

15.04.2024
Court No. 15
Item No. 02
(**Suvendu**)

W.P.A. 9772 of 2021

Sri Rajat Suvra Seal
-Versus-

The Kolkata Municipal Corporation & Ors.

Mr. Nitai Ch. Saha
Mr. Abhijit Ch. Majumder
...for the petitioner

Mr. Alak Kr. Ghosh
Mr. Arijit Dey
....for the KMC

The writ petition has been instituted, *inter alia*, challenging an order dated 11th March, 2020 passed by the Special Municipal Commissioner (P), Kolkata Municipal Corporation, being the respondent no. 4 whereby right of the petitioner to receive full salary on adjusting subsistence allowance for the period when the petitioner was kept under suspension has been denied.

The learned advocate representing the petitioner submits that the petitioner was an employee of Kolkata Municipal Corporation (hereinafter referred to as "KMC") who was placed under suspension with effect from 29th April, 2003 for his alleged involvement in a

Criminal Case being Bhawanipur Police Station Case No. 206 dated 5th June, 2000. The petitioner was acquitted by the Criminal Court vide judgment dated 25th August, 2017 and subsequently the petitioner's suspension was withdrawn by an order dated 7th December, 2018 passed by the respondent no. 4. In view of withdrawal of suspension, the petitioner was permitted to resume his duty and he superannuated on attaining retirement age on 30th April, 2019.

Previously, the petitioner filed a writ petition being WP No. 21386 (W) of 2019 and the same was disposed of by an order dated 2nd December, 2019 by a Coordinate Bench directing the respondent no. 4 to consider the representation of the petitioner within a certain period of time and to pass a reasoned order. Pursuant to the said order dated 2nd December, 2019, the respondent no. 4 passed an order dated 11th March, 2020 whereby it has been decided that back wages for the period when the petitioner was kept under suspension would not be paid since the petitioner did not render service during such period.

It has been contended on behalf of the petitioner that the criminal proceeding initiated against the petitioner was culminated into an

order of acquittal vide judgment dated 25th August, 2017 and no disciplinary proceeding was initiated by the KMC against the petitioner. Hence, the right of the petitioner to receive back wages during the period he was kept under suspension cannot be denied.

Mr. Ghosh, learned advocate representing KMC has opposed the prayer of the petitioner on the score that the petitioner was not honourably acquitted. Therefore, he is not entitled to get his full back wages as claimed in this writ petition. However, it has been submitted on behalf of KMC that no disciplinary proceeding was initiated against the petitioner.

In support of his contention, reliance has been placed on the judgment of a Coordinate Bench of Punjab and Haryana High Court dated 14th October, 2022 passed in CWP No. 17760 of 2017 (*Suraj Bhan Versus State of Haryana and another*).

Having considered the submissions made on behalf of the parties and on perusal of the relevant records, it appears that no disciplinary proceeding was initiated by the KMC against the petitioner. Due to alleged involvement of the petitioner in a Criminal Case being Bhawanipur Police Station Case No. 206 dated 5th June, 2000, he was placed under suspension with

effect from 29th April, 2003. Ultimately the Criminal Court by its judgment dated 25th August, 2017 acquitted the petitioner wherein in the concluding portion it has been held by the Criminal Court that the prosecution has failed to establish the charges under Sections 417/420/468/471/34 of the Indian Penal Code and under Section 13(1)(c) read with Section 13(2) of the Prevention of Corruption Act, 1988 which led the Criminal Court to pass an order of acquittal.

On the contrary, the respondent no. 4 though directed to count the suspension period of the petitioner for release of his retiral dues in view of the petitioner's superannuation on 30th April, 2019 but did not allow back wages to the petitioner during the period of his suspension on the ground that he did not render service during such period.

From the order of the respondent no. 4 dated 11th March, 2020, it does not transpire that since the petitioner's acquittal was not an honourable acquittal, as submitted by the learned advocate representing KMC, back salary was not allowed to him.

Therefore, it further appears that the submission made by Mr. Ghosh representing

KMC is not in sync with the reasoning as contained in the order dated 11th March, 2020.

In addition thereto, denial of back salary during the period of suspension would have been a relevant consideration had disciplinary proceeding been initiated by the KMC against the petitioner and the same would have been culminated into an order of punishment.

In absence of initiation of any disciplinary proceeding against the petitioner, the respondent no. 4 is not authorized to consider as to whether the petitioner is entitled to receive his back salary or not on the anvil of fact that the petitioner did not render service during the period of suspension. Rendering service during the period of suspension by the petitioner appears to be preposterous since during suspension an employee is not authorized to render service.

The judgment of the Coordinate Bench of Punjab and Haryana High Court as delivered in Suraj Bhan (supra) does not come in aid of KMC since facts situation was different in the said case. The petitioner in the said case was placed under suspension and was convicted which led to pass an order of dismissal from service on 21st October, 2011.

In view of the aforesaid discussion, the impugned order dated 11th March, 2020 stands set aside.

The concerned authority of KMC is directed to release back salary for the period when the petitioner was kept under suspension after adjusting subsistence allowance, if paid, within a period of eight weeks from the date of communication of this order.

With the aforesaid observations and directions, the writ petition stands disposed of.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Saugata Bhattacharyya, J.)