

08.01.2025
Court No.23
ML -11
(Milan)

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 24206 of 2024

**Dipanwita Mandal
versus
The State of West Bengal & Ors.**

Mr. S. Das,
Mr. Chiranjit Pal,

.... for the Petitioner

Mr. Joydip Banerjee,
Mr. Prabir Kumar Ray

....for the State

The petitioner is admittedly an employee under the Government of West Bengal and holding a civil post. The petitioner says that an order of suspension was issued against the petitioner in contemplation of a disciplinary proceedings, subsequently by issuance of charge sheet the disciplinary proceedings have been initiated. The petitioner says that the disciplinary proceedings have been initiated against the petitioner as she had declared her mother to be her dependant for the purpose availing the medical benefits as a dependent member. The petitioner's mother is, however, receiving family pension after the death of the petitioner's father. The disciplinary proceedings encircles around such action of the petitioner. The petitioner has already withdrawn her application to treat the petitioner's mother as her dependant. The petitioner is also willing

to refund if any benefit has been received while treating the petitioner's mother as her dependent.

In that view of the matter, the petitioner says that the entire cause of action for proceeding against the petitioner is no more in substance. The petitioner has approached this Court on the ground that the West Bengal Administrative Tribunal (in short, "WBAT") constituted under the Administrative Tribunal Act, 1985 (hereinafter referred to as, "1985 Act") is virtually in-operational as it is functioning only through an administrative member as there is no judicial member or chairman appointed for the said Tribunal. Although, the provisions of Section 15 read with Section 28 and 3(q) of the 1985 Act, create an embargo on this Court to entertain a writ petition as the ordinary forum is the WBAT. Since WBAT is not functioning in true sense, the petitioner relies upon the ratio laid down in ***Rojer Mathew vs. South Indian Bank Ltd.*** reported in **2020 (6) SCC 1** and submits that the jurisdictional High Court being this Court can entertain the writ petition even if there is a statutory alternative remedy available to the petitioner as held in **2020 (17) SCC 602 [AIIMS vs. Sanjiv Chaturvedi & Ors.]**. The petitioner also says that she will be for all practical purpose remediless, if directed to approach the WBAT.

On behalf of the State, it is submitted that this Court lacks the jurisdiction to receive, try and determine

the writ petition. In view of embargo under the provisions of 1985 Act, there is also suppression of material fact by the petitioner which has led to the initiation of the disciplinary proceedings.

An order of suspension can be interfered with on the grounds enumerated in judgment reported in **2006 (8) SCC 200 [Jayrajbhai Jayantibhai Patel vs. Anilbhai Nathubhai Patel & Ors.]** which has been subsequently approved in **2013 (16) SCC 147 [Union of India & Anr. Vs. Ashok Kumar Aggarwal]**.

The issuance of charge sheet is also normally not interfered with as the same does not affect the right of the employee as held in **AIR 2024 SC 2252 [Babu Sahebagouda Rudragoudar & Ors. Vs. State of Karnataka]**. A disciplinary proceedings is also not interfered with unless it is in violation of any service rule or initiated arbitrarily on patently illegal grounds. A disciplinary proceedings is permitted to be brought to a logical conclusion so that the employee concerned can challenge the final order.

In the instant case, since the Tribunal is virtually non-operation and considering the relief claimed by the petitioner instead of relegating the petitioner to espouse her cause before the WBAT, I am minded to direct the Enquiry Officer to consider the petitioner's representation dated 4th September, 2024, submitted through an electronic mail and the physical

representation dated 6th September, 2024 submitted subsequent to the electronic mail and if necessary file an appropriate report before the Disciplinary Authority for consideration before further proceeding with.

I, however, make it clear that I have gone into the merits of the matter and it will be open to the Enquiry Authority and the Disciplinary Authority to form their respective opinion independently without being influenced by any observation made in this order.

It is made clear that there shall be no stay of the disciplinary proceedings in the event that the Enquiry Authority or the Disciplinary Authority finds the representation dated 4th September, 2024 or 6th September, 2024 to be devoid of merits.

The disciplinary proceedings, in such a case, should be brought to a logical conclusion. It is also made clear that entertaining the writ petition will not give a right to the petitioner to challenge the order of the Disciplinary Authority or in connection with the disciplinary proceedings before this Court, if the WBAT functions, since this writ petition is entertained.

Nothing further remains to be adjudicated in the writ petition, the same is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)