

Sl. No.28
07.02.2025
Suman
Ct. 15

WPA 3777 of 2024

Sukumar Das
Vs.
Damodar Valley Corporation and Ors.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. R. Guha Thakurta
Mr. S. Sengupta
Mr. Pulin Chandra Maiti
Ms. Dipa Roy
..for the petitioner

Mr. Srijan Nayak
Ms. Rituparna Maitra
Mr. Partha Sarathi Pal
Mr. Asis Dutta
..for Registrar of Co-operative Society

Mr. Pradip Kumar Tarafdar
Mr. Subir Pal
..for Damodar Valley Corporation

Mr. Ankit Sureka
Mr. Biplab Das
..for respondent no.3.

I am convinced that the petitioner has been restrained from joining his service in an arbitrary and illegal manner, which warrants the intervention of this Court.

The petitioner was appointed as a "Cook" under the Damodar Valley Corporation Employees Co-operative Stores & Canteen Ltd. (hereafter referred to as the "said Society"), Respondent No. 2. He was issued a show-cause notice dated November

28, 2023, by the Special Officer of the said Society, who was appointed by the Cooperation Department of the State.

It is essential to quote the relevant portion of the show-cause notice, as follows:

“A joint petition has been submitted against you by some employees of DVC Employees Cooperative Stores and Canteen Ltd. that you are, in group, creating various misunderstanding among the employees of the above named canteen. Some of you are instigating DVC management against one of your colleagues to step down him. In addition you are sharing various important issues related to canteen with other institutions.

You should know that these activities are completely against the integrity of this canteen and out and out against discipline of this canteen.

That is why you are requested to show the cause, that why the disciplinary action is not taken against you from this end within seven working days after receiving this letter.”

In response, the petitioner submitted a letter dated December 5, 2023, in which he stated:

“With due respect, I would like to inform you that, neither I have any idea about the meaningless so called complaints as mentioned in the aforementioned letter under ref(i); nor have I understood anything.

I believe that I am sincere and committed to my colleagues and organization.”

The Special Officer, however, found the petitioner's response unsatisfactory, and by a letter dated December 11, 2023, the petitioner was suspended, with the following observations:

“Your reply of Ref. No.DVC/ECSC/105 date 28.11.2023 is not satisfactory and the language of the letter is very much derogatory.

So, you have been charged insubordination and disciplinary proceedings will be initiated against you.

During the disciplinary proceedings you will be suspended from your job till the proceedings officially conclude.

This order will take immediate effect.

You will receive the subsistence grant during the period of suspension as per rule 5(28)ibid (34) of the West Bengal Service Rules 1980 (Part-I)."

Respondent no.2 without conducting disciplinary proceedings issued an order stepping down the petitioner vide order dated January 17, 2024, which stated:

"Sri Sukumar Das, whereas a petition lodged against you for your conspicuous activity against the DVC Employees Cooperative Stores and Canteen Ltd. and the staffs of the same, like pilferage of documents and conspiracy against a particular staff of managerial cadre,

and

Whereas you had been advised to show the cause for your such activities which was against the interest of the Canteen Co-operative.

and

Whereas the reply of the show cause was not satisfactory and the language of the letter was derogatory,

and

Whereas you had been suspended till the disciplinary proceedings had been concluded,

and

Whereas you entered the canteen, during suspension, with a group of outsiders/goons during lunch time and create a pandemonium.

and

Whereas you and some rogues/goons entered with you, attacked the female employees of the DVC Employees Cooperative Stores and Canteen Ltd. during suspension.

and

Whereas after that incident a criminal case of molestation of a female employee of DVC Employees Cooperative Stores and Canteen Ltd. initiated against you with Maniktala Police Station.

and

You are therefore warned for this incident and advised to submit an undertaking in regard that you will keep away from this similar type of activity in future. You are also intimated that you have been stepped down from skilled category to semi skilled category for such type of activity and at the same time you are advised to join you duty on 01.02.2024."

The petitioner through his advocate served a lawyer's notice dated January 29, 2024, on receipt of which, respondent no.3 issued a communique dated February 7, 2024, directing the petitioner not to join his duties from January 1, 2024, which reads as follows:

*"In cancellation of Ref. No.DVC/ECS/126, Ref. No.DVC/ECS/127, Ref. No. DVC/ECS/128, you are requested **not** to join your duties on and from 1.1.2024, as your reinstatement is under the consideration of the court of law after receiving the lawyer's notice from your end. As in the said lawyer's notice some derogatory words like illegal appointment, has been used by you (as the lawyer representing you), the matter has been put to law for defamation suit. On the other hand, this Registrar of Cooperative Societies, West Bengal is not the authority to appoint the Special Officer.*

Therefore, your joining will be decided after the judgment of concern court of law."

The petitioner contends that this communication is arbitrary and illegal. To support this claim, the petitioner relies on the judgment in ***Gayatri De v. Mousumi Cooperative Housing Society***, reported at **(2004) 5 SCC 90**.

Mr. Ankit Sureka, learned counsel representing the Special Officer, submits that the petitioner was a casual employee, and therefore, a full disciplinary process was not required to be initiated against him. He further argues that the writ petition is not maintainable as the society is a private entity. In the absence of any public law element, the writ court should not intervene in a contractual employee's services. Additionally, he

submits that the petitioner had an alternative remedy available to him.

Mr. Pradip Kumar Tarafder, learned counsel for the Damodar Valley Corporation, argues that there is no statutory obligation for the Damodar Valley Corporation to operate a canteen and that the petitioner cannot be considered an employee of the Corporation.

In light of the facts of the case and the submissions made by the petitioner, I am compelled to set aside the orders dated January 17, 2024 and February 7, 2024.

Addressing the issue of the maintainability of the writ petition, I find merit in the petitioner's argument that when the action complained of is carried out by an officer appointed by the State, such action becomes amenable to writ jurisdiction. In my view, the petitioner's case concerning the maintainability of the writ petition is squarely supported by the judgment reported in ***Gayatri De*** (supra).

Regarding the status of the petitioner as an employee, I am not persuaded by the argument that his employment is casual in nature. The petitioner's appointment letter explicitly states:

“You are appointed as regular employee of the canteen in the post of “Cook” w.e.f 10.09.1992”.

Additionally, it is evident that the petitioner's monthly salary was determined by the Damodar Valley Corporation through an initial notification dated October 24, 1996, and a subsequent notification dated February 13, 2024. It is undisputed that the petitioner has been employed for the past 32 years without interruption and has consistently received salary as determined by the Damodar Valley Corporation.

It should be noted that the petitioner does not receive his salary directly from the Damodar Valley Corporation. Instead, the Corporation provides a fund to the canteen, from which the petitioner's salary is disbursed.

From a bare reading of the impugned orders dated January 17, 2024, and February 7, 2024, it is abundantly clear that the grounds for the petitioner's stepping down were not communicated to him at any stage. The step down order itself introduces grounds for dismissal that were not previously disclosed to the petitioner. It was essential for Respondent No. 3 to provide the petitioner an opportunity to respond to the allegations contained in the step down order. The

show-cause notice was based on different grounds, and the step down order was later based on entirely new allegations. This constitutes a clear violation of the principles of natural justice.

The grounds, as mentioned in the step down order, carry a stigmatising nature.

In the foregoing facts, I am of the firm opinion that the petitioner could not be directed to step down without providing him the opportunity to address the allegations raised in the step down order. It is also absolutely illegal to prevent the petitioner from joining his duties since he has approached this Court. Consequently, I set aside the orders dated January 17, 2024 and February 7, 2024.

It has also come to the Court's attention that the term of the Special Officer who issued the impugned orders has expired. A regular Board has now been formed to manage the Society. The Board is directed to reinstate the petitioner within 15 days from the date of this order, with 25% back wages. The disciplinary proceedings initiated against the petitioner are hereby set aside.

Accordingly, **WPA 3777 of 2024** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)