

13.03.2024
Item Nos.2 & 3
Ct. No. 7
KS

R.V.W. 233 of 2023
With
IA No. CAN 1 of 2023
Nabendu Sengupta
Versus
National Jute Board & Ors.
With
W.P.A.534 of 2021
Nabendu Sengupta
Versus
National Jute Board & Ors.

Mr. Soumya Majumder
Mr. Victor Chatterjee
.....For the Review Petitioner
Mr. Rahul Karmakar
Mr. Surya Prasad Chattopadhyay
.....For the Respondent Nos.1 & 2

1. The affidavit-of-service filed in Court today is taken on record.
2. The review petitioner has filed this Memorandum of Review for review of the order dated 31st August, 2023 passed in W.P.A. 534 of 2021.
3. By referring to the said order dated 5th February, 2021, Mr. Majumder, learned advocate submits that the Co-ordinate Bench while passing the order dated 5th February, 2021 framed an issue as to whether in terms of the service conditions and rules applicable to

National Jute Board Employees, the disciplinary proceedings initiated against the petitioner can be continued beyond his superannuation and as to whether the employer could withhold its share of contribution of the provident fund.

4. Mr. Majumder, learned advocate further submits that by the said order, it was observed that the disciplinary proceedings as also the claim for provident fund, gratuity and leave encashment made by the writ petitioner shall abide by the final result of the writ application.
5. Mr. Majumder submits that the order under review suffers from error apparent on the face of the record as the issues framed vide order dated 5th February, 2021 remains unanswered.
6. Mr. Majumder, learned advocate submits that since the very initiation of the disciplinary proceeding was challenged in this writ petition and if such action is found to be not in consonance with law, all subsequent proceedings has to be declared null and void. In support of such contention, he places reliance upon a decision of the Hon'ble Supreme Court in the case of *Chairman-cum-Managing Director, Coal India*

Limited Vs. Ananta Saha & Ors. reported at (2011) 5 SCC 142.

7. There is no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in the case of *Ananta Saha (supra)* that if the initial action is not in consonance with law, subsequent proceedings would not sanctify the same. The said decision being distinguishable on facts do not have any manner of application to the case on hand.
8. Mr. Karmakar, learned advocate appearing for the respondent nos.1 and 2 submits that the review petitioner is trying to reargue the writ petition on merits, which is not permissible in the eye of law. He submits that the Memorandum of Review as well as the connected application are liable to be dismissed *in limine*.
9. It is not in dispute that during pendency of the writ petition, the disciplinary proceeding, which was initiated against the petitioner while he was in service got culminated in the order dated 30th June, 2021 passed by the disciplinary authority, thereby dismissing the petitioner from service. The review petitioner thereafter filed an application being, CAN 1

of 2021 praying for setting aside the order of dismissal passed by the disciplinary authority on 30th June, 2021. When the said application being, CAN 1 of 2021 was taken up for hearing by a Co-ordinate Bench on 16th February, 2022, it was specifically contended by Mr. Majumder that since specific point has been urged in the writ petition that the disciplinary authority cannot continue with the proceedings against the applicant after his superannuation and the order of dismissal is the outcome of such disciplinary proceedings, the said order of dismissal dated 30th June, 2021 can very well be questioned by filing the said application being, CAN 1 of 2021.

10. The Co-ordinate Bench after considering the submissions of the respective parties, made the following observations:-

“This Court has considered the submissions made by the learned advocates representing the parties to this application and is of the view that during pendency of the writ petition the disciplinary proceedings which was being continued at the time of superannuation of the applicant has been concluded by passing an order of dismissal dated 30th June, 2021. Therefore, if today the writ petition is heard finally the Court is to restrict itself to the extent of continuation of disciplinary proceedings after superannuation of the petitioner but fact remains the final order of dismissal dated 30th June, 2021 remains unchallenged in the writ petition. Therefore, according to the appreciation

of the facts of the present case as well as in view of the dismissal order dated 30th June, 2021 being issued by the disciplinary authority appropriate course is to file a fresh writ petition questioning the order of dismissal."

11. On the basis of the aforesaid observations, the Co-ordinate Bench disposed of the application being, CAN 1 of 2021 without passing any order save and except directing the concerned respondent authorities to release the terminal benefits to the petitioner, if any, payable in accordance with law.
12. Since, the review petitioner prayed for setting aside the order of the disciplinary authority dated 30th June, 2021 in CAN 1 of 2021 and such prayer was not allowed, the same, in the considered view of this Court, amounts to deemed rejection of the prayer for setting aside the order of dismissal. It would be relevant to note that the Co-ordinate Bench while disposing of the application being, CAN 1 of 202 specifically observed that in view of the dismissal order dated 30th June, 2021 being issued by the disciplinary authority, appropriate course is to file a fresh writ petition questioning the order of dismissal. The said order is binding upon the petitioner.

13. After taking note of the said observations of the Co-ordinate Bench in CAN 1 of 2021, the writ petition was disposed of giving liberty to the petitioner to pray for the reliefs, which have been claimed in the said writ petition, if any, challenge is thrown to the order of dismissal dated 30th June, 2021 passed by the Disciplinary Authority.
14. This Court, therefore, does not find that there is any error apparent on the face of the record for this Court to exercise its powers of review.
15. For the reasons, as aforesaid, the Memorandum of Review and the connected application stand dismissed.
16. There shall be, however, no order as to costs.
17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)