

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR
&
THE HON'BLE JUSTICE ARJUN RAY MUKHERJEE

FMA 1118 of 2024

with
CAN 1 of 2023

Bijoy Kumar Moni
vs.
The State of West Bengal & Ors.

For the Appellant	: Mr. Soumya Majumdar, Sr. Adv., Mr. Swapan Banerjee, Adv. Mr. Kunal Ganguly, Adv. Mr. Subhodip Maity, Adv. Mr. Kaustav Banerjee, Adv.
For the State	: Ms. Aparna Banerjee, Ld. AGP. Ms. Kakali Dutta, Adv.
For the Municipality	: Mr. Ramkrishna Bhattacharyya, Adv.
Judgment reserved on	: 01.10.2026
Judgment pronounced on	: 08.10.2026

Shampa Sarkar, J.

1. The appeal arises out of an order dated October 17, 2023 passed in WPA No. 22565 of 2023. By the order impugned the learned Judge disposed of the writ petition, inter alia, holding that the order of suspension simply implied that a departmental enquiry was being contemplated. The same

could not be taken as a conclusion on the appellant's misconduct. There was no finality attached to the decision to suspend the appellant. Accordingly, the observations with regard to the misconduct of the appellant and his involvement in illegal activities, were tentative and not final. The allegations of the appellant that the employer had already made up its mind with regard to the charges that would be ultimately framed against the appellant, was not accepted by Her Lordship. Her Lordship held that, the order of suspension clearly mentioned that the matter deserved an in-depth enquiry and proper disciplinary action.

2. Mr. Soumya Majumdar, learned Senior Advocate submitted that the appellant has been kept under prolonged suspension without any subsistence allowance. The first order of suspension was issued on 11 August, 2023 by the Chairman, Raghunathpur Municipality. The second suspension order was a verbatim replication of the earlier suspension order. The suspension order dated August 11, 2023 had been challenged by the appellant before this Court under Article 226 of the Constitution of India. The writ petition was registered as WPA 20872 of 2023. The learned Single Judge had kept the said order of suspension in abeyance and directed that a fresh order may be passed upon taking into consideration the representation filed by the appellant dated August 8, 2023.

3. Mr. Majumdar contended that the municipality had changed its stand before the learned Single Judge. In the earlier round of litigation arising out of a prayer of the appellant for absorption in the regular establishment of the municipality, the municipality had supported the case of the appellant.

Another Hon'ble Division Bench by order dated June 19, 2015 had directed the Director of Local Bodies to pass necessary order by according approval to the decision of the municipality with regard to permanent absorption of the appellant in the newly sanctioned post of Sub-Assistant Engineer. Aggrieved by the said direction, the State of West Bengal preferred a Special Leave to Appeal before the Hon'ble Apex Court. The Hon'ble Apex Court on July 24, 2015 passed an order staying the operation of the order of the Division Bench, but with a further direction that the post should neither be filled up nor should the appellant be removed from service. The said Civil Appeal is still pending before the Hon'ble Apex Court. During such time, with an ulterior motive and with mala fide intention, the first order of suspension was issued on August 11, 2023, with a charge of impersonation. The charge was that the appellant had described himself as an Assistant Engineer although he was working as the Sub-Assistant. He used such position to do various illegal activities. Accordingly, a show cause notice was issued on August 4, 2023 and the appellant was given 7 days' time to reply to the same. A reply was filed, but the same was not taken into consideration when the order of suspension was issued. Her Lordship had intervened and directed that the order of suspension dated August 11, 2023 would remain in abeyance and the authority should consider the reply to the show cause notice filed by the appellants, before issuing any other letter of suspension.

4. Mr. Majumdar urged that, the second order of suspension which was the subject matter of challenge in WPA 22565 of 2023 was thereafter issued

with the self-same allegations. The second suspension order did not reveal that the contentions of the appellant had at all been considered. This time Her Lordship however committed an error by holding that the suspension order dated September 4, 2023 was only a, prima facie, observation of the employer with regard to the misconduct of the appellant and the same was not conclusive. Her Lordship failed to appreciate that after issuing a close minded suspension order, a disciplinary proceeding would be a futile exercise. The employer had already made up its mind with regard to the charges against the appellant, even before a proceeding had been initiated. As the appellant was under prolonged suspension from 2023, Mr. Mazumdar urged that such suspension order was punitive in nature. This court should revoke the same by setting aside the order impugned. It was also submitted that during the entire period of suspension, the appellant had not been paid any subsistence allowance.

5. Mr. Ramakrishna Bhattacharyya, learned Advocate for the respondent/municipality submits that, the appellant was initially engaged as a temporary technical supervisor and was paid Rs. 80 per day. His role was supervision of different developmental works under the Raghunathpur Municipality. He was engaged as a casual employee. His engagement was a private arrangement. He left the job in September 1996. Sometime in April, 1997, the Chairman of Raghunathpur Municipality issued a certificate of experience, inter alia, stating that the appellant had worked as a technical supervisor from April 1996 to September 1996.

6. One Kishore Moni who was working as a Sub-Assistant Engineer retired in August, 2008. Thereafter, the appellant approached the Board of Councillors with a request for engagement as a Technical Assistant. A resolution was adopted by the Board of Councillors and the appellant was engaged as a Technical Assistant from May, 2009 on temporary basis, with a remuneration of Rs. 10,000/- per month. He did not continue in the municipality between October 1, 1996 and May 17, 2009. There was no approved post for Assistant Engineer in the municipality, but the appellant managed to keep a note sheet generated by the then Chairman of the said municipality, Madan Bharat, designating the appellant as an Assistant Engineer with effect from October 30, 2009.

7. Learned Advocate submitted that, the Director of Local Bodies granted permission to fill up the sanctioned vacant posts of the said municipality, including the post of Sub-Assistant Engineer, strictly in accordance with the provisions of the West Bengal Municipal Employees' (Recruitment) Rules, 2005. At that stage, the appellant filed a writ petition which was registered as WP 18591 (W) of 2013, falsely claiming that he had uninterruptedly worked in the municipality since 1996 and he should be regularised. The municipality was directed to consider the claim of the appellant. The appellant preferred an appeal which was registered as MAT 1669 of 2013. The Division Bench by an order dated March 19, 2014 directed the Director of Local Bodies to take an appropriate decision. Although the Chairman of the Raghunathpur Municipality had sought approval in respect of selection of the appellant, the Deputy Director of Local Bodies by a letter dated May

26, 2014 informed the Chairman that the selection of the appellant was irregular and appropriate measures should be taken to fill up the newly sanctioned posts. By that time the appellant had preferred a contempt application before the learned Division Bench, alleging violation of its order. The Division Bench quashed the decision of the municipality that, the appellant's appointment had been irregular and directed the State to take appropriate action by according necessary approval for permanent absorption of the appellant to the newly sanctioned post of Sub-Assistant Engineer, without further delay. Aggrieved by the aforementioned order, the State of West Bengal filed a Special Leave Petition, which was later registered as Civil Appeal No. 11355 of 2016.

8. On December 3, 2018 the District Magistrate, Purulia wrote a letter to the then Chairman that the municipality was not authorized to appoint an Assistant Engineer as per the existing staff pattern. The Chairman was directed to terminate the irregularly appointed Assistant Engineer (appellant). The order of the Hon'ble Apex Court protecting the engagement of the appellant, was brought to the notice of the District Magistrate and the said letter was withdrawn.

9. On the basis of a complaint received that the appellant had been indulging in corrupt practices, the Deputy Secretary, Government of West Bengal issued a letter to the Director of Local Bodies to take necessary action. A show cause notice was issued on August 4, 2023, asking the appellant to show cause with regard to misappropriation of government funds which had been sanctioned for solid waste management. The

appellant was the nodal officer of such project. Charge of inflating the number of households and number of staff employed as 'Nirmal Sathi' had been levelled against the appellant. The local people had drawn the attention of the municipality to such illegal and corrupt practices by the appellant. An order of suspension was issued to the appellant on August 11, 2023. The said order was challenged before a writ court and the same was kept in abeyance only on the ground that the reply of the appellant to the show cause notice should be considered. The appellant was heard. His reply was considered and a fresh order of suspension dated September 4, 2023, was issued. Challenging the order of suspension, WPA 22565 of 2023 was filed and the order impugned was passed.

10. Mr. Bhattacharyya learned Advocate for the municipality, submitted that the second order of suspension was issued upon considering the reply of the appellant. The appellant was provided with an opportunity of being heard. We are of the view that, the employer had the right to put an employee under suspension, even if the employee was engaged as a casual employee. It appears from the records that a personal hearing was granted to the appellant and the Chairman, Raghunathpur Municipality had arrived at a conclusion that the appellant was responsible for acts of misconduct. He misused the designation of Assistant Engineer, although he was not engaged as an Assistant Engineer. He had also acted in a fraudulent manner during the implementation of the solid waste management. Such action caused huge financial loss to the municipality and to the Government. The matter required an in depth inquiry and an appropriate

disciplinary action. We find from the records that, the appellant had not been absorbed in the regular establishment, but his service had been protected by the Hon'ble Apex Court. The municipality being the employer suspended the appellant. There are allegations of causing financial loss to the municipality and misleading the public by using a designation not assigned to him. The correctness of the charges cannot be adjudicated by us. Thus, the expression "conclusion" in the second line of the second paragraph of the suspension order cannot be said to be a final decision of the Chairman, Raghunathpur Municipality. It was a, prima facie, view. Before any decision can be taken in respect of the service of the appellant, the municipality is bound to take leave from the Hon'ble Apex Court. An order of suspension does not amount to a final decision with regard to the charge of misconduct. It is only a, prima facie, satisfaction that the appellant had committed misconduct. It is not a finding of guilt. The issue is yet to be decided. Most importantly, the order of suspension dated August 11, 2023 was challenged by the appellant by filing I.A 169152 of 2023 before the Hon'ble Apex Court in the pending Civil Appeal No. 11355 of 2016. The said suspension order was once again challenged by filing a writ petition being WPA No. 20872 of 2023. A copy of the I.A had been handed over to us. It was averred that, the Chairman of the municipality had placed the appellant under suspension by a letter dated August 11, 2023 motivatedly, deliberately and by ignoring the reply to the show cause notice which was filed through the learned Advocate on record of the appellant. The relevant averments are quoted below :-

“12. That the said show cause notice dated 04.08.2013 is a counter blast of the Applicant’s communication from the Learned Advocate on Record of the Hon’ble Supreme Court dated 3.8.2023, which was sent through mail because the Applicant already got a hint that the Chairman of the Municipality, by ignoring all the facts and action of the earlier Municipal Authority, as stated hereinabove, was going to take harsh step against the present Applicant. For such reason the Applicant, through his Learned Advocate on Record Mr. Rameshwar Prasad Goyal, informed the Executive Officer and the Chairman of the said Municipality that since the Hon’ble Supreme Court is in seisin of the matter and he was protected by the Hon’ble Supreme Court, they were requested to allow him to work as Sub Assistant Engineer in the said Municipality under the garb and coverage of the order of the Hon’ble Supreme Court but the Municipality did not adhere to in response of the said letter dated 3.8.2023 and accordingly, a show cause notice dated 4.8.2023 was issued and the Applicant submitted his reply to the show cause on 8.8.2023, which had been sent through mail as well as by speed post but curious enough by letter dated 11.08.2023 the Chairman of the Municipality suspended the petitioner only on the ground that the Applicant did not reply to the show cause notice dated 4.8.2023 which is absolutely incorrect and thereby the Chairman of the said Municipality had issued the order of suspension against the Applicant deliberately and motivatedly ignoring not only the reply to the show cause or the letter of the learned Advocate on Record of the Hon’ble Supreme Court dated 3.8.2023 but also the earlier orders of the then Chairman of the Municipality as well as of the concerned authorities of the Administration, who ultimately endorsed the Applicant working as an Assistant Engineer in the said Municipality but it is very curious that even then the present Chairman and the Executive Officer whimsically and deliberately suspended the Applicant with an ulterior motive and flouted altogether the order of the Hon’ble Apex Court and hence, this application.”

11. The prayers of I.A 169152 of 2023 are quoted below :-

- “a) issue a direction upon the Chairman Raghunath Municipality not to hold the meeting scheduled on 22.08.2023 at 03:30 PM;
- b) order of suspension dated 11.08.2023 be set aside and/or quashed by the Hon’ble Apex Court forthwith and the petitioner shall be allowed to function as he was functioning prior to his suspension as an Assistant Engineer in the said Municipality subject to the result of the Special Leave Petition pending before the Hon’ble Apex Court; and
- c) pass an ad-interim ex-parte order in terms of (a) and (b) hereinabove;
- d) pass such further or other order or orders as to this Hon’ble Court may seem fit and proper.”

12. The writ petition WPA 20872 of 2023 was filed before this court on August 24, 2023, and was affirmed on August 22, 2023. The I.A was filed before the Hon'ble Apex Court on August 22, 2023, as per the documents supplied to us by the municipality. In the I.A, the factum of filing of the writ petition before the High Court has not been mentioned and we also understand from the order passed in the writ petition dated August 28, 2023 that the filing of the I.A before the Hon'ble Apex Court on the self-same cause of action was not mentioned before the learned Single Judge, who heard WPA 20872 of 2023 on August 28, 2023. The learned Single Judge passed the following order :-

“The order passed by the Hon'ble Division Bench of this Court directing the Director of Local Bodies for according approval to the permanent absorption of the petitioner in the post of Sub-Assistant Engineer has been stayed by the Hon'ble Supreme Court on July 24, 2015. The State respondents were restrained from filling up the post in question, that is the post of the SubAssistant Engineer. The petitioners were further restrained from removing the writ petitioner herein from service. The same implies that the writ petitioner is still serving in the post of Engineer-in-Charge as the order of the Hon'ble Division Bench to approve him as SubAssistant Engineer was stayed by the Hon'ble Supreme Court. The matter before the Hon'ble Supreme Court is pending consideration.

At this stage, the petitioner who is serving as the Engineer-in-Charge ought not to interfere with the notification published by the Municipality calling for walk in interview for engaging one Sub-Assistant Engineer on contractual basis for a temporary period of six months.

The Hon'ble Supreme Court has been pleased to grant protection to the petitioner as there is already a direction not to remove him from service, which means that the service of the petitioner remains protected. At the same time the Hon'ble Supreme Court has been pleased to restrain the employer from filling up the post of Sub-Assistant Engineer.

The Municipality has specified in the notification calling for interview that the Municipality is entitled to engage two Sub-Assistant Engineers, but presently intends to engage only one. It does not appear that the petitioner will be prejudiced in any manner whatsoever if one post of Sub-Assistant Engineer is filled up on contractual basis for a temporary period.

In view of the facts stated hereinabove it appears that there is no reason for the petitioner to apprehend that he will be removed from service.

As regards the show cause for suspension from service, the Municipality passed the order of suspension without taking into consideration the causes shown by the petitioner in the representation dated August 8, 2023 posted on August 10, 2023.

The Municipality is accordingly directed to take into consideration the causes shown by the petitioner in response to the show cause notice dated August 4, 2023 in accordance with law after giving him a reasonable opportunity of hearing.

The order of suspension dated August 11, 2023 is directed to be kept in abeyance till a fresh order is passed by the Municipality in this regard.”

13. I.A 169152 of 2023 was dismissed by the Hon’ble Apex Court by the order dated October 31, 2023. The dismissal of the I.A was after the impugned order as passed in WPA 22565 of 2023. The order impugned was passed on October 17, 2023, but the factum of dismissal of the I.A 169152 of 2023 was not brought to the notice of the learned Judge. With the dismissal of the I.A 169152 of 2023, in our view, the first suspension order revived. However, a writ court had already kept that order of suspension in abeyance, by asking the municipality to issue a further order of suspension upon hearing the reply of the appellant. The second suspension order dated September 4, 2023 was challenged in WPA 22565 of 2023. The order of dismissal of the I.A, which was passed on October 31, 2023, i.e., after the second suspension order. We do not find from the records that these aspects were mentioned before the Hon’ble Apex Court. The Hon’ble Apex Court just recorded that Their Lordships were not inclined to entertain the application and accordingly the same stood dismissed.

14. The appellant did not approach the writ court with clean hands. The appellant also did not approach the Hon’ble Apex Court with clean hands.

The appellant took a chance by challenging the order of suspension dated August 11, 2023 before the Hon'ble Apex Court and before a writ court. It appears that, the municipality has already approached the Hon'ble Apex Court seeking permission to deal with the appellant on the basis of the suspension order, by taking appropriate steps.

15. Under such circumstances, we are not inclined to interfere with the order impugned. The issue of subsistence allowance was not the subject matter of the writ petition. The issue of the permanent status of the service of the appellant is pending consideration before the Hon'ble Apex Court. The Hon'ble Apex Court is already in seisin of the entire matter and the parties shall be bound by the directions of the Hon'ble Apex Court. As the petitioner is guilty of suppression, we impose cost of Rs. 5,000/- upon the appellant. The same shall be paid to the municipality within 2 weeks from date and the same shall be utilised by the municipality for rehabilitation of stray dogs.

16. Accordingly, the appeal and the connected application are dismissed.

17. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

I Agree.

(Arjun Ray Mukherjee, J.)

(Shampa Sarkar, J.)