

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

MAT 399 of 2024

CAN 1 of 2024

CAN 2 of 2024

CAN 3 of 2024

**The Kolkata Municipal Corporation & Ors.
Vs.**

Basanta Kumar Roy & Anr.

With

COT 72 of 202

**The Kolkata Municipal Corporation & Ors.
Vs.**

Basanta Kumar Roy & Anr.

With

FMA 228 of 2024

Basanta Kumar Roy & Anr.

Vs.

The Kolkata Municipal Corporation & Ors.

For the Appellants

In MAT 399/2024,

Respondents in

COT 72/2024 &

FMA 228/2024

:
Mr. Jaydip Kar, Sr. Adv.,
Mr. Arijit Dey, Adv.

**For the Respondent/
Writ Petitioner in**

MAT 399/2024,

Cross objector in

COT 72/2024 &

Appellant in

FMA 228/2024

: Mr. Alok Kumar Ghosh, Adv,
Mr. Dilip Kumar Chatterjee, Adv.

For the WBMSC

: Ms. Koyeli Bhattacharyya, Adv.,
Mr. Bibek Dutta, Adv.

Heard on

: 29.07.2024, 12.08.2024, 27.08.2024
& 03.09.2024

Judgment on

: 03.09.2024

Joymalya Bagchi, J. :-

1. Appellant Kolkata Municipal Corporation has preferred the appeal challenging judgment and order dated 23.11.2023 whereby the Hon'ble Single Judge had set aside the order of punishment dated 31.08.2005 passed by the Municipal Commissioner and affirmed by the Mayor vide order dated 21.09.2006.
2. Factual matrix giving rise to the appeal is as follows:-
3. Respondent/writ petitioner was a 'C' category employee of Kolkata Municipal Corporation (hereinafter referred to as 'KMC'). On 07.10.1997 the Joint Municipal Commissioner issued a charge sheet upon the respondent/writ petitioner. Pursuant to the charge sheet an enquiry was initiated. Enquiry report was filed. Upon

considering the enquiry report, the Municipal Commissioner (exercising powers of Joint Municipal Commissioner) by order dated 31.08.2005 held respondent/writ petitioner guilty of misconduct and directed his removal from service. Respondent/writ petitioner made a representation before the Mayor which came to be dismissed on 21.09.2006. The aforesaid order of removal by the Municipal Commissioner and its affirmation by the Mayor were assailed by the respondent/writ petitioner in the writ petition.

4. Referring to Sections 18 and 21 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as KMC Act, 1980), it was contended on behalf of the writ petitioner Joint Municipal Commissioner is the appellate authority in respect of category 'C' employees and as the order of punishment was passed by the Municipal Commissioner (acting as Joint Municipal Commissioner), the appellate remedy of the appellant has been rendered nugatory. However, Corporation relying on a Circular No.50 dated 01.02.2002 argued the Mayor had been empowered to hear appeals against orders passed by the Municipal Commissioner in regard to Group 'B', 'C' and 'D' categories, hence the appellant's remedy remained intact. Hon'ble Single Judge relying on *Smt. Kusum Roy & Ors. Vs. The Calcutta Municipal Corporation & Ors.*¹ wherein the said circular had been quashed held the order of punishment passed by the

¹ 2015 SCC OnLine Cal 1162

Municipal Commissioner and the appellate order affirming it by the Mayor were contrary to the provisions of KMC Act, 1980 and liable to be set aside.

5. Mr. Kar, learned Senior Advocate contends Municipal Commissioner/Joint Municipal Commissioner who initiated the enquiry and passed the order of punishment is a superior authority than the one prescribed under the law as the disciplinary authority. Disciplinary proceeding conducted by a superior officer cannot cause prejudice to an employee.
6. In rebuttal, Mr. Ghosh contends disciplinary authority i.e. Joint Municipal Commissioner is the appellate authority under law in regard to orders of punishment against category 'C' and 'D' employee. As the order of punishment was passed by the Municipal Commissioner acting as Joint Municipal Commissioner, appellate remedy prescribed under the law stood extinguished to the prejudice of the appellant. Order passed by the Mayor as appellate authority is *non est* in law as Circular No.50 dated 01.02.2002 had been quashed in *Smt. Kusum Roy & Ors.* (Supra).
7. The moot issue which falls for consideration is as follows:-
8. Did the order of punishment passed by the Municipal Commissioner acting as Joint Municipal Commissioner in respect of respondent/writ petitioner, a group 'C' employee, result in

extinguishment of his appellate remedy under law and thereby caused prejudice to him.

9. Sections 18 and 21 of KMC Act reads as follows:-

“18. Appointing authorities – Subject to the other provisions of this Act, the appointing authority in respect of the posts of officers and employees constituting the establishment of the Corporation shall be –

(a) In the case of category A posts, the Municipal Commissioner,

(b) In the case of category B posts, a Joint Municipal Commissioner,

and

(c) In the case of category C posts and category D posts, such officer or officers of the Corporation as the Municipal Commissioner may, with the prior approval of the Mayor-in-Council, designate in this behalf.

21. Control, discipline and conduct of officers and employees –

(1) Unless there is anything to the contrary, the whole time of an officer or employee of the Corporation shall be at the disposal of the Corporation and he may be employed by the Corporation in such manner as it thinks fit. Such officer or employee may also be transferred from one post to another carrying an identical scale of pay.

(2) The Corporation may, by regulation, provide for the discipline, control and conduct of officers and employees constituting the establishment of the Corporation.

(3) Any officer or employee of the Corporation as may be determined by regulation, may be censured, fined, penalized by

withholding of increment or promotion temporarily or permanently, penalized by recovery from his pay of the whole or part of any pecuniary loss caused by him to the corporation, reduced to a lower stage in the time scale of pay for a specified period, reduced to a lower time scale of pay, grade, post or service, or penalized by compulsory retirement or removal or dismissal from service for any breach of departmental rules or of discipline or for negligence of duties or for other misconduct, by the authority by whom such officer or employee has been appointed.

(3A) The Commissioner or the appointing authority may pass an order of suspension pending departmental proceedings or prior to the initiation of any departmental proceedings against any employee of the Corporation.

(3B) (i) An employee of the Corporation who is detained in custody for a period exceeding 48 hours on a criminal charge, may be suspended by an order of the appointing authority with effect from the date of his detention and such employee shall remain under suspension until an order withdrawing the order of suspension is made by the appointing authority.

(ii) An employee of the Corporation who is undergoing a sentence of imprisonment upon conviction on a criminal charge, shall be suspended by the appointing authority pending disciplinary proceeding against him.

(4) An appeal against an order under sub-section (3) shall lie –

(a) to the Corporation where the appointing authority is the Mayor-in-Council;

(b) to the Mayor in the case of an officer or employee holding a category A post;

(c) to the Municipal commissioner in the case of an officer or employee holding a category B Post; and

(d) To a Joint Municipal Commissioner in the case of an officer or employee holding a category C post or a category D post.

(5) No officer or employee of the Corporation appointed on the recommendation of the Municipal Service Commission or the Public Service Commission, as the case may be, shall be reduced in rank, removed or dismissed except after consultation with such Commission.

10. Section 18 states in respect of category 'C' and category 'D' posts, the appointing authority shall be such an officer of the Corporation as the Municipal Commissioner with the prior approval of Mayor in Council designate. As per Section 21 sub-section (3), appointing authority is entitled to impose penalties envisaged in law including removal or dismissal from service. Order of punishment passed under the aforesaid sub-section may be appealed under sub-section (4) of Section 21. Sub Clause (d) of Section 21 of sub-section (4) states Joint Municipal Commissioner is the appellate authority in respect of officers employed in category 'C' or category 'D' posts.
11. A combined reading of the said provisions leave no doubt in one's mind that appeal against the order of punishment passed against the respondent/writ petitioner who is a category 'C' employee is the

Joint Municipal Commissioner. However, if the order of punishment is passed by the Municipal Commissioner acting as Joint Municipal Commissioner (as in the present case), where will the appeal lie?.

12. Mr. Kar has referred to *Uttrar Pradesh Power Corporation Ltd. Vs. Virendra Lal (Dead) through LRs.*² And *Chairman, A.P. State Electricity Board & Ors. Vs. M. Kurmi Naidu*³ to argue, in case disciplinary proceeding is conducted by an officer superior to the appointing authority the delinquent does not suffer prejudice.
13. We have no quarrel with the aforesaid proposition. However, if the appellate authority acts as the disciplinary authority and imposes penalty, a completely different controversy arises. In *Surjit Ghosh Vs. United Commercial Bank*⁴, the Hon'ble Apex Court held when disciplinary proceeding was conducted by the Deputy General Manager (the appellate authority in that case) the right of appeal of the delinquent stands extinguished and the order of punishment is liable to be set aside on such score. Similar view was taken in *Balbir Chand Vs. Food Corporation of India Ltd.*⁵
14. In the cited cases the ratio in *Surjit Ghosh* (supra) and *Balbir Chand* (supra) was distinguished by referring to *Electronics Corpn. of India*

² (2013) 10 SCC 39

³ (2006) 8 SCC 62

⁴ (1995) 2 SCC 474

⁵ (1997) 3 SCC 371

*Vs. G. Muralidhar*⁶, *A. Sudhakar Vs. Postmaster General*⁷ and *S. Loganathan Vs. Union of India*⁸ wherein the Hon'ble Apex Court clarified no prejudice is suffered by a delinquent if the disciplinary proceeding is conducted by an authority superior to the appointing authority provided the same does not deprive the delinquent of the right to appeal.

15. To elucidate it may be apposite to refer to the observations in *A. Sudhakar* (Supra) :-

“18. It is now trite that an authority higher than the appointing authority would also be the designated authority for the purpose of Article 311 of the Constitution. Even the appellate authority can impose a punishment subject, of course, to the condition that by reason thereof the delinquent officer should not be deprived of a right of appeal in view of the fact that the right of appeal is a statutory right. However, if such right of appeal is not embellished, an authority higher than the appointing authority may also act as a disciplinary authority.” (emphasis supplied)

16. In the case at hand the exercise of disciplinary powers by the Joint Municipal Commissioner, a superior authority, had extinguished the statutory right to appeal against an order of punishment under law. As per section 21(4)(c) of KMC Act, an appeal lies against an order of punishment passed against category 'C' employees before the Joint Municipal Commissioner. If the Joint Municipal Commissioner

⁶ (2001) 10 SCC 43

⁷ (2006) 4 SCC 348

⁸ (2012) 1 SCC 293

himself initiates the disciplinary proceeding and passes the order of punishment, there is no scope of preferring appeal against such order before the same officer i.e. the Joint Municipal Commissioner.

17. Hon'ble Judge rightly highlighted this procedural infirmity which had deprived the respondent/writ petitioner of his right to appeal and discriminated him vis-a-vis other similarly circumstanced employees.
18. It is true Mayor had affirmed the order of the Joint Municipal Commissioner. But the exercise of appellate powers of Mayor is based on Circular No.50 dated 01.02.2002 which had been quashed by this Court in *Smt. Kusum Roy* (supra).
19. In view of the aforesaid, we find no infirmity in the order of the Hon'ble Single Judge setting aside the order of punishment and the order dated 31.08.2005 passed by the Municipal Commissioner (Acting as Joint Municipal Commissioner) and the Mayor's order 21.09.2006 confirmed the same.
20. At this stage Mr. Kar submits the matter may be remitted for initiating disciplinary proceeding afresh by the appointing authority. He contends petitioner was appointed in 1974 by the Deputy Commissioner (Revenue). After promulgation of KMC Act, 1980, he was deemed to be an employee of Corporation by operation of Section 635(d) of KMC Act, 1980. By memo dated 24.02.2006 some

posts of Deputy Commissioner (Revenue) were re-designated as Chief Manager.

21. In view of the aforesaid he submits matter may be remanded for conducting disciplinary proceeding by Chief Manager who are equivalent to Deputy Municipal Commissioner (Revenue) i.e. the appointing authority of the writ petitioner under the old law.
22. Mr. Ghosh contends no officer of the Corporation has been designated by the Municipal Commissioner as appointing authority for category 'C' and category 'D' posts under Section 18 of KMC Act.
23. In view of the fact that the proceeding against the respondent/writ petitioner had been initiated in 1997 and the order of punishment was passed in 2005 i.e. almost two decades ago, we do not wish to remand the matter for fresh initiation of disciplinary proceeding against the respondent/writ petitioner. We are further prompted to come to such conclusion as the petitioner had been out of service since 2005 and would have superannuated in 2010.
24. With regard to the cross appeal, we find the Hon'ble Single Judge has awarded 50% back wages to the respondent/writ petitioner.
25. Mr. Ghosh submits his client was kept out of employment due to the erroneous decision of the Corporation and he is entitled to full back wages.

26. Grant of full back wages cannot be demanded as a right whenever a disciplinary proceeding is quashed. It is in the nature of discretionary relief and its quantum is to be tailored to the facts of each case. Moreover, it is apposite to bear in mind the Hon'ble Judge had quashed the proceeding due to procedural defects impacting valuable right to appeal and not on merits i.e. absolving the respondent/writ petitioner of the charge of misconduct. Under such circumstances, we are of the view award of 50% back wages is most charitable and we are not inclined to enhance it. However, we direct the said amount shall be paid to the respondent/writ petitioner within three months from date.
27. With these observations, the appeal and the cross appeal are dismissed.
28. Consequently, connected applications are also dismissed.

In Re: FMA 228 of 2024.

29. As the order of the Hon'ble Single Judge quashing the order of punishment and the appellate order passed by the Mayor has been upheld in MAT 7399 of 2024, no order needs to be passed in the appeal.
30. There shall be no order as to costs.

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

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

as/tkm