

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN
WPA 6047 of 2018

Sasti Pada Mondal..
-Vs-
Durgapur Chemicals Ltd. & Ors.

For the Petitioner: Mr. Timir Kumar Saha, Adv.

For respondent nos. 1 to 5: Mr. Ranajay De, Sr. Adv.,
Mr. Basabjit Banerjee, Adv.,
Mr. Adityjit Abel, Adv.

Hearing concluded on: 13.01.2025

Judgment on: 13.01.2025.

PARTHA SARATHI SEN, J. : –

1. By filing the instant writ petition the writ petitioner has prayed for issuance of appropriate writ against the respondents/authorities for setting aside and/or quashing its reasoned order dated April 14, 2017 whereby and whereunder the writ petitioner's requests for reinstatement, was not considered favourably by the respondent no. 3.
2. For effective adjudication of the instant *lis*, the facts leading to filing of the instant writ petition are required to be dealt with in a nutshell and those are as under:
 - i) According to the writ petitioner he was a Group – 'D' staff as 'Shramik' under the respondents/authorities;

- ii) On 26.08.2001, an allegation of theft was leveled against the writ petitioner by the respondents/authorities. Consequently, an FIR was lodged against him in the jurisdictional Police Station under Section 479/411 IPC and thus, a criminal case was initiated by the said jurisdictional Police Station;
- iii) On 28.08.2001, the writ petitioner was suspended from his employment;
- iv) On 05.09.2001, a charge-sheet was submitted against the writ petitioner;
- v) On 02.11.2001, enquiry officer issued a letter to the delinquent informing the next date of enquiry proceeding has been fixed on 20.11.2001;
- vi) On 07.12.2001, the enquiry authority submitted its finding with regard to the charges as framed against the delinquent;
- vii) On 12.02.2002, the writ petitioner was dismissed from service by the respondent no. 2/authority;
- viii) On 16.06.2014, the writ petitioner was acquitted from the criminal case as initiated against him;
- ix) On 19.08.2015, the writ petitioner submitted a representation before the respondents authorities for reinstating him in the service on account of his acquittal, however, the same was not considered favourably;
- x) On 07.12.2015, the writ petitioner sent a legal notice to the respondents/authorities which was also not *adhered* to;

- xi) The writ petitioner approached this High Court by filing WP 27266 (W) of 2016 before a co-ordinate Bench wherein the said co-ordinate Bench disposed of the said petition directing the respondent no. 3 herein to consider and dispose the representation dated August 19, 2015 as submitted by the writ petitioner in accordance with law and the rules governing in the field within a specified time;
 - xii) Pursuant to the said order and judgment dated 15.02.2017, the reasoned order came to be passed which was under challenge in the instant writ petition.
3. In course of his submission, Mr. Saha, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to Page No. 32 of the affidavit-in-opposition. It is submitted that from Page No. 32 of the affidavit-in-opposition being Annexure R-1, it would reveal that one Nepal Chandra Nayak, SSI, IC of the respondents/authorities had lodged a complaint in writing against the delinquent who is the petitioner herein alleging theft by the writ petitioner on 26.08.2001.
4. In course of his submission, Mr. Saha draws attention of this Court to Page No. 42 to 45 being the copy of the judgment and order of acquittal as passed by the Jurisdictional Magistrate in G.R. Case No. 805 of 2001. Drawing attention of this Court to the judgment and order dated 16.06.2014 as passed in G.R. Case No. 805 of 2001, it is contended by Mr. Saha that in the said criminal proceeding, the said

informant has been arrayed as a prosecution witness and the learned Judicial Magistrate while passing the said order of acquittal, found that the evidence of P.W. 1 is not at all trustworthy to bring home the charges as framed against the accused. Learned Judicial Magistrate further found that the P.W. 2 stated nothing against the accused in the said criminal trial and thus, the accused who is the writ petitioner before this Court was honourably acquitted from the said criminal trial.

5. In his next fold of submission, Mr. Saha draws attention of this Court to the copy of the proceedings and findings of the enquiry authority at page 55 of the affidavit-in-opposition. It is submitted that in the said enquiry proceeding, the self-same defacto complainant i.e., Nepal Chandra Nayak, Sub-Inspector, Security of the respondents deposed against the writ petitioner as P.W. 1 and the enquiry authority while coming to its finding, heavily placed reliance upon the evidence of the said P.W. 1 and came to a conclusion that the charge as levelled against the writ petitioner has been proved.
6. It is thus submitted by Mr. Saha that it thus reveals that both the enquiry proceedings as conducted by the respondents/authorities and the criminal trial as faced by the present writ petitioner before the Jurisdictional Magistrate are based on same allegation of facts and appreciation of self-same evidence adduced by the self same person and, therefore, the finding of the criminal court has the overriding effect over the finding of the domestic enquiry.

7. Drawing attention to Clause 21(c)(ii) of the 'standing order for workmen employed in Durgapur Chemicals Ltd.' (hereinafter referred to as the 'said standing order' in short), it is argued by Mr. Saha that the said standing order clearly postulates that in the event, a workman is found to be 'not guilty' of the charge in a criminal proceeding, he would be deemed to have been on duty during the period of suspension and, therefore, the respondents/authorities are not justified in passing the order declining reinstatement of the writ petitioner as prayed for.
8. In course of his submission, Mr. Saha, learned advocate for the writ petitioner places his reliance upon the following reported decisions, namely, **Captain M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr.** Reported in **AIR 1999 SC 1416** and **State of West Bengal & Ors. Vs. Vidyasagar Pandey & Anr.** Reported in **2011(1) CLJ (Cal) 57.**
9. On being asked by this Court, Mr. Saha however admitted that challenging the order of dismissal as passed by the disciplinary authority on the basis of the finding of the enquiry authority, the writ petitioner has not preferred any writ petition, however, Mr. Saha strongly contended that subsequently the order and judgment of acquittal as passed in G. R. Case No. 805 of 2001 by the Jurisdictional Magistrate empowers the writ petitioner to approach this Court by filing the instant writ petition for ventilating his grievance purely on the question of law that in the domestic enquiry

proceeding and in the criminal trial, the allegations against the writ petitioner are same and in both the proceedings, the same set of evidence has been adduced. However, in the criminal trial, an order of acquittal was passed which empowers the writ petitioner to seek reinstatement in service as per the prevailing law of the land.

10. Per contra, Mr. Dey, learned advocate appearing on behalf of the respondent authorities at the very outset draws attention of this Court to the order dated 14.06.2018 as passed by a coordinate Bench to the writ petition, wherein the maintainability of the writ petition was kept open. It is submitted by Mr. Dey that it is an admitted position that the writ petitioner is a workman and, therefore, his relief is embodied in the Industrial Dispute Act, 1947 (hereinafter referred to as the 'said Act of 1947'). In course of his argument, Mr. Dey draws attention of this Court to Sections 2(k), 2(s) and Section 2A of the said Act of 1947. It is submitted by Mr. Dey that on conjoint perusal of the said provisions of the Act of 1947, it would appear that the writ petitioner being a workman ought to have approached the appropriate authority/authorities under Chapter IV of the said Act of 1947 and thus, for not availing alternative efficacious remedy/ remedies the instant writ petition is not maintainable.
11. In his next fold of submission Mr. Dey contends that it is also an admitted position that the order of acquittal was passed after 13 years from the date of dismissal of the writ petitioner from his

service. It is further submitted by Mr. Dey that at the time of passing of the order of dismissal there was no occasion on the part of the enquiry authority to come across the findings of the learned Judicial Magistrate while disposing G.R. Case No.805 of 2001.

12. It is further contended by Mr. Dey that the subsequent order of acquittal cannot have any overriding effect over the order of dismissal of the writ petition in view of the fact that in the domestic enquiry and in the criminal trial different sets of evidence were adduced and further, the mode of proof in a domestic enquiry differs much from the mode of proof in a criminal trial since in the former one, the mode of proof is based on preponderance of probability whereas in the later the degree of proof is much higher that is of beyond reasonable doubt.
13. In course of his submission Mr. Dey places reliance upon the following decisions: i) ***Management of Bharat Heavy Electricals Limited versus M. Mani*** reported in ***(2018) 1 Supreme Court Cases 285***, (ii) ***State of West Bengal and Others versus Sankar Ghosh***, reported in ***(2014) 3 Supreme Court Cases 610*** (iii) ***General Manager (Operations) State Bank of India and Another versus R. Periyasami***, reported in ***(2015) 3 Supreme Court Cases 101*** (iv) ***Arjun Hazra versus Coal India, Ltd. and Others***, reported in ***2001 (4) L.L.N. 1057*** and (v) ***Nirmalendu Roy versus Steel Authority of India and Another***, reported in ***1999 SCC OnLine Cal 433***.

14. This Court has meticulously perused the entire materials as placed before this Court. This Court has given its anxious consideration over the submissions of the learned advocates for the contending parties.
15. Since on behalf of the respondents the question of maintainability of the instant writ petition has been raised, this Court proposes to deal with the said point at the very outset.
16. Before entering into the factual aspects of the instant writ petition, some provisions of the said Act of 1947 are required to be looked into and those are as under:-

Section 2(k)

“(k) “industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”

Section 2(s)

“(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- (ii) who is employed in the police service or as an officer or other employee of a prison; or*
- (iii) who is employed mainly in a managerial or administrative capacity; or*
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”*

Section 2A

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.— Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.”

17. Undisputedly, the writ petitioner is a workman within the meaning of Section 2(s) of the said Act of 1947. The dispute between the writ petitioner and the respondent authorities also comes under the purview of the Industrial Dispute within the meaning of Section 2(k) of the said Act of 1947. Since the writ petitioner was dismissed from service by the respondent authorities, it also comes under the

Industrial Dispute within the meaning of Section 2A of the said Act of 1947.

18. Admittedly, challenging the order of dismissal, the writ petitioner has not raised any industrial dispute within the meaning of Section 2A before the appropriate authority. However, on careful consideration of the entire materials as placed before this Court, it appears to this Court that it is the case of the writ petitioner that a valuable right has accrued in favour of him after obtaining the judgment and order of acquittal in the aforementioned criminal trial for his reinstatement in the service and for non-consideration of his said right by the respondent authorities by passing the impugned order, his right to life as enshrined in Article 21 of the Constitution of India has been violated and, therefore, the action of the respondent authorities are amenable to the writ jurisdiction and the same cannot be taken away by any legislation and/or subordinate legislation.
19. This Court on careful consideration of the entire materials as placed before this Court finds sufficient merit in the submission of Mr. Saha that the writ petitioner's constitutional remedy cannot be curtailed on account of accrual of a valuable right following the judgment and order of acquittal as passed by a criminal court and thus, this Court holds that even though the writ petitioner has not availed the alternative remedy under the said Act of 1947, the instant writ petition cannot be held to be not maintainable. In view of such, this

Court thus, holds that the instant writ petition is very much maintainable.

20. In considered view of this Court the reported decision of **Nirmalendu Roy (supra)** and **Arjun Hazra (supra)** as cited on behalf of the respondent authorities are distinguishable from the facts and circumstances of the instant case and in further considered view of this Court those have got no application in the instant writ petition since in the said two reported decisions it has been held that without availing the efficacious and alternative remedy under the said Act of 1947, invoking the writ jurisdiction of the High Court is not permissible.
21. So far as the reported decision of **Vidyasagar Pandey (supra)** as passed by a Division Bench of this Court and as cited from the side of the writ petitioner has also got no application in the instant writ petition in view of the fact that in the said reported decision the Hon'ble Division Bench of this Court noticed that the disciplinary authority failed to consider the contradictory evidence as adduced by the self-same P.W.s both in the disciplinary enquiry and in the criminal proceeding. The said reported decision of **Vidyasagar Pandey (supra)** is distinguishable from the facts and circumstances of the instant case in view of the fact that the disciplinary authority when came to its finding, that is, on 7.12.2001 the said authority had got no scope to consider the evidence of the P.W.s as recorded in

the said G.R. Case No.805 of 2001 since such evidence was recorded in the year 2014.

22. However, in considered view of this Court, the reported decision of **Capt. M. Paul Anthony (supra)** is very much relevant for effective disposal of the instant writ petition and the relevant portion of the said judgment is reproduced hereunder in verbatim.

1. *“As we shall present see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution*

beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.”

23. This Court has also perused the reported decision of **R. Periyasami (supra), Sankar Ghosh (supra) and Management of Bharat Heavy Electricals Limited (supra)** as cited from the side of the respondents wherein it has been consistently held by the Hon’ble Supreme Court that standard of proof in domestic enquiry is based on preponderance of probability while in a criminal trial the same is based on beyond reasonable doubt as has been held in the case of **Capt. M. Paul Anthony (supra)**. However, in the reported decision of **Capt. M. Paul Anthony (supra)** the Hon’ble Apex Court noticed a little exception that is, where the departmental proceeding and the criminal case are based on same set of facts and the evidence in both the proceedings is common without there being a variance.
24. At this stage, if I look to the judgment and order of acquittal dated 16.06.2014 as passed in G.R. Case No.805 of 2001 by the learned Judicial Magistrate, it appears that the said criminal case was started on the basis of an allegation of theft by the de facto complainant, who in the said trial adduced evidence as P.W.1. Learned Judicial Magistrate found that the evidence of P.W.1 in the said criminal trial is not convincing in order to bring home the

charges as against the accused and thus, in absence of any cogent evidence acquitted the accused by passing the said judgment.

25. At this stage, if I look to the proceedings and findings of the enquiry as has been annexed at Page 55 to 63 of the affidavit-in-opposition, it appears that in the said proceedings the self-same de facto complainant, namely; Nepal Chandra Nayek adduced evidence as P.W.1 and he was cross-examined by the delinquent. It further reveals that one Mihir Kumar Bhattacharjee, one of the eyewitnesses to the alleged incident of theft also adduced evidence in support of the allegation as levelled against the delinquent. Apart from that the enquiry authority also considered an admission on the part of the delinquent which has been exhibited before him.
26. It thus appears to this Court that the finding of the domestic enquiry authority and the finding of the Judicial Magistrate are not based on self-same evidence. Therefore, by no stretch of imagination it can be said that the judgment of acquittal as passed in the said criminal trial had an overriding effect over the finding of the domestic enquiry which was concluded 13 years back.
27. On careful consideration of the entire materials as placed before this Court, it further appears to this Court that it is not the case of the writ petitioner that before the enquiry authority principle of natural justice has not been followed. On the contrary, sufficient materials have been placed before this Court to substantiate that the

delinquent was given opportunity to adduce evidence and he had also availed the opportunity to cross-examine the P.W.s.

28. It is settled position of law that in a judicial review a writ Court is not supposed to act as an appellate authority and, therefore, the writ Court is not expected to re-appreciate the evidence as an appellate court. Exercise of writ jurisdiction, in considered view of this Court is permissible if it is proved that there is illegality in the decision making process and/or the finding of the enquiry authority is based on extraneous evidence and/or such finding is wholly arbitrary and capricious.
29. In course of hearing the writ petitioner has measurably failed to make out a case for invoking writ jurisdiction of this Court for interfering with the reasoned order as passed by the respondent authorities, more specifically by the respondent no.3. This Court finds that the finding of the respondent no.3 while passing the reasoned order dated 14.04.2017, is absolutely logical and, thus, called for no interference.
30. The instant writ petition is devoid of any merit and is thus dismissed on contest.
31. However, there shall be no order as to costs.
32. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)