

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

**WPA 28310 of 2025
With
WPA 28891 of 2024
With
WPA 31085 of 2024**

**Amarnath Mandal
Versus
The State of West Bengal & Ors.**

For the petitioner	:	Mr. Sanjay Saha Mr. Lal Ratan Mondal Mr. Probal Sarkar Mr. Sk. Kiran Ms. Indrani Mukherjee
For the State in WPA 28310 of 2025	:	Mr. Suddhadev Adak
For the State in WPA 28891 of 2024	:	Mr. Santanu Kumar Mitra Mr. Subhabrata Das
For the State in WPA 31085 of 2024	:	Mr. Ansar Mondal Ms. Sreelekha Bhattacharya
For the Municipality	:	Mr. Md Sarwar Jahan Mr. Sayantan Hazra Mr. Subrata Ghosh Ms. Shalini Sen Ms. Sahina Parvin Mr. Emrul Kayes
Heard on	:	11.03.2026
Judgment on	:	11.03.2026

Raja Basu Chowdhury, J (Oral):

1. By consent of the parties, the three writ petitions, all filed by the petitioner are taken up for consideration together.
2. The proceedings emanate from an order passed by the Hon'ble Division Bench of this Court in a Public Interest Litigation, being WPA (P) 13 of 2024 dated 18th January, 2024, whereby the Hon'ble Division Bench of this Court taking note of the submissions of elected members of the Murshidabad Municipality and the allegation that despite a decision taken by the municipality in its meeting held on 12th September, 2023 to investigate and conduct an enquiry with regard to certain tenders the same had not been concluded and that the respondents therein were in the process of compromising the issue, directed the Director of Local Bodies, Government of West Bengal to appoint an officer who shall immediately conduct an enquiry into the matter and thereafter proceed to take action in accordance with law.
3. The records would reveal that in furtherance to the above, the Director of Local Bodies by a communication in writing dated 13th December, 2024 had directed the Chairman, Murshidabad Municipality to initiate a disciplinary proceeding against certain employees including the petitioner herein, who at the relevant point of time was discharging his function as Sub-Assistant Engineer of the municipality.
4. In the interregnum, however, the Chairman of the municipality had issued a show cause calling upon the petitioner to respond as to why legal action shall not be taken against petitioner for the petitioner

having been involved in the illegalities and irregularities which resulted in loot of public money amounting to Rs.2,91,41,305.61.

5. Without responding to the aforesaid show cause, or waiting for the outcome thereof, the petitioner had approached this Court by way of a writ petition being WPA 28891 of 2024, inter alia, challenging the show cause notice dated 25th November, 2024.

6. Records would also reveal that in furtherance to the notice dated 13th December, 2024 issued by the Director of Local Bodies, the petitioner was placed under suspension vide memo dated 18th December, 2024, issued by the Chairman of the said municipality.

7. Challenging the order of suspension, a writ petition, being WPA 31085 of 2024 was filed. Subsequently, on 27th November, 2025 a notice was issued intimating that a disciplinary proceeding has been initiated against the petitioner in terms of the West Bengal Municipal Employees' (Classification, Control, Appeal and Conduct) Rules, 2010 (hereinafter referred to as the "said rules"). Since, by such time, the petitioner had already reached the age of superannuation, challenging the aforesaid initiation of disciplinary proceeding post his superannuation on 30th September, 2025, a writ petition being WPA 28310 of 2025 was filed.

8. Mr. Saha, learned advocate representing the petitioner has drawn attention of this Court to the said rules and would submit that the said rules do not authorize initiation or continuation of disciplinary proceeding beyond the date of superannuation. In support of his aforesaid

contention he has placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Dev Prakash Tewari v. Uttar Pradesh Cooperative Institutional Service Board, Lucknow & Ors.***, reported in **(2014) 7 SCC 260**. Reliance has also been placed on the judgment delivered by the Hon'ble Division Bench of this Court in the case of ***Dilip Kumar Banerjee v. State of West Bengal & Ors.***, reported in **2024 SCC Online Cal. 11859**.

9. Mr. Jahan, learned advocate representing the municipality would submit that this matter pertains to financial embezzlement at the behest of the petitioner. A proceeding had been initiated on the basis of the directives issued by the Hon'ble Division Bench of this Court in a Public Interest Litigation in furtherance to the resolution dated 12th September, 2023. According to him, the petitioner is involved in the financial embezzlement and loot of public money. He would submit that criminal proceedings have also been initiated against the petitioner and the same is being investigated by the CID at present.

10. Having heard the learned advocates appearing for the respective parties, I am of the view that the primary issue that requires consideration is whether consequent upon the petitioner having superannuated from service i.e. on 30th September, 2025, the municipality could have initiated any disciplinary proceeding on 27th November, 2025. The same is important having regard to the fact that

the master-servant relationship between the petitioner and the municipality came to an end by then.

11. Independent of the above, the petitioner has not only challenged the show-cause notice but also the order of suspension. In the instant case, the petitioner claims that the initiation of the disciplinary proceeding was on the basis of the notice dated 27th November, 2025, however, in the instant case, the fact that the petitioner was put under suspension in contemplation of disciplinary proceeding in furtherance to the memo issued by the Director of Local Bodies dated 13th December, 2024 cannot be overlooked.

12. Be that as it may, to consider the above aspect it is necessary to consider the scope and powers of the disciplinary authority to put a delinquent under suspension. Rule 4 of the said rules provide for the conditions for placing an employee under suspension. To morefully appreciate the same, the relevant rule is extracted hereinbelow:-

“Rule 4. Conditions for placing an employee under suspension.

“(1) The appointing authority may place an employee under suspension,-

(a) Where a disciplinary proceeding or departmental enquiry against him is contemplated or is pending; or

(b) Where in the opinion of the appointing authority, he has engaged himself in activities prejudicial to the interest of the Local Body or the State or the country; or

(c) Where a case against him in respect of any criminal offence is under investigation or trial.

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(2) The procedure, which is being followed for criminal charges against a Government employee, may identically be followed in case of a municipal employee.

(3) A municipal employee who is placed under suspension or be deemed to be under suspension in the circumstances mentioned in sub rule (1) shall irrespective of the circumstances which lead to, or resulted in suspension be entitled to subsistence allowance during the period of suspension.

(4) An employee against whom a proceeding has been commenced on a criminal charge but who is not actually detained in custody (e.g. a person released on bail) may be placed under suspension under clause (c) of sub-rule (1) by an order made by the appointing authority. If the criminal charge is related to the official position of the employee or involves any moral turpitude on his part, suspension shall be ordered under this sub-rule, unless there are exceptional reasons for not adopting such a course.

(5) An employee who is detained in custody for a period exceeding forty eight hours under any law providing for preventive detention or as a result of a proceeding either on a criminal charge or otherwise, shall be deemed to have been suspended, by an order of the appointing authority, with effect from the date of his detention and shall remain under suspension until further orders. An employee who is undergoing a sentence of imprisonment shall also be dealt with in the same manner, pending, a decision on the disciplinary action to be taken against him.

(6) (i) Where a penalty of dismissal, removal or compulsory 'retirement from service imposed on an employee under suspension; or

(ii) a disciplinary proceeding pending against an employee under suspension is set aside in appeal or on review under these rules and the case is remitted for further enquiry or action or with any directions, the order of his suspension shall be deemed to have continued in force,-

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(a) in the case where the penalty of dismissal, removal or compulsory retirement from service had been imposed, on and from the date of the order imposing such penalty, and

(b) in the case where the disciplinary action was pending, on and from the date of order placing the employee under suspension, and in either case; the order of suspension shall remain in force until further orders.

(7) Where a penalty of dismissal, removal or compulsory retirement from service imposed on a employee under suspension or a disciplinary proceeding pending against an employee under suspension is set aside or declared or rendered void in consequence of or by a decision of Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against the employee on the allegations on which the penalty was originally imposed or the disciplinary proceeding was originally started, the employee shall be deemed to have been placed under suspension by the appointing author with effect from the date on which the order imposing the penalty of dismissal, removal compulsory retirement from service was made or where the disciplinary proceeding pending, from the date on which the employee was originally placed under suspension

An order of the suspension made or deemed to have been made under this sub-rule shall continue force until it is modified or revoked by the authority competent to do so.”

13. Having regard to the above and since a departmental enquiry was contemplated against the petitioner at the relevant point of time in furtherance to the notice issued by the Director of Local Bodies dated 13th December, 2024, the right of the municipality to place the petitioner under suspension cannot be doubted. The suspension order has been passed by the Chairman of the municipality who is the

appointing authority as also the disciplinary authority and as such the order of suspension does not suffer from any illegality. On such ground, this Court is not inclined to interfere with the order of suspension dated 18th December, 2024.

14. Insofar as issuance of show case notice is concerned, the show cause was issued obviously in furtherance to the order passed by the Hon'ble Division Bench of this Court. Going by the aforesaid although, the petitioner has attempted to make out a case that the municipality had made up its mind, while issuing the show-cause, however, from the tenor of the same it is clear that the observations made in the show cause were only tentative and no conclusion had been reached at that stage. The petitioner was obliged to respond to the show cause. On such ground no interference is called for.

15. Coming back to the issue whether the disciplinary proceedings can be initiated or continued against the petitioner after the petitioner having reached the age of superannuation, I find that the rules do not expressly provide for the scope for initiation of disciplinary proceeding beyond the date of superannuation. Admittedly, in this case, the petitioner had reached the age of superannuation though at the relevant point of time he was kept under suspension. It is also an admitted position that at that stage the municipality was only contemplating disciplinary proceeding and no disciplinary proceeding had actually been initiated. Initiation of disciplinary proceeding was effected vide letter dated 27th November, 2025. On 27th November,

2025, the petitioner had already reached the age of superannuation and the master-servant relationship had snapped. On such ground and in absence of any rule authorizing initiation of disciplinary proceeding and in absence of any master-servant relationship which is the foundation for disciplining a delinquent employee, the initiation of proceeding after the date of superannuation becomes a non-starter. The judgment delivered in the case of ***Dev Prakash Tewari*** (supra) and in the case of ***Dilip Kumar Banerjee*** support the above proposition of law. This apart the disciplinary proceeding had been initiated by a person other than the disciplinary authority. Though Mr. Jahan by placing the resolution adopted by the Board of Councillors dated 16th September 2025 would submit that the Executive Officer was empowered to initiate disciplinary proceeding against the petitioner, however, having regard to the rules not conferring any power to delegate, I am of the view ordinarily delegation of such power was not possible. However, since such issue may not be a relevant consideration in the light of the observation made hereinabove, no decision is rendered thereon.

16. In the light of the above, the disciplinary proceeding initiated against the petitioner cannot be sustained and are declared to be non-starter and *non est* and consequentially quashed. All consequences shall follow.

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17. The aforesaid order shall however not interfere with the rights of the municipality to proceed against the petitioner in the criminal proceedings, especially when the disciplinary proceeding has been declared to be *non est* on technical ground.

18. With the above observations and directions, the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

SB
A.R. (Court)