

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1128 OF 2021

Priyanka Das

... Petitioner

Versus

The Institute of Company Secretaries of
India & Ors.

...Respondents

Mr. Ramesh Ramamurthy a/w. Mr. Saikumar Ramarurthy a/w. Ms. Kavita Anchan, Ms. Seema Sorte, Mr. Karthik Pillai for the petitioner.
Mr. Sudhir Talsania, Senior Advocate, Mr. Chirag Dave, Mr. Nitin Jain i/b Legasis Partners for the Respondent Nos. 1 to 3.

**CORAM : NITIN JAMDAR &
M. M. SATHAYE, JJ.**

DATED : 2 APRIL, 2024

P.C.:

1. Heard learned Counsel for the parties.
2. The Petitioner has challenged the order passed by the Disciplinary Authority of the Respondent-Institute of Company Secretaries of India dated 11 June 2019 and 27 August 2019 and the order passed by the Appellate Authority dated 11 March 2020.
3. The Petitioner joined the services of the Respondent-Institute as Management Trainee from 4 July 2011 to 3 July 2012. The Petitioner was absorbed as Assistant Education Officer with effect from 4 July 2012.

The services of the Petitioner are governed by the rules framed by the Respondent-Institute titled as the Institute of Company Secretaries of India Service Rules, 1979 (for short "*the Rules of 1979*")

4. The Petitioner received a memorandum of charges on 29 April 2017, listing four charges. Thereafter, an inquiry was held and two charges i.e. Charge No. 1 (Article - 1) and Charge No. 2 (Article -2) were proved. The Petitioner was exonerated from the Charge No. 3 (Article -3) and Charge No. 4 (Article-4). The Disciplinary Authority passed an order on 27 August 2019 in exercise of powers under Regulation 151(i) of the Company Secretaries Regulations, 1982 read with Rule 61 of the Rules of 1979 reducing the Petitioner to lower post/level under Rule 60(a) of the Rules of 1979. As stated in the order dated 27 August 2019, the Petitioner filed Appeal under the Rule of 63 of the Rules of 1979. The Appellate Authority rejected the Appeal by order dated 11 March 2020.

5. Learned Counsel for the Petitioner relying on the decision of the Hon'ble Supreme Court in *Nyadar Singh vs Union of India and Others*¹ contended that the reduction of rank could not have been to a post lower than the post which the Petitioner initially held. Secondly, it was contended that the order passed in the Appeal is a non-speaking order.

6. On the merits of the charges, learned Counsel for the Petitioner submitted that the Petitioner was not guilty of the charges and the

¹ (1988) 4 SCC 170

Petitioner has sufficient explanation for both the charges. Learned Counsel for the Respondents submitted that the inquiry was properly held with adequate opportunity to the Petitioner and the charges have been duly proved.

7. The order of the Disciplinary Authority does not state as to which post the Petitioner would be reverted to. It only states that the Petitioner is reduced to the lower post. The Petitioner was holding the post of Executive (Academics) and the Petitioner, thereafter, was transferred to Chennai and posted as Senior Executive Assistant. There is no debate that this is a lower post.

8. Thus, on the face of it, in the light of the law laid down by Hon'ble Supreme Court in case of *Nyadar Singh (supra)*, the order reducing the Petitioner below the post she has held cannot be sustained.

9. We have also looked into the charges that are stated to be proved against the Petitioner. The Charge No. 1 (Article 1) was that the Petitioner was reporting directly to the Chairman and elected Members of the Institute and not following the reporting pattern as per the service rules. The second charge was that the Petitioner participated in a conference without informing the Directorate of Finance and Accounts and despite the instructions of timely completion of audit. The Petitioner has sought to contend that there were certain reasons because of which the Petitioner and other employees did not report the Director but to the

Chairman directly and according to the Petitioner, the Petitioner had permission of the Chairman to attend the official conference. Be that as it may, even assuming the charges are to be proved, an order of reversion from a substantive post was, apart from being illegal as per law laid down, was also disproportionate.

10. In view of the fact that the order of reversion has to be set aside, the question as to the findings in the inquiry still remain. In these circumstances, we have looked into the order passed in the Appeal. The appellate order gives no reasons whatsoever and confirms the earlier order. In these circumstances, according to us it would be appropriate that after setting aside the order of reversion with above observations, the Appeal of the Petitioner is restored for the Appellant Authority to consider the matter as regards the Petitioner's challenge to the findings in inquiry and then consider imposition of the punishment, if any.

11. Accordingly, we dispose of the Petition by passing the following order:

- (a) The order passed by the Disciplinary Authority dated 27 August 2019 to the extent it imposes the punishment of reversion is quashed and set aside or findings therein are retained for the purpose of consideration in Appeal.
- (b) The Appeal filed by Petitioner is restored to the file of Appellate Authority.

(c) All contentions of the parties as regards the merits of the inquiry are kept open to be considered by the Appellate Authority including the Petitioner's contentions as regards the likelihood of bias in the inquiry.

(d) In case the Appellate Authority concludes against the Petitioner, the Appellate Authority will keep in mind our observations as regards the quantum of punishment.

(e) Considering the fact that the matter is to be remanded to the Appellate Authority in above circumstances, the Appellate Authority will give hearing to the Petitioner and pass a reasoned order.

12. The Writ Petition is disposed of in above terms.

(M. M. SATHAYE, J.)

(NITIN JAMDAR, J.)