

11.11.2025
sayandeep
Sl. No. 11
Ct. No. 03

WPA 4101 of 2024

Pradip Sarkar
Vs.
State of West Bengal & ors.

Mr. Sanjay Saha
Mr. Lal Ratan Mondal

..... for the petitioner

Md. Mansoor Alam

..... for the State

1. The present with petition has been filed, *inter alia*, praying for a direction upon the respondents to resume the dues of the petitioner and to pay the arrears back wages by setting aside the order of suspension.
2. By an order dated 16th December, 2025, this Court was pleased to pass the following order:

1. Affidavit-of-service is taken on record.
2. The petitioner, by way of present writ petition, is challenging the suspension order dated 15.12.2023 issued by the respondent authority whereby the petitioner was placed under suspension with effect from 01.12.2023.
3. It is the case of the petitioner that he was appointed as Mazdoor vide appointment letter dated 09.03.2019 and was posted at Moti Jheel Levy of Murshidabad Municipality for the purpose of tax collection. On 07.11.2023 the respondent informed the petitioner that he had been absent from duty for the preceding four days and accordingly directed him to report to duty at the Conservancy Section under Murshidabad Municipality. The petitioner citing health reasons requested that he may be permitted to continue his duty at the Moti Jheel Levy of Murshidabad Municipality for tax collection. However, by letter dated 10.11.2023 respondent reiterated its direction requiring the petitioner to report for duty at the Conservancy Section. Upon the petitioner's

failure to comply with the said direction, the matter was placed before the Board of Councillors and subsequently by the impugned order dated 15.12.2023, the petitioner was placed under suspension with effect from 01.12.2023.

4. Learned Counsel appearing for the respondent-Municipality submits that the petitioner was placed under suspension on account of his deliberate refusal to comply with the order of transfer dated 07.11.2023. He further states that the departmental action is being contemplated against the petitioner as per the West Bengal Municipal Employees' (Classification Control Appeal and Conduct) Rules, 2010 sub-section 3.

5. Learned Counsel for the respondent-Municipality seeks and is granted further four weeks time to file affidavit-in-opposition. Reply thereto, if any, be filed within two weeks thereafter.

6. List this matter after eight weeks (11.11.2025)."

3. Despite such direction, no affidavit-in-opposition has been filed by the Municipality. The municipality is in fact not represented. Learned advocate for the petitioner would complain that as of today though the petitioner has been suspended with effect from 1st December, 2023 till date no disciplinary proceedings has commenced. According to him, having regard to the provisions contained in West Bengal Payment of Subsistence Allowances Act, 1969, the petitioner is entitled to payment of subsistence allowance at the rate of 75% of the wages drawn by the employee as such employee was drawing immediately before his suspension. In this context, the relevant Section 3 of the West Bengal Payment of Subsistence Allowance Act, 1969 is reproduced herein below:

"3. (1) An employee who is placed under suspension shall, during the subsistence allowance. period of such suspension, be

entitled to receive payment from the employer as subsistence allowance an amount equal to fifty per centum of the wages which the employee was drawing immediately before such suspension:

Provided that where the period of suspension exceeds 90 days the amount of subsistence allowance shall be increased after the expiry of 90 days to seventy-five per centum of the wages which the employee was drawing immediately before such suspension:

Provided further that an employee shall not be entitled to any subsistence allowance if he accepts employment during the period of suspension in any place other than the establishment where he had been working immediately before his suspension.”

4. Having regard thereto, and noting that the respondents have not come up by way of an affidavit and since it is the petitioner's case that no enquiry has also commenced, at this stage I am of the view that respondents should comply with the direction of payment of subsistence allowance at the rate of 75% of the last drawn wages of the petitioner and should accordingly disburse the same in favour of the petitioner along with arrears as may have fallen due and should continue to pay the same till such time either the suspension is lifted or the petitioner attains the age of superannuation or the contemplated enquiry proceedings is initiated and reaches the logical conclusion.

5. Although the learned advocate for the petitioner would insist that the order of suspension cannot be continued in the given fact, I am of the view the right of the employer to initiate departmental proceedings cannot be taken away, though it is expected that the

employer should proceed against the delinquent employee within a reasonable period.

6. Since nothing survives in the present writ petition, the same is accordingly disposed of.

(Raja Basu Chowdhury, J.)