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19.03.2024
AGM

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 7807 of 2024

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

**Mr. Biswaroop Bhattacharya.
Mr. Anish Kumar Mukherjee.
...For the Petitioner.**

**Mr. Santanu Kumar Mitra.
Mr. Subhabrata Das.
... For the State.**

**Mr. Srijan Nayak.
Ms. Rituparna Mitra.
...For the Registrar.**

**Mr. D. K. Sengupta.
Ms. Sweta Saha.
... For the respondent no. 6.**

The show cause notice dated 27th February, 2024 forwarding the inquiry report of the disciplinary proceeding pending against the petitioner by the order of the Board of Directors through the Chief Executive Officer is impugned in the present writ petition.

It appears that an inquiry was conducted in respect of the charges framed against the petitioner. At the time of forwarding the inquiry report, the proposed punishment was mentioned therein.

The petitioner submits that an opportunity of hearing ought to have been given to the petitioner

prior to finalizing the punishment that may be imposed against him.

It has been submitted that there has been violation of principles of natural justice in not providing the petitioner an opportunity of hearing prior to a decision being taken to impose punishment upon him.

It has been submitted that the petitioner ought to have been given an opportunity to respond to the inquiry report.

Reliance has been placed on the judgment delivered by this Court in the matter of **Smt. Aloka Bhattacharjee -Vs. North Bengal State Transport Corporation & Ors** reported in **(2017) 2 CLT 499 (HC)**.

Learned advocate representing the Bank submits that the inquiry report has been forwarded along with the show cause notice which is impugned therein.

It has been admitted that the bank is yet to take a decision with regard to the punishment that may be imposed against the petitioner and decision will be taken only after hearing him.

Learned advocate representing the Registrar of Co-operative Societies submits that the petitioner ought to have availed the remedies available under the West Bengal Co-operative Societies Act, 2006 and the Rules framed thereunder. There is provision for appeal which the petitioner ought to have availed without approaching the writ Court at this stage. The writ petition is not maintainable.

I have heard the submissions made on behalf of all the parties.

The Bank admits that the inquiry report has been forwarded with the show cause notice and the same was not forwarded earlier.

It appears that the show cause notice has been drafted in such a manner that the punishment which the employer is proposing to impose upon the petitioner is reflected therein. If the Board of Directors afford opportunity of hearing to the petitioner after serving the inquiry report along with the proposed punishment, then it may be difficult for the petitioner to change the mind of the Board of Directors qua the punishment that they have already proposed to impose. The employer would be hearing the petitioner with a pre-determined mind. The hearing would be nothing but an empty formality. The inquiry report ought to have been forwarded prior to taking a decision with regard to the punishment that may be imposed.

The Court in Smt. Aloka Bhattacharjee (supra) laid down that the inquiry report has to be furnished since it is the right of the employee to have the report to defend himself effectively and it would not be proper to construe as failure to ask for the report as a waiver of his right.

In the instant case, it appears that the Bank has already taken a decision to impose a particular punishment upon the petitioner without granting him opportunity to defend his case in respect of the inquiry report.

The same is in violation of the principles of natural justice.

In view of the above, the impugned show cause notice dated 27.02.2024 is liable to be set aside, and is, accordingly set aside.

The Board of Directors shall afford an opportunity of hearing to the petitioner in connection with the inquiry report that has already been furnished to him along with the impugned show cause notice and thereafter take a decision whether to impose any punishment upon him or not.

The Bank shall act in terms of this order within a period of four weeks from date.

It is made clear that the impugned communication is being set aside only on the ground of violation of principles of natural justice and the Court has not decided upon the merit of the case. It will be open for the petitioner to raise all points before the appropriate authority at the time of hearing.

The writ petition stands disposed of.

Urgent certified copy of this order, if applied for, be supplied to the parties expeditiously, on compliance of usual legal formalities.

(Amrita Sinha, J.)