T. 243 of 2013** is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

19. I agree.

(Rai Chattopadhyay, J.)

Later:

20. At this stage, learned advocate appearing for the writ petitioner prays for stay.

21. We find no reason to stay of our judgment and order.

22. Prayer for stay is considered and rejected.

(Debangsu Basak, J.)

(Rai Chattopadhyay, J.)