

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

W.P.S.T. 122 of 2023

State of West Bengal & Ors.

Vs.

Biswanath Das

With

W.P.S.T. 118 of 2023

State of West Bengal & Ors.

Vs.

Biswanath Das

For the Petitioners/ State. : Mr. Tapan Kumar Mukherjee, Ld. AGP,
Mr. Pinaki Dhole,
Ms. Debdooti Dutta

For the Respondent : Mr. M. N. Roy,
Mr. G. Haldar,
Mr. B. Nandy

Judgment on : May 18, 2025.

Madhuresh Prasad, J.:

In Re: W.P.S.T. 122 of 2023

1. An order dated 06.09.2022 passed by the West Bengal Administrative Tribunal ('*Tribunal*' for short), in M.A No. 98 of 2022 whereby and whereunder the prayer for extension of time, granted earlier by the

Tribunal vide order dated 22.12.2020 passed in O.A. No. 406 of 2020 for concluding the Departmental Proceeding was rejected is the subject matter of WPST 118 of 2023.

2. WPST 122 of 2023 was filed challenging an order dated 18.05.2023 passed by the Tribunal in O.A No. 53 of 2023, directing for release/payment of admissible full pensionary benefits to the applicant since the punishment order dated 16.01.2024, passed after rejection of the prayer for extension of time, was held vitiated and could not be made the basis of depriving the petitioner of his pensionary benefits.
3. Heard the learned AGP on behalf of the State (writ petitioners), and the learned advocate representing the respondent.
4. By an order dated 22.12.2020 passed in O.A. 406 of 2020, the Tribunal directed for conclusion of the Disciplinary proceedings within six months. Miscellaneous Application (M.A. 98 of 2022) was filed on 24.08.2022 seeking extension of time fixed by the Tribunal. The same was rejected. The present writ petition is filed assailing an order passed in M.A. 98 of 2022, dated 06.09.2022 by the Tribunal.
5. At the very outset it is submitted by the learned AGP that the applicant did not challenge the punishment order dated 16.01.2024. Therefore, no relief can be granted to the applicant.
6. The learned AGP submits that the order dated 22.12.2020 was passed in the Original Application when there were substantial restrictions due to the national lockdown imposed due to covid-19 pandemic. The authorities, therefore, were incapacitated in taking the matter to its logical conclusion within the time stipulated by the Tribunal.

7. Learned AGP referred to an order dated 23.02.2022 passed by a five Judges Bench of this Court in a *suo moto* proceeding bearing W.P.A. No. 5323 of 2020. The special bench took notice of the fact that the Apex Court in *suo moto* writ petition bearing W.P.(Civil) No. 3 of 2020 passed orders extending the limitation under the various provisions taking into consideration the national lockdown. The Special Bench, however, was of the view that continuance of interlocutory orders which were in force was also an issue which required consideration. Therefore, the Special Bench, on 23.02.2022 passed the following order:

“All that remains is the continuance of interlocutory orders which are in force in terms of the original order issued in the writ petition namely, W.P.A. 5323 of 2020 and extended from time to time, which as of now, stand extended till February 28, 2022.

We do not see any reason to extend the original order any further beyond February 28, 2022, except as regards the matters which we specifically order hereinbelow.

Conditional orders of Courts including those relating to occupation of any premises subject to payment of rent or occupational charges will continue, notwithstanding the non-deposit of the rent or occupation charges during the period 28th February, 2022 to 15th March, 2022. Similarly, rent or occupation charges not deposited in terms of the rent control legislations will not immediately make the tenant or occupant liable for eviction till 15th March, 2022 or earlier contrary orders of Court.

This order will also apply to orders pertaining to the Original Side of this Court.

This order be published on the official website of this Court and also be communicated to the Courts subordinate to this Court and all Tribunals; Learned Advocate General; Learned Additional Solicitor General; and the Presidents and Secretaries of the three wings of the Bar in this Court with a request to circulate the same among lawyers, litigants and other interested.”

8. It is submitted that all conditional orders, therefore, stood extended till 28.02.2022. The order of the Court was communicated to all Tribunals as is obvious from a plain reading of the order. Therefore, the time limit or condition imposed in the order dated 22.12.2020 passed in O.A. 406 of 2020 stood extended in terms of the order passed in W.P.A. 5323 of 2020.
9. The Tribunal was approached by filing a Miscellaneous Application seeking extension of the time limit for a further period of six months. The Tribunal without considering this aspect of the matter rejected the Miscellaneous Application by assigning a reason that after expiry of six months from the order dated 22.12.2020, the Tribunal had become *functus officio*. The order dated 06.09.2022 in M.A. 98 of 2022 is unsustainable, in light of the order passed in W.P.A. 5323 of 2020.
10. It is also submitted that finding regarding the Tribunal becoming *functus officio* is also unsustainable, in view of Section 22(3)(f) of the Administrative Tribunal Act, which acknowledges the Tribunal's power of review.
11. It is further submitted that the authorities have taken all steps to expeditiously conclude the proceeding. The Tribunal's order dated 22.12.2020 was immediately communicated to the Governor Secretariat, on 28.01.2021. Thereafter, it was followed up by issuance of a communication on 19.05.2022. Despite the authorities pursuing the matter diligently, decision could not be taken.
12. It is further submitted that in the present case prior to passing of a penal order against the applicant concurrence was required from his

excellency, the Governor. The concurrence was not forthcoming. Therefore, the authorities could not pass the final order/s in the departmental proceeding within the stipulated time. Immediately after concurrence was accorded from the Governor, the punishment order dated 16.01.2024 was passed.

13. The learned AGP submitted that the delay occurred due to unavoidable reasons beyond the control of the authorities responsible for concluding the proceeding within the stipulated time.

In Re: W.P.S.T. 118 of 2023

14. The second Original Application bearing O.A. No. 53 of 2023 was filed by the applicant seeking the following relief:

“10. RELIEF (S) SOUGHT FOR:

(a) A mandatory direction do issue upon the concerned respondent authorities, particularly upon the Secretary, Public Works Department, Government of West Bengal, respondent no.1 herein, to forthwith disburse/release all the due terminal benefits including regular pension with arrears alongwith 18% interest accrued thereon upto the actual date of payment for such delayed payment in favour of the applicant who retired from service on superannuation on 31.12.2015 after taking into account the fact that the impugned Departmental Proceeding so drawn up against the applicant under Memorandum No. 183-E 9Vig) dated 16.10.2012 has already been vitiated in terms of the solemn Orders dated 22.12.2020 and 23.10.2020 of this Hon’ble Tribunal passed in OA No. 406 of 2020, being Annexure- ‘A’ and ‘B’ herein, and to command them to act strictly in accordance with law;

(b) A direction do issue upon the concerned respondent authorities to produce and / or cause to be produced the entire records relating to the applicant’s case and

on such production being made, render conscionable justice upon perusing the same;

(c) And/or to pass such other or further Order or Orders as to this Hon'ble Tribunal may deem fit and proper."

This Original Application was allowed by the Tribunal by its order dated 18.05.2023. The same is also put to challenge by the State in the second writ petition.

15. The submissions with respect to the relief granted by the Tribunal to the applicant in the second Original Application bearing O.A. No. 53 of 2023 are substantially the same as have been advanced in support of the earlier writ petition. It is submitted that since the writ petitioner has made out a case justifying the delayed conclusion of the proceedings, the punishment order dated 16.01.2024 is legally sustainable and the order of the Tribunal granting relief to the petitioner is unsustainable and fit to be set aside.
16. The learned advocate for the applicant/respondent submits that the relief was rightly granted by the Tribunal since the authorities took no steps to comply with the order of the Tribunal and failed to pass an order in the departmental proceeding within the time stipulated in the order of the Tribunal dated 12.12.2020 passed in OA No.406 of 2020.
17. It is submitted that the law in this regard has recently been stated by the Apex Court in a decision rendered in the case of ***State of Uttar Pradesh through Principal Secretary, Department of Panchayati Raj, Lucknow -Vs.- Ram Prakash Singh*** reported in ***2025 SCC OnLine SC 891***. The Apex Court has dealt with the manner in which an authority is expected to act in a similar circumstance, having failed to

pass an order in a departmental proceeding within the time frame specified by the judicial forum. In the present case, the authorities have not taken any care to comply with the time frame specified by the Tribunal. Their actions are in violation of the law stated by the apex court in the case of **Ram Prakash Singh** (*supra*).

18. The learned advocate has further submitted that an objection raised by the writ petitioner that the applicant did not challenge the final order of punishment dated 16.01.2024, is devoid of any substance whatsoever. As per decision of the apex court in the case of **Ram Prakash Singh** (*supra*), the authorities could not have passed the order dated 16.01.2024 and were required to await the decision of these two proceedings pending before this Court, arising out of the order passed in M.A. 98 of 2022, and O.A No.53 of 2023. Therefore, the order dated 16.01.2024 having passed in violation of the Tribunal's order; and having failed to obtain an extension for passing such an order, is of no consequence to the writ petitioner.

19. It is further pointed out that this Court by an interim order dated 30.01.2024 passed earlier in the present writ proceedings, already made implementation of the punishment order dated 16.01.2024, for withholding of 20% pension, conditional. The order dated 30.01.2024 reads:

"In such conspectus, in our opinion interest of justice will be subserved if the petitioners are directed to release all the retirement benefits including the gratuity amount upon deduction of amounts in terms of the order of punishment.

Accordingly, the petitioners are directed to release all the retirement benefits including the gratuity amount and pension upon deduction 20% of the pension for a period of five years

commencing from 2015 to the respondent positively within a period of four weeks from date of receipt of a copy of this order.

As we have kept the above issues alive and left those issues to be decided at the time of final hearing of both the writ petitions, the payment of aforesaid amounts shall be without prejudice to the rights and contentions of the parties and the interim order passed in the above writ petitions shall continue till the disposal of both the writ petitions.”

20. We find that a charge memo was issued against the applicant on 16.10.2012, and an enquiry was conducted. The petitioner retired on 31.12.2015, during pendency of the departmental proceeding. A second show cause notice was issued on 07.06.2018. Reply to the second show cause notice was submitted by the applicant on 12.07.2018. However, the Disciplinary Authority did not take any steps to conclude the proceeding. The writ petitioner filed the OA 406 of 2020, wherein an order was passed on 22.12.2020 for concluding the departmental proceeding within 6 months.

21. In the meantime the applicant attained the age of superannuation. The proceeding thereafter was covered by the West Bengal (Death Cum Retirement Benefit) Rules, 1971 (hereinafter in short DCRB). In view of Rule 10.1 of the DCRB the conclusion of the disciplinary authority proposing a pension cut off of 20 per cent for a period of 5 years, after its ratification by the Public Service Commission (PSC), was sent for concurrence to the Governor's Secretariat. Therefore, the matter was pending before the Governor's Secretariat since prior to passing of the order dated 22.12.2020, whereby and whereunder the Tribunal directed for concluding the proceeding within six months. Concurrence was received from the Governor's Secretariat by a communication issued

under the signature of the Senior Special Secretary of Hon'ble Governor dated 27.12.2023. The order was communicated on 10.01.2024 to the Technical Secretary PWD by the Deputy Secretary, Vigilance, Public Works Department.

22. The State/writ petitioner claims to have sent a communication dated 28.01.2021 to the Governor's Secretariat immediately after the Tribunal's order dated 22.12.2020 for concluding the proceeding in accordance with law. A copy of the Peon Book is annexed in support of such statement made in the writ petition. The purported communication, however, was not placed on record.

23. It is submitted by the learned AGP that the writ petitioner and other state authorities were awaiting consent of his Excellency the Governor and they cannot be faulted for the delay which occurred in conclusion of the proceedings.

24. We have considered the submission of the learned Advocates representing the parties. We have also perused the records. The issue arising for consideration was formulated by this Court in its earlier Order dated 30.01.2024, in the following terms:

"Indisputably, taking the subsequent events into account, the arena of the dispute has now been confined within a narrow compass. Shortly put, the issues involved in these writ petitions are i) Whether the disciplinary proceeding which was concluded after expiry of the period specified by the learned Tribunal stood vitiated or not; and ii) whether the order of penalty whereby a direction was given to deduct 20% of the pension of the respondent for period of five years can be sustained or not."

25. At the very outset we find from the extract of the order of 30.01.2024, that this Court has already taken into account an event, subsequent to filing of the present two writ petitions, being the order of punishment

dated 16.01.2024. By the order dated 30.01.2024, this court allowed the State to make payment of retirement benefits upon deduction of 20% in terms of the punishment order, but without prejudice to the rights and contentions of the parties. The consequences of the punishment order was also made conditional and dependent upon final order to be passed in the present proceeding. The interim order dated 30.01.2024 was passed after hearing the writ petitioner as well as the respondent. An issue was also formulated by this court's earlier order dated 30.01.2024 whether the punishment order dated 16.01.2024 was sustainable or not. The punishment order dated 16.01.2024 was brought on record by the writ petitioners by filing supplementary affidavit dated 25.01.2024. Therefore, there is no room for doubt that the punishment order dated 16.01.2024, is already substantially an issue in the writ proceedings and it does not lie in the mouth of the writ petitioners to now contend that the same was not challenged, or that sustainability of the punishment order dated 16.01.2024 cannot be gone into in the present proceedings.

26. We would only record that the form and substance of the punishment order dated 16.01.2024, is not an issue in the instant proceedings. This court would not examine the correctness or sustainability of the conclusion recorded therein. The only issue to be considered is whether the punishment order could be passed after expiry of the period stipulated for passing such an order, by the Tribunal in OA No. 406 of 2020.

27. We, therefore, see no relevance in the objection raised by the writ petitioners regarding the punishment order dated 16.01.2024, not being formally challenged. The formal plea would be required only if the merit of the order was required to be looked into within the scope of judicial review, to examine whether it was founded on material, without considering extraneous material, observing the procedural formalities, and whether the order was vitiated on account of perversity. Such issues do not arise in the present writ proceedings. The issue is only whether after expiry of the time frame stipulated by the Tribunal in OA 406 of 2020, the punishment order dated 16.01.2024 could be passed or not. Therefore, in our view such objection is unfounded and we overrule such objection raised by the writ petitioners.

28. We, therefore, proceed to consider the plea raised by the writ petitioner that the authorities were helpless since the consent from His Excellency the Governor was mandatory under the rule and the same was not forthcoming.

29. We find that pendency of the matter before the Governor was well-known to the respondent authorities when the Tribunal passed the order in OA 406 of 2020. If the authorities were of the view that the consent could not be obtained from the Governor, within six months they should have raised objection before the Tribunal regarding fixing of such time frame. The authorities did not object to six months' time limit prescribed by the Tribunal. Even if the authorities did not raise any objection at the time of passing of the order, when the time frame was nearing completion, and they had not received consent from the Governor

Secretariat, it was open to the writ petitioner to seek extension of the time by making an application in this regard before the Tribunal, before the time (six months) lapsed, which also they have chosen not to do.

30. The Tribunal's order dated 22.12.2020 in OA 406 of 2020 fixed a time frame of six months, which was to lapse in last week of June 2021. Therefore, an application for extension of time was required to be filed by the writ petitioner within the above period, unless they could show sufficient reasons justifying the making of an application thereafter. An application for extension of time bearing MA No. 98 of 2022 however, was affirmed and filed casually more than a year after the time lapsed, i.e. on 24.08.2022. Therefore, plea regarding pendency of the matter before the Governor is irrelevant and devoid of any substance to sustain the affront attitude of the respondent authorities, manifest from the punishment order dated 16.01.2024. The punishment order was passed contrary to, and in fact in violation of Tribunal's order dated 22.12.2020 in OA No. 406 of 2020; and order dated 06.09.2022 passed in MA No.98 of 2022 rejecting the State writ petitioner's plea for extension of time for concluding the proceeding.

31. Despite knowledge of the fact that the matter was pending consent of the Governor, the authorities neither took an objection to fixation of the six month's time limit nor did they seek extension of such time limit within the stipulated time frame. The authorities have no one to blame but themselves for such inaction on their part. This inaction on the part of the respondent authorities in not making an application for extension of time before the Tribunal for concluding the proceeding cannot in any

way be justified by raising a plea that they were waiting for concurrence from the Governor.

32. Considering the full bench decision of the Allahabad High Court the Hon'ble Supreme Court of India, in the case of **Ram Prakash Singh** (*supra*) affirmed the view taken by the full bench and clarified certain points which were not considered by the full Bench. The Apex Court held that it is desirable to obtain an extension before expiry of the time limit. However, even after expiry of the stipulated time such an application can be moved, in exceptional cases. The request however, is to be considered depending on the reasons stated for inability or failure to conclude the proceeding within the time stipulated. While doing so the authority is also required to give reasons for not applying, for extension of time before expiry of the time specified by the court/tribunal. If an application for extension is rejected then the disciplinary authority could not proceed, unless the order of rejection is reversed by the superior court and the disciplinary authority is permitted to proceed. In unambiguous terms the Apex court held that proceeding further without an extension could give rise to an apprehension of bias and therefore the authority should await an order on the application for extension. The apex court held that the disciplinary authority is required to seek an extension of time since the sanctity of the orders of the tribunal/court cannot be disrespected by errant parties.

33. The apex court also held that if the order fixing a time for conclusion of proceeding is coupled with a rider that, in default the proceeding

would stand lapsed, then the disciplinary authority in such a case would cease to have jurisdiction to proceed further. Unless of course the application is made for recall of the default clause on genuine grounds, and the recall is allowed. Having laid down the law in this regard, the Apex court proceeded to hold:

“63. We also hold that continuation of disciplinary proceedings beyond the time stipulated by a tribunal/court could invite interdiction if no bona fide attempt is shown to have been made to seek an extension of time. However, much would depend on the facts of each case and it may not be possible to lay down a common formula applicable to each case. In an exceptional case, the tribunal/court would have the discretion to overlook the laxity and make such direction as it deems fit in the circumstances.

64. The answer to the fourth issue, in view of our discussion, has to be in favour of the respondent and against the appellant. Without an extension of time, no order of punishment could have been validly made and the grievance of the respondent in this behalf is absolutely legitimate.”

34. In the present case a plea was raised that an extension of time could not be filed due to the intervening circumstances arising out of national lockdown imposed on account of COVID 19 pandemic. An attempt is made to justify the delay in approaching the Tribunal by placing reliance on the decision of the Special Bench of this Court in WPA 5323 of 2020. The reliance placed by the Special Bench judgment is thoroughly misplaced in our opinion since the judgment is of 23.02.2022. The time stipulated by the Tribunal had lapsed long prior thereto in the last week of June 2021. The authorities therefore cannot derive any substance from the Special Bench Order dated 23.02.2022 passed in WPA 5323 of 2020.

35. Even if we accept a plea regarding the COVID 19 pandemic related restrictions coming in the way of the authorities passing a final order in the disciplinary proceeding, such a plea can be raised only with respect to the period in between March 2020 till June 2022 when it is common knowledge that there was an impact of the pandemic. However, the disciplinary authority did not show due diligence and a casual plea was taken in the M.A.:

“4. That your applicants state that due to the menace of Covid 19 pandemic the works with regard to the instant case was delayed without any fault upon the petitioner.”

36. Vague and sketchy pleas were taken in the MA 98 of 2022 to justify the delay in conclusion of the proceedings. We find that the state/writ petitioner did not offer any explanation whatsoever as to why the Miscellaneous Application for extension was filed in August 2022 more than a year after the time for passing a final order in the proceeding had lapsed. The MA did not make out any exceptional circumstances based on any plausible inability or failure to complete the proceedings within time or in respect of the delay in filing an MA for extension of time. Therefore, it is our considered view that the state did not make out any case for an extension of the time for concluding the proceeding. Rejection of the application for extension (MA No.98 of 2022) by the impugned order of the Tribunal dated 06.09.2022 therefore requires no interference.

37. The authorities have no regard or respect for the sanctity of the order dated 22.12.2022 passed in OA No.406 of 2020. Nearly 2 years after rejection of the application MA No.98 of 2022 seeking permission from

the tribunal for extension of time to conclude the disciplinary proceeding, vide order dated 06.09.2022, the Disciplinary Authority passed an order of punishment dated 16.01.2024. Therefore, the order of punishment was issued by the Disciplinary Authority also in utter disregard and disrespect to the order passed in MA No.98 of 2022 also.

38. We also consider another relevant aspect that order dated 22.12.2022 passed in the original application fixing a time (six months) for conclusion of the disciplinary proceeding was coupled with a rider the failure to do so would render the proceeding vitiated. Therefore, in view of the decision of the apex court in the case of **Ram Prakash** (*supra*) passing of the punishment order dated 16.01.2024, by the disciplinary authority was illegal, unsustainable and without jurisdiction.

39. We, therefore, did not find any infirmity in the Tribunal's order rejecting the Miscellaneous Application. The consequential order passed in OA No. 53 of 2023 also in our opinion for the reason indicated above does not call for interference.

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

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)