

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Apurba Sinha Ray

M.A.T. 1383 of 2022

Kakali Saha & Ors.

-Vs-

Mayor, Calcutta Municipal Corporation & Ors.

For the Appellants : Mr. C. R. Chakraborty, Adv.
Mr. Ram Krishna Chandra, Adv.
Ms. Puspa Rani Jaiswara, Adv.

For the KMC : Mr. Arijit Dey, Adv.

Heard on : 12.08.2024

Judgment on : 12.08.2024

Joymalya Bagchi, J. :-

1. Appellants are the heirs and successors of the deceased employee namely, Goutam Saha.

2. Goutam Saha was attached as Sub-Assistant Engineer to Borough-IX of Kolkata Municipal Corporation. He was served with a charge sheet wherein it was, inter alia, alleged during the check period i.e. 1986-87 to 1992-93 though he drew a sum of Rs.1,05,186.65/- from Kolkata Municipal Corporation, he had accumulated a sum of Rs.2,41,150.07/- in three bank accounts viz. (i) The Andhra Bank Ltd.,

Khidderpore Branch, (ii) Bank of Baroda, Khidderpore Branch & (iii) Punjab National Bank, Khidderpore Branch. In addition to various movable properties, he had also acquired immovable property of one katha 14 chitaks 26 sq. ft. of land at Mohendra Banerjee Road, Behala, Kolkata.

3. In his reply Goutam Saha contended during the said period he had received loans from his relatives and friends to the tune of Rs.2,20,000/- on various dates.

4. His explanation did not inspire confidence and a disciplinary proceeding was initiated against him on the aforesaid charge. During the disciplinary proceeding, witnesses were examined and documents as well as reports from Vigilance authority were produced before the Inquiry Officer.

5. After considering the evidence on record, Inquiry Officer came to a finding that Goutam Saha had accumulated disproportionate assets and his explanation that the said assets were pursuant to gifts given by his friends and relatives was not convincing. In fact, no permission had been granted by competent authority to the officer to receive such gifts.

6. Accordingly, Inquiry Officer submitted his report before the disciplinary authority and the latter after considering the materials on record and recording its reasons thereon came to a finding that Goutam Saha was guilty of the charge of committing misconduct unbecoming of a responsible civic employee of Kolkata Municipal Corporation and awarded the following punishments :-

*“(i) his five annual increments will be forfeited w.e.f. his next increment due on cumulative basis;
(ii) the period spent by him under suspension will be treated as such and no additional remuneration other than what he has drawn as sub-assistance allowance during the period of suspension will be paid to him.”*

7. Mr. C. R. Chakraborty for the appellants contends Hon’ble Single Judge failed to consider that the disciplinary proceedings were conducted in an unfair and prejudicial manner. Explanation offered by Goutam Saha was a probable one and ought to have been accepted.

8. Learned Advocate for the Kolkata Municipal Corporation submits Goutam Saha was given ample opportunity to present his case before the disciplinary authority. His explanation was found to be improbable. There was no violation of principles of natural justice or palpably impropriety in the disciplinary proceeding which prejudiced the delinquent.

9. We have considered the materials on record.

10. During enquiry Goutam Saha was called upon to explain how he had accumulated Rs.2,41,150.07/- during the period from 1986-87 to 1992-93 while he received salary to the tune of Rs.1,05,186.65/- during the check period. He submitted an explanation that he had received loans from his friends during the said period as follows :-

Sl. No.	Name of the Party/Relative	Amount(s)
1.	Sri Munmun Sengupta FB-77, Narayantala Rd. Cal-59.	Rs.65,000/-
2.	Sri Arunava Sengupta FB-77, Narayantala Rd. Cal-59.	Rs.70,000/-
3.	Sri Rama Roy 86, Govinda Auddy Rd., Cal-27.	Rs.20,000/-
4.	Sri S. Mondal Gourhati Lane, Cal.	Rs.10,000/-
5.	Sri P. Mondal 187, Vivekananda Rd., Cal-6	Rs.40,000/-

6.	Sri M. P. Mondal 187, Vivekananda Rd., Cal-6	Rs.15,000/-
Total		Rs.2,20,000/-

11. Materials placed before the Inquiry Officer including the report of the Vigilance Department show most of the aforesaid persons were relatives of Goutam Saha and no permission had been granted to receive loans from third party as required under Section 25(1) of the Kolkata Municipal Corporation Act, 1980 read with Regulations 5(2) & (3) of the Regulations of 1991. Inquiry Officer also noted the hollowness of his defence i.e. though loans were said to have been taken between 1986-87 to 1992-93 for construction of a house, plan for the building had been sanctioned only in 1993. This exposed the improbability of his defence.

12. After considering the report of the Inquiry Officer and the response of the delinquent in light of the materials on record, the disciplinary authority came to a finding of guilt against the deceased employee and awarded punishment.

13. During hearing it was argued the articles of Charge were vague and the words used therein were ambivalent and did not disclose formation of reasonable belief to initiate disciplinary proceeding.

14. We are unable to accept this submission. In the charge sheet it is unequivocally alleged the delinquent had amassed a sum of Rs.2,41,150.07/- in three bank accounts during the period 1986-87 to 1992-93 when he had earned a salary of Rs.1,05,186.65/-. The charge sheet was based on entries made in the bank accounts and other relevant

materials placed before the authority. The charge cannot be said to be vague or non-specific.

15. The delinquent fully understood the charge and sought to defend himself by submitting a written explanation wherein he claimed he had obtained loans from his relations and friends to the tune of Rs.2,20,000/- during the period 1986-87 to 1992-93 for construction of a house. As per Section 25(1) of the Kolkata Municipal Corporation Act, 1980 read with Regulations 5(2) & (3) of the Regulations of 1991, an officer of Kolkata Municipal Corporation is required to take permission from appropriate authority to receive loan from third party. No such permission was placed on record.

16. On the other hand, disciplinary authority was of the view that the defence taken by the delinquent was an afterthought and highly implausible. It belies logic that loans had been advanced to him from 1986 onwards for construction of a building whose plan was sanctioned only in 1993. The findings of the disciplinary authority are wholly justified on the anvil of broad probabilities of human conduct.

17. Authorities relied by the appellants are distinguishable.

18. In *B.C. Chaturvedi vs. Union of India & Ors.*¹, the Apex Court, inter alia, held when the disproportionate asset is comparatively small i.e. less than 10% of the total income, a lenient view may be taken. In the present case, the undisclosed asset is more than 100% of the disclosed income of the delinquent.

¹ (1995) 6 SCC 749

19. In *Vijay Singh vs. State of Uttar Pradesh & Ors.*², the Apex Court held withholding integrity certificate was not a punishment envisaged under Rule 4 of the Rules applicable to the delinquent employee. It has not been argued that the punishments are *de hors* the rules governing the disciplinary proceeding.

20. For these reasons, we are of the view no case for interference in judicial review of the order of the disciplinary authority is made out. Hon'ble Single Bench was justified to direct calculation and release of retiral benefits to the appellants i.e. heirs of the deceased employee after taking into consideration the penalty so imposed upon the said employee. We find no reason to interfere with the order impugned.

21. Appeal is accordingly, dismissed.

22. There shall be no order as to costs.

23. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Apurba Sinha Ray, J.)

(Joymalya Bagchi, J.)

akd

² (2012) 5 SCC 242

