

06.08.2024

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WPST 4 of 2024

Tapas Kumar Roy

– Versus –

The State of West Bengal & Another

Mr. Kallol Basu,
Mr. Suman Banerjee,
Mr. Ayushman Dasgupta
... for the Petitioner.
Mr. Tapan Kumar Mukherjee, Ld. AGP,
Ms. Sangeeta Roy
... for the State/Respondents.

Records reveal that in contemplation of a disciplinary proceeding, the petitioner was placed under suspension by a memo dated 03.08.2022 on the basis of a report of the Additional Director General and Inspector General of Police CID, West Bengal dated 22.07.2022. He submitted representations to the competent authority on 29.09.2022 and 16.11.2022 praying for revocation of the suspension order. Thereafter he was communicated a memo dated 14.11.2022 whereby the suspension was directed to be continued in terms of the recommendation of a Review Committee dated 02.11.2022. By an application under the Right to Information Act, 2005, the petitioner sought for the minutes of the Review Committee but in vain and again by a memo dated 26.05.2023 the suspension was directed to be continued in terms of the recommendation of a Review Committee dated 25.04.2023. Aggrieved thereby, the petitioner preferred OA 558 of 2023 and during

pendency of the same the petitioner was communicated a memo dated 17.10.2023 intimating that the Review Committee met on 13.10.2023 and recommended continuance of suspension until further review. The OA 558 of 2023 was heard by the learned Tribunal on 12.12.2023 but the petitioner's prayer for interim order of stay of operation of the order of suspension was not considered and parties were directed to exchange their replies and rejoinder. Aggrieved thereby, the petitioner preferred the present writ petition on 10.01.2024. In the midst thereof, the OA again appeared before the learned Tribunal on 20.06.2024 but without granting any interim protection the matter was deferred for hearing on 12.08.2024. In the midst thereof, by a memo dated 24.04.2024 the petitioner was intimated that the fourth meeting of the Review Committee was held on 13.10.2023 and the Committee recommended continuance of suspension until further orders and by a further memo issued on the same date, the Secretary, Vigilance Commission directed the Principal Secretary, Home and Hills Department to intimate the petitioner to meet with one Sri Partha Palit in the office of the State Vigilance Commission along with the documents detailed in the said memo for the purpose of an enquiry. Thereafter a charge sheet was issued against the petitioner by a memo date 23.07.2024. All the documents have been brought on record by

supplementary affidavits. Let the same be kept on record.

Drawing our attention to the memoranda dated 14.11.2022, 26.05.2023, 17.10.2023 and 24.04.2024, Mr. Basu submits that in a most mechanical and routine manner the Review Committee had directed continuance of the order of suspension in contemplation of a disciplinary proceeding. Such renewal is not even based on sound reasoning contemporaneously available on the record.

He submits that the minutes of the Review Committee, as sought for, had also not been furnished to the petitioner and he had been compelled to suffer a protracted period of suspension. The charge sheet had ultimately been issued about two years after issuance of the order of suspension on 03.08.2022 without any explanation as regards the delay inordinate delay.

Mr. Basu submits that suspension is essentially transitory or temporary in nature and must perforce be of short duration. If such order of suspension is for an indeterminate period or if its renewal has no reason, it would be punitive in nature.

Drawing our attention to the last order passed by the learned Tribunal on 20.06.2024, he submits that the arguments, as advanced on behalf of the petitioner, were simply glossed over and the prayer for stay of operation of the order of suspension was refused directing the parties to exchange their

pleadings and the matter has been made returnable on 12.08.2024. However, till date no reply has yet been filed on behalf of the State respondents. The petitioner's right to speedy disposal has remained suspended in a state of limbo. A fair, just and reasonable procedure implicit in the Article 21 creates a right in favour of the accused to be tried speedily.

He argues that as a model employer, the State must conduct itself with high probity and candour and ensure that its employees do not succumb to the procedural rigmarole. In support of the arguments advanced reliance has been placed upon the judgment delivered in the case *Ajay Kumar Choudhary Vs. Union of India through its Secretary and Another*, reported in (2015) 7 SCC 291.

Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents submits that the suspension is not a punishment. There exists a strong *prima facie* case to keep the petitioner under suspension, as would be explicit from the report of the Additional Director General and Inspector General of Police CID, West Bengal dated 22.07.2022.

He argues that there is no material on record to suggest that the order of suspension suffers from any procedural impropriety and as such question of interference with the same at this juncture does not arise moreso when a formal chargesheet has already been issued. Furthermore, the learned Tribunal is still

in seisin of the matter. The arguments, as advanced today before this Court, can well be urged before the learned Tribunal when the matter is next fixed for hearing on 12.08.2024. Any interference at this stage would tantamount to prejudging an issue which is pending consideration before the learned Tribunal. In support of the arguments reliance has been place upon the judgment delivered in the case of *Union of India and Another Vs. Ashok Kumar Aggarwal*, reported in (2013) 16 SCC 147.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

In a given case the prolonged suspension on account of sheer inaction on the part of the appointing authority may be unjustified and that the period of suspension should ordinarily not be unnecessarily prolonged in the absence of any plausible reason. If the Government employee is kept under suspension, the Government is required to pay him subsistence allowance without taking any service from such employee.

We have perused the orders passed by the review committee on the last four occasions. The orders, in our considered opinion, do not reflect any reason towards continuance of the order of suspension for about two years. In the midst thereof, the petitioner has been issued a notice from the

Vigilance Commission to explain the details of his property and expenditure incurred during a particular financial year and ultimately a chargesheet has been issued.

In the case of *Ajay Kumar Choudhary (supra)* the Hon'ble Supreme Court has directed that the currency of a suspension order should not extend beyond three months if within such period of the memorandum of charges/chargesheet is not served upon the delinquent officer/employee.

In the present case the order of suspension was passed way back on 03.08.22 in contemplation of a disciplinary proceeding and ultimately the chargesheet has been issued about two years thereafter on 23.07.24.

In the said conspectus and considering the nature of allegations and the gravity of the misconduct as alleged, we are of the opinion that there is no necessity to keep the petitioner under suspension any further and accordingly, the order of suspension dated 3.08.2022 is set aside.

In view thereof, no useful purpose would be served by keeping the OA pending any further and the same along with the present writ petition are disposed of.

We, however, make it clear that to rule out the possibility that the petitioner may interfere with the disciplinary proceeding, the State respondents would

be at liberty to transfer the petitioner to an appropriate office so as to sever any local or personal contact that the petitioner may have and which he may misuse for obstructing the proceedings.

The petitioner is also directed to extend all cooperation to the respondents so that the disciplinary proceeding may be concluded as expeditiously as possible.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)