

06.02.2023
ML-19
(PP)
Ct.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 190 of 2023

Debashis Mukherjee
Vs.
The Union of India & Ors.

Mr. Pratip Mukherjee,
Mr. Atarul Haque Molla,
Mr. Omar Faruk Gazi

....for the petitioner.

Mr. Biswaroop Bhattacharya,
Mr. Syed Nurul Arefin,
Mr. Rahul Singh

....for ECL.

Affidavit of service filed in Court today is retained with the records.

Mr. Mukherjee, learned counsel, appears on behalf of the petitioner and prays for stay of the departmental proceedings initiated by charge-sheets dated June 7, 2022 and August 2, 2022. The petitioner is employed as a Supervisor with the Eastern Coalfields Limited (in short "ECL"). By a charge-sheet dated June 7, 2022, the petitioner was, inter alia, alleged to have committed misconduct due to misappropriation in relation to illegal coal mining. The petitioner was suspended on July 23, 2022. Thereafter, the petitioner was again charge-sheeted on August 2, 2022. A letter of suspension was issued on August 4, 2022.

Attention of this Court is drawn to the contents of the First Information Report (FIR) lodged on November 27, 2020. The petitioner was suspected of the offence of criminal conspiracy, criminal breach of trust by public servant and criminal misconduct by a public servant due to dishonestly and fraudulently misappropriating the property entrusted to him or any other property under his control as a public servant.

Mr. Bhattacharya, learned counsel, appearing on behalf of the respondents/ECL challenges the maintainability of the writ petition on the ground that the petitioner is not an employee of ECL. He is a workman of the employer/DCL and comes under the purview of the Industrial Disputes Act, 1947.

On the question of maintainability, this Court is of the view that since the petitioner is admittedly discharging his duties as a Supervisor and also drawing wages/salary exceeding Rs.10,000/- per month he cannot be held to be a workman under the Industrial Disputes Act, 1947.

Mr. Bhattacharya further submits that the criminal proceedings against the petitioner has not yet been initiated since no charge-sheet has been filed till date despite an FIR being lodged in November 2020. He relies on a judgment reported in (1991) 4

SCC 109 (**Union of India & Ors. Vs. K. V. Janakiraman & Ors.**) in support of the proposition that initiation of criminal proceedings is usually upon filing of a charge-sheet. Therefore, since no criminal proceedings are pending as on date, the disciplinary proceedings should not be stayed by this Court.

Let the matter come up for further consideration under the same heading "**Motion**" on **February 21, 2023**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

(Lapita Banerji, J.)