

WPST 118 of 2024

(Gitesh Das Mahapatra Vs. The State of
West Bengal & Ors.)

Mr. Bikash Ranjan Neogi
Ms. Ananya Neogi

.... For the petitioner

Mr. Tapan Kumar Mukherjee, Ld. AGP
Ms. Ashmita Chakraborty

.... For the State respondents

Affidavit-of-service filed by the petitioner be kept on record.

The present writ petition has been preferred challenging an order dated 6th March, 2024 passed in the original application (in short, OA), being OA 307 of 2022. The operative part of the said order runs as follows:

‘The Tribunal is of the opinion that since this matter involves various points of law, it would be proper if it is heard by a Bench comprising two members (Judicial and Administrative). Let such prayer for an interim order also be heard by the same Bench.’

Mr. Neogi, learned advocate appearing for the petitioner submits initially a draft chargesheet was issued against the petitioner on 8th August, 2014. In connection with the said disciplinary proceeding, the petitioner was suspended on 8th May, 2013. The said suspension order was, however, revoked on 28th January, 2015. Though the petitioner visited the office twice thereafter to join the post, he was not allowed to join. Aggrieved thereby, the petitioner preferred OA 282 of 2017. In the midst thereof, a fresh chargesheet was issued against the petitioner *vide* memo dated 22nd April,

2022 cancelling the earlier draft chargesheet. The learned Tribunal finally heard the matter and passed an order dated 31st March, 2022 recording that the respondents do not want to proceed with the chargesheet dated 8th August, 2014 and observing *inter alia* that the said draft chargesheet, the second show cause notice pertaining to the said proceeding have become infructuous. Though no leave was granted to the respondents to issue any fresh chargesheet, the impugned chargesheet dated 22nd April, 2022 was issued repeating and reiterating the allegations incorporated in the earlier chargesheet.

Answering our query, Mr. Neogi submits that the petitioner was constrained to participate in the proceeding initiated by the new chargesheet dated 22nd April, 2022 and in connection with the same, a second show cause notice was issued and during pendency of the present writ petition, a further notice has been issued on 7th May, 2024. In the said conspectus, the petitioner prayed for an interim order but the learned Tribunal directed that such prayer for interim order may be considered by a Bench consisting of two members. There is no possibility towards constitution of a Division Bench in the near future and as such the petitioner has been left without any remedy and unless an interim protection is granted, the respondents would pass the final order of the punishment and the petitioner, accordingly, would suffer irreparable loss. Let the supplementary affidavit as

filed by the petitioner annexing by the copy of the notice dated 7th May, 2024, be kept on record.

Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents, however, denies and disputes the contention of Mr. Neogi and submits that having participated in the proceeding initiated on the basis of the chargesheet dated 2nd April, 2024, the petitioner cannot turn back and challenge the same and seek any interim protection.

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

Prima facie, it appears that the charges contained in the draft chargesheet dated 8th August, 2014 are almost identical to the charges incorporated in the new chargesheet issued about 8 years thereafter on 22nd April, 2022 and the grant of an interim order would not cause a greater loss and prejudice to the respondents than the loss and prejudice, the absence thereof, is likely to be caused to the petitioner.

In view thereof, this Court directs that the respondents would be at liberty to proceed with the disciplinary proceeding but no final order shall be passed in the same till the disposal of the OA.

As there is no possibility towards constitution of a Division Bench in the near future and as the dispute comes within clause (b) of the said notification dated 23rd November, 2022 being '*Departmental/Disciplinary*

Proceedings /Dismissal/ Removal from Service/ Suspension/ Punishment/ Reinstatement’, there cannot be any hindrance towards final hearing of the OA before the learned single Bench, more so when an order has been passed by a Bench presided over by the Hon’ble the Chief Justice in WPA (P)/125/2024 observing *inter alia* ‘...*The applications which are filed need not be adjourned to be heard by a Bench comprising of Two Members...*’.

In view thereof, the learned single member is directed to hear and dispose of the OA on merits, as expeditiously as possible and preferably within a period of 12 weeks from date of communication of this order to the learned Registrar of the learned Tribunal, without granting any unnecessary adjournments to either of the parties.

The petitioner shall immediately communicate this order to the learned Registrar of the learned Tribunal.

The writ petitioner being WPST 118 of 2024 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.)