

17.03.2025

Item no.DL/9
Court No. 23

Asraf, A.R.(Ct.)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Case No. **WPA 28798 of 2024**

APURBA CHAKRABORTY

....Writ Petitioner

VS.

THE STATE OF WEST BENGAL & ORS.

....Respondents

For the Writ Petitioner :

Ms. Nilanjana Adhya

Mr. S. N. Agarwal

Ms. Bishalaxmi Ghosh

....Advocates

For the State :

Mr. Tapan Kumar Mukherjee, Sr. Advocate

Mrs. Ipsita Banerjee

Mr. Somnath Naskar

....Advocates

The petitioner has challenged the final order passed by the disciplinary authority on 9th September, 2024 by which the petitioner was dismissed from his services. The petitioner was admittedly holding a civil post under the State by virtue of serving the office of the Executive Engineer (PWD), Kolkata South Health Division of the Government of West Bengal. The petitioner's services are, therefore, governed by the provisions of West Bengal Services (Classification, Control & Appeal) Rules, 1971. The said Rules also provide for a statutory appeal provision. The petitioner has already invoked the appellate jurisdiction under the said Rules challenging the self-

same order of dismissal dated 9th September, 2024. The petitioner says that the order of dismissal and the entire disciplinary proceeding have been conducted in such a manner that the same is *ex facie* without jurisdiction and is also arbitrary on disproportionate punishment having been imposed. The petitioner can, therefore, challenge the order of dismissal even by invoking Article 226 of the Constitution of India without proceeding with the appeal filed under the 1971 Rules. The petitioner also says that an alternative remedy is not an absolute bar in maintaining a writ petition.

There is no dispute in respect of the proposition that alternative remedy is not an absolute bar in maintaining a writ petition but the statutory provisions under the 1971 Rules stand in the way. In the instant case, being a Government employee holding a civil post under the State. Any challenge relating to the service matter has to be, therefor, before the West Bengal Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 in view of the provisions of Section 50 read with Section 28 and 3(q) of the said Act.

Without going into the merits of the matter assuming without admitting that the order passed by the disciplinary authority is without jurisdiction then also it has to be challenged before the West Bengal

Administrative Tribunal and not directly under Article 226 of the Constitution of India before the High Court. The High Court does not have jurisdiction to receive, try and determine the writ petition wherein there is a statutory embargo in view of the 1985 Act. This position has been clarified in the judgment reported in (2020) 17 SCC 602 (AIIMS vs. Sanjiv Chaturvedi & Ors.).

In the aforesaid facts and circumstances, I am of the view that this Court lacks the jurisdiction to receive, try and determine the writ petition. I, however, make it clear that I have not gone into the merits of the matter and, as such, the petitioner shall be free to agitate all the points on merit before the appellate authority or before any other forum wherein the petitioner can ventilate his grievances in accordance with law.

The writ petition is not entertained before this Court and, accordingly, stands **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.)