

16.12.2024
Court No.23
ML – 30
(PP)

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 23843 of 2024

**Diptendu Das
versus
Union of India & Ors.**

Mr. Chandradoy Roy
.... for the Petitioner.

Mr. Swapan Kumar Nandi,
Ms. Banani Bhattacharya
.... for Union of India.

The petitioner is presently a Field Assistant in Raja Rammohun Roy Library Foundation (hereinafter referred to as the Foundation), an organization which, according to the petitioner, has been set up by the Ministry of Culture, Government of India. The petitioner also claims that the said foundation is registered under the West Bengal Societies Registration Act, 1961. The petitioner says that the petitioner has been working in the said Foundation since 13th February, 2013. The petitioner has served the Foundation at different places and is presently serving at Gwahati. The petitioner has also been asking for transfer for quite some time to the Head quarters of North Eastern Zone at Kolkata on the ground of ailing parents. All on a sudden the petitioner has been served with a suspension order dated 4th September, 2024 by which the petitioner has been suspended with immediate effect. The petitioner says

that on a perusal of the suspension order it will appear that the suspension has been made by exercise of powers under Rule 10(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, when such rules were not applicable to the petitioner at the time when such suspension order was issued. This will be further evident from the petitioner's appointment letter dated 13th February, 2015 which clearly says that the petitioner's appointment shall be governed by Raja Rammohun Roy Library Foundation Service Regulations, 1972 (hereinafter referred to as the "Service Regulations, 1972"). The petitioner also says that during the pendency of the writ petition and after affirmation of the supplementary affidavit filed today, the petitioner has been served with a charge sheet dated 4th December, 2024. The charge sheet is also in variance to the suspension order and the petitioner has replied to the same though neither the charge sheet nor reply thereto is on record.

On behalf of the respondents, it is submitted that from S.R.29 and S.R.36 of the Service Regulations, 1972, it is clear that the employees of the Foundation will be eligible to draw all allowances as are admissible to the Central Government employees from time to time and matters concerning the conduct and discipline of an employee shall be governed by the Central Civil Services

Conduct Rules and the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

Relying upon such regulation, it is submitted by the respondents that the petitioner is governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and as such, there is no illegality, ambiguity or inconsistency in the suspension order. Moreover, charge sheet has been already issued to which the petitioner has admittedly given a reply.

Suspension order is issued in contemplation of a disciplinary proceedings. A disciplinary proceedings is initiated with the issuance of charge sheet. Issuance of charge sheet as held by the Hon'ble Supreme Court does not affect the right of the employee.

In such situation, the Courts are loathe in interfering with the order of suspension as held 2006(8) SCC 200 (Jayrajbhai Jayantibhai Patel vs. Anil bhai Nathubhai Patel and others) as approved in 2013 (16) SCC 147 (Union of India and another vs. Ashok kumar agarwal). The Court is cautious and slow in interfering with disciplinary proceedings and normally permit the same to be brought to a logical conclusion unless such disciplinary proceedings is without jurisdiction or is tainted with palpable illegality apparent on face of record.

Suspension order, therefor, cannot be challenged except on the grounds enumerated in paragraph 18 of

Jayrajbhai (supra). I do not find any such grounds being made out by the petitioner.

It is also not the case of the petitioner that the employer did not offer payment of subsistence allowance as applicable in law to the petitioner, but the petitioner has not accepted to the same on the ground that he has challenged the suspension order itself.

On a perusal of the prayers made in the writ petition apart from challenging the suspension order, the petitioner has also sought for a mandamus directing transfer of the petitioner to Head Quarter of North Eastern Zone at Kolkata after lifting/revoking the illegal suspension order at the earliest.

On a perusal of the Service Regulations, 1972, and in particular S.R.36 thereof, it is clear that an employee of Raja Rammohun Roy Library Foundation and matters concerning the conduct and discipline of an employee of Raja Rammohun Roy Library Foundation shall be governed by the Central Civil Services Conduct Rules and the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Assuming without admitting that the CCS Rules, 1965 was not applicable to the petitioner when the suspension order was issued and have been made applicable only in October, 2024 then also there will be no major change once such rule has been made applicable to the petitioner.

I, therefor, do not find any irregularity or inconsistency in the suspension order dated 4th September, 2024 which is the main subject matter of challenge in this writ petition.

The other prayer being a mandatory direction to transfer the petitioner to Head Quarter office at Kolkata is also untenable in law as a transfer order is within the domain of the employer for smooth administration of the organization. Transfer orders, therefore, are left un-interfered with unless it is demonstrated that the same is to victimize the employee concerned or is palpably illegal.

The petitioner, therefore, cannot pray for a mandatory direction for being transferred to a particular place of his choice by citing the reasons as stated in the writ petition. This prayer could have been left open for a sympathetic consideration by the employer but for the disciplinary proceedings having been initiated cannot also be done at this stage.

The writ petition is, therefore, unmeritorious and is accordingly dismissed.

The dismissal of this writ petition will, however, not stand in the way in the petitioner challenging the orders that may be passed in the disciplinary proceedings in accordance with law.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)