

WP.CT. 96 of 2023

(State of West Bengal & Ors. Vs. Debasish
Dhar & Anr.)

Md. T. M. Siddiqui, Ld. AGP
Mr. S. Adak

..... For the petitioners

Mr. Soumya Majumder
Mr. Manoj Malhotra
Mr. Ravi Kumar Dubey

..... For the respondent no. 1

The present writ petition has been preferred by the State and its functionaries challenging an order dated 15th June, 2022 passed by the learned Tribunal in the original application being OA/1000/2022. By the said order, the learned Tribunal, after recording that the parties have agreed and submitted that the suspension order has been revoked, directed that *'let the period that he was placed under suspension be regularized in accordance with law and the decision be communicated to the applicant within 4 weeks by the competent authority'*.

Mr. Siddiqui, learned Additional Government Pleader appearing for the petitioners submits that the respondent no. 1 herein preferred an original application being OA 888 of 2022 challenging *inter alia* an order of suspension dated 5th May, 2021 and a chargesheet dated 11th June, 2021. The second chargesheet issued on 16th September, 2021 was also challenged by the respondent no. 1 by filing a separate original application being OA

1000/2021. During pendency of the said original applications, on the basis of a letter dated 30th December, 2021 issued by the Under Secretary to the Government of India, Ministry of Home Affairs, the respondent no. 3 herein passed an order on 9th June, 2022 revoking the order of suspension dated 5th May, 2021 with a clause to the effect that *‘the treatment of the period spent on suspension shall be decided after the conclusion of the departmental proceedings initiated against him’*.

Drawing our attention to the provisions of Rule 3 and Rule 5B of the All India Services (Discipline & Appeal) Rules, 1969 (hereinafter referred to as the said Rules), Mr. Siddiqui submits that the direction of the learned Tribunal upon the petitioners to regularize the period of suspension, in accordance with law is not sustainable since the petitioners can take such decision only after conclusion of the disciplinary proceedings pending against the respondent no. 1.

He argues that both the original applications pertaining to the order of suspension and the charge sheets are still pending and at this stage, the learned Tribunal erred in law in directing regularization of the period of suspension. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same. The order impugned also does

not disclose any reason in support of the direction issued towards regularization of the period of suspension.

Per contra, Mr. Majumder, learned advocate appearing for the respondent no. 1 argues that the order of suspension was revoked since within the mandatory period of thirty days, no confirmation was obtained from the Central Government. The second proviso to Rule 3 (1) of the said Rules clearly provides that an order of suspension issued by the State Government shall not be valid unless the said order is confirmed by the Central Government before expiry of a period of thirty days from the date of suspension. Thus, the authority to order reinstatement is the Central Government. Upon revocation of the suspension order, the respondent no.1 stands reinstated from the date of suspension and becomes entitled towards regularization of the period of suspension as a period spent on duty.

Drawing our attention to the provisions of 5B(1) to 5B(8) of the said Rules, Mr. Majumder argues that in terms of 5B(6), the State authorities can, at best, review the order of suspension and grant benefits only within the parameters of sub-rule (3) and sub-rule (5) of Rule 5B. The authority to treat the period of suspension as a period spent on duty is the confirming authority being the Central Government and upon reinstatement after suspension, the regularization of the period of suspension cannot be withheld.

In the said conspectus, according to Mr. Majumder, there is no infirmity in the direction issued by the learned Tribunal towards regularization of the period of suspension, moreso when the petitioners herein agreed and admitted the fact that the order of suspension has been revoked.

In reply, Mr. Siddiqui submits that the authority under the State had been conferred the jurisdiction to review the order of suspension under the said Rules after conclusion of the pending disciplinary proceedings, which includes the authority to treat the period as spent on duty and to grant all consequential benefits including pay and allowances, as would be explicit from the provisions of Rules 5B(1) to 5B(5) of the said Rules. The authority conferred under Rule 5B(1)(a) and Rule 5B(1)(b) as well as Rule 5B(3) and Rule 5B(4) are conjunctive in nature.

We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

The title of Rule 5B is '*Admissibility of pay and allowances and treatment of service on reinstatement after suspension*'. Rule 5B(6) of the said Rules specifically provides *inter alia* that where suspension is revoked pending finalization of the disciplinary proceeding or proceedings in a court any order passed under sub rule (1) before the conclusion of the proceedings '*shall be*

reviewed on its own motion after the conclusion of the proceedings'. All the provisions under Rule 5B are inextricably bound. The entire Rule 5B needs to be considered together and not in isolation. A particular clause cannot be taken up and highlighted. Indisputably the issues pertaining to the order of suspension and the disciplinary proceedings are still pending final adjudication. In the midst thereof, the direction to regularize the period for which the respondent no. 1 was suspended is not sustainable.

Accordingly, the direction in the order dated 15th June, 2022 that '*let the period that he was placed under suspension be regularized in accordance with law and the decision be communicated to the applicant within 4 weeks by the competent authority*', is set aside.

The writ petition is, accordingly, disposed of.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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