01. 14.03.2024
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WPA 766 of 2010

Chandan Bhattacharya
-vs-
The State of West Bengal & Ors.

Mr. Kajal Roy
Mr. Suman Nandi ... for the petitioner.

Mr. Suman Basu ... for Chandernagore Municipal Corporation

In the writ petition challenge has been thrown to the order of dismissal dated 28th December, 2007 passed by the Mayor Chandannagore Municipal Corporation (hereinafter referred to as "Corporation"). It has been contended on behalf of the petitioner *albeit* the charges contained in the charge sheet dated 20th September, 2007 which are admitted by petitioner vide letter dated 11th October, 2007 addressed to the concerned authority of Corporation the issue relating to imposition of punishment of dismissal needs to be relooked in consideration of the allegation levelled against the petitioner of defalcation of money to the extent of Rs. 75 while collecting municipal tax from tax-payers. In other words it has been submitted on behalf of the petitioner that it is true the charge has been admitted by him vide letter dated 11th October, 2007 which is at page 27 of the writ petition but the nature of punishment which has been imposed against the petitioner is disproportionate to the alleged misconduct of misappropriation of Rs. 75. At the same time drawing attention of this Court to the contents of the letter dated 11th October, 2007 it is submitted petitioner virtually begs pardon on humanitarian ground since the petitioner was reeling under financial constraints.

Corporation being the disciplinary authority is represented by Mr. Basu, learned advocate who has submitted that apart from the incident which took place on 21st August, 2007, on which date there was an allegation of misappropriation of fund while collecting municipal tax from the tax-payers previously in the same year i.e., in 2007 punishment was imposed upon the petitioner on the basis of more or less similar charges levelled against him as per decision taken by the Mayor-in-Council on 21st January, 2007. Vide said decision of the Mayor-in-Council dated 21st January, 2007 two yearly increments were stopped which could not mend the petitioner and he went on committing same misconduct which ultimately compelled the concerned authority of the Corporation to take ultimate decision of dismissing the petitioner from service vide order dated 28th December, 2007. According to the Corporation had it been the first incident of committing such misconduct the prayer of the petitioner to condone such misconduct could have been considered.

It is also contended on behalf of the Corporation that being a statutory Local Authority the Corporation is required to maintain discipline so far as the employees are concerned and if at this stage after dismissing the petitioner vide order dated 28th December, 2007 the same is lifted that will send a wrong message to the employees of the

Corporation.

It is also submitted that pursuant to the orders passed by this Court previously effort was made by the Corporation to reconsider the issue of dismissing the petitioner from service in order to extend the benefit of retiral dues but the same could not be considered in favour of the petitioner as it has been decided in the meeting of the Mayor-in-Council conducted on 28th February, 2024. Prior to taking such decision by the Mayor-in-Council on 28th February, 2024 opinion was sought for from the concerned authority of Department of Urban Development and Municipal Affairs and vide letter dated 31st January, 2024 the Corporation was asked by the Senior Deputy Secretary of the said department to follow the relevant statutory provisions while deciding the issue relating to imposition of punishment upon the petitioner.

Petitioner was a clerk of the Corporation who was placed under suspension vide order dated 30th August, 2007 in contemplation of disciplinary proceeding and subsequent thereto the charge sheet was issued on 20th September, 2007 alleging that the petitioner defalcated fund while collecting municipal tax from the tax-payers as a result whereof the amount of tax collected on 21st August, 2007 mismatched with the counterfoil maintained in the office of the Corporation wherein less quantam of amount was shown and by such conduct the petitioner was able to defalcate the fund amounting to dereliction of duty and indiscipline which is unbecoming of an employee of

Corporation. In support of said charges relevant documents were also annexed to the said charge sheet dated 20th September, 2007 therebe asking the petitioner to respond. In order to find out the veracity of the charges Enquiry Officer was appointed vide order dated 20th September, 2007. However, the petitioner by letter which was received by the Corporation on 11th October, 2007 admitted charges as contained in the charge sheet dated 20th September, 2007. Moreover, during the enquiry proceeding on 24th October, 2007 the petitioner admitted before the Enquiry Officer that the charges levelled against him are correct as it emanates from the minutes of the enquiry proceedings annexed to this writ petition from page 31 onwards.

In view of admission of charges by the petitioner by submitting letter dated 11th October, 2007 and also before the Enquiry Officer on 24th October, 2007 it is not required to dilate on the issue whether the findings made by the Enquiry Officer is erroneous or not. Accordingly, the Enquiry Officer concluded the enquiry with the findings that the charges levelled against the petitioner were proved which ultimately led the concerned authority of the Corporation to pass order of dismissal dated 28th December, 2007 which was subsequently reconsidered by the authority of Corporation but such reconsideration did not go in favour of the petitioner as it appears from the memo dated 29th August, 2008 which is at page 30 of the writ petition.

Question comes up for consideration whether charge of defalcation of Rs. 75 invites punishment of dismissal on proving the allegation? This Court while considering this aspect cannot lose sight of the previous incident which led the concerned authority of Corporation to impose punishment of withdrawal of two yearly incremental benefits. But such minor punishment could not mend the petitioner and he went on committing same misconduct which ultimately compelled the concerned authority of Corporation to impose punishment of dismissal on charges being admitted by the petitioner during conduct of enquiry proceedings.

In this regard reliance is placed on the judgment of the Apex Court reported in ***(2018) 1 SCC 231 (Uttarakhand Transport Corporation & Ors. –vs- Sukhveer Singh)***; paragraph 11 of the said judgment is quoted below:

> *"11. The respondent contended that the punishment of dismissal is disproportionate to the delinquency. It is submitted that he was working as a driver and the irregularity in issuance of tickets was committed by the conductor. We are in agreement with the findings of the inquiry officer which were accepted by the disciplinary authority and approved by the appellate authority and the Labour Court that the respondent had committed the misconduct in collusion with the conductor.It is no more res integra that acts of corruption /misappropriation cannot be condoned, even*

in cases where the amount involved is meagre. (See UPSRTC v. Suresh Chand Sharma.”

(emphasis supplied)

In view of aforesaid discussion and the ratio decided in ***Sukhveer Singh*** (supra) this court refuses to interferring with the order of dismissal dated 28th December, 2007.

Accordingly, the writ petition stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)