

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

Present:

The Hon'ble Justice Md. Shabbar Rashidi

W.P.A. 10285 of 2019

Sudip Mandal

Vs.

Bangiya Gramin Vikas Bank And Others

For the Petitioner : Mr. Arya Bhattacharyya, Adv.
Mr. A.N. Bhattacharyya, Adv.

For the Respondents : Mr. Baidurya Ghosal, Adv.
Mr. Sourav Mukherjee, Adv.
Mr. Saikat Mukherjee, Adv.

Heard on : 01.09.2026

Judgment on : 28.09.2026

Md. Shabbar Rashidi, J.:-

1. The writ petitioner has assailed the order No. 28/2016 dated December 30, 2016 passed by the Disciplinary Authority and General Manager of Bangiyo Gramin Vikas Bank and order No. 12 of 2018 dated December 31, 2018 passed by the Appellate Authority/Chairman.

2. By the impugned order dated December 30, 2016, the writ petitioner was removed from service following a disciplinary proceeding initiated against him. The petitioner preferred an appeal against the order of disciplinary authority and by an order dated December 31, 2018, the appeal was dismissed.

3. Learned advocate for the petitioner submitted that the order of removal from service was passed by the disciplinary authority in violation of an order dated May 12, 2026 passed in W. P. No. 8286 (W) of 2016. It was submitted that the order dated December 30, 2016 was passed by the authorities during the subsistence of order dated May 12, 2016. Learned advocate for the petitioner further submitted that by such order passed by this Court, the authorities were directed not to proceed with the disciplinary proceeding without the leave of this Court. However, the authorities proceeded with such proceeding without seeking requisite leave from this Hon'ble Court and proceeded to pass an order of 'removal from service' against the petitioner.

4. It was also contended by learned advocate for the petitioner that W.P. No. 8286 (W) of 2016 was dismissed for default without any specific order specifically vacating the interim order dated May 12, 2016. Subsequently the said writ petition was restored to its original file and number by an order passed by this court. With such a restoration of the writ petition, the interim order dated May 12, 2016 also revived automatically. In that view of the facts, continuance of the

disciplinary proceeding resulting in an order for removal of the petitioner from service was bad in law. In support of his contention, learned advocate for the petitioner relied upon the authority in **(2004) 6 SCC 378 (Vareed Jacob v. Sosamma Geevarghese & Ors.)** and an unreported decision passed by a Division Bench of this Court on October 12, 2023 in **MAT 937 of 2023 (Union of India v. West Bengal Kerosene agents' welfare Association & Others)**.

5. Learned advocate for the petitioner further submitted that the respondents were party to such writ petition and despite having knowledge of the order dated May 12, 2016, proceeded to dispose of the disciplinary proceeding against the petitioner without seeking leave from this Court, resulting in removal of the petitioner from service. It was also contended by learned advocate for the petitioner that an order passed by an authority despite knowledge of the interim order of the Court is of no consequence and remains a nullity. To such proposition, learned advocate for the petitioner placed reliance upon **2022 SCC OnLine Ori 780 (Amar Kumar Behera v. State of Odisha & Others)**.

6. Learned advocate for the writ petitioner also contended that the impugned order of removal from service of the writ petitioner was passed by an officer who was inferior to the appointing authority of the petitioner. Such an action on the part of the respondents was violative of the provisions of Article 311 of the Constitution of India. According

to learned advocate for the petitioner, in terms of Article 311 of the Constitution of India, the order of removal from service of the petitioner ought to have been passed by an officer not below the rank of the appointing authority of the petitioner.

7. On the other hand, learned advocate for respondent Bank contended that the writ petitioner was an employee of Regional Rural Bank governed by the Regional Rural Banks Act, 1976. The employees of such Regional Rural Bank do not hold a civil post within the meaning of Article 311 of the Constitution of India. In support of his contention, learned advocate for the respondent relied upon **(1970) 1 SCC 177 (S.L. Agarwal v. General Manager, Hindustan Steel Ltd.)**.

8. Learned advocate for the respondents further submitted that in terms of the amended provisions of West Bengal Bangiya Gramin Vikas Bank (Officers and Employees) Service Regulations, 2010, the General Manager is designated as the Competent Disciplinary Authority for Scale I and Scale II officers. Therefore, the impugned order of removal of the petitioner from service was passed by the appropriate authority designated in the applicable regulations. Learned advocate for the respondents further submitted that in case of Banking/Statutory entities, the appointing authority need not be vested with the powers of disciplinary authority unless it is expressly provided by the applicable service rules.

9. Learned advocate for the respondents also contended that the impugned order was passed by the disciplinary authority upon due adherence to the rule of natural justice. The petitioner was provided with sufficient opportunity to defend himself and that the findings of the inquiry officer, was based on cogent evidence.

10. Learned advocate for the respondent bank also submitted that a bank officer should act with utmost fidelity, honesty and high institutional discipline. The diversion of ₹40,00,000/- by the writ petitioner demonstrated gross misconduct which could not be accepted in usual banking business. It was further contended that punishment imposed in a departmental proceeding for such gross misconduct should not be interfered in a writ jurisdiction. In support of his contentions, learned advocate for the respondents relied upon ***(2005) 7 SCC 435 (State Bank of India v. Bela Bagchi)***, ***(2003) 4 SCC 364 (Chairman and MD, United Commercial Bank v. P.C. Kakkar)***, ***(2011) 4 SCC 584 (State Bank of Bikaner & Jaipur v. Nemai Chand Nalwaya)*** and ***(2015) 2 SCC 610 (Union of India v. Gunasekaran)***.

11. Learned advocate for the respondent also contended that the writ petitioner filed the statutory appeal against the order passed by the disciplinary authority on October 10, 2018 i.e. after a delay of about two years. The regulations of 2010 do not provide for condonation of delay. The petitioner sat tight over his rights and now,

he cannot pray for any relief in this writ jurisdiction. To such proposition, the learned advocate for the respondents relied upon **(2014) 4 SCC 108 (Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Baby)**.

12. The writ petitioner was appointed as Probationary Officer under JMG Scale I in Bangiya Gramin Vikas Bank on June 18, 2014. He was initially appointed for a period of 2 years and on satisfactory completion of such period of probation, his services were likely to be confirmed. However, during such period, an FIR had to be lodged against the writ petitioner on the allegation that the writ petitioner, on April 13, 2015 suo motu enhanced the cash credit limit of account no. 516220000569 from ₹10,000/- to ₹45,00,000/- and on the same day a sum of ₹40,00,000/- was transferred through NEFT from such account to another account.

13. Upon detection of the alleged fraud perpetrated by the writ petitioner, he was suspended by an order passed on September 11, 2015. Simultaneously, a departmental proceeding was also initiated against the petitioner. A chargesheet was served upon the writ petitioner on March 18, 2016. A disciplinary proceeding was conducted between April 26, 2016 and September 9, 2016. The writ petitioner was afforded the requisite reasonable opportunity to defend and present his case. Upon conclusion of the disciplinary proceeding the Senior Manager (Credit), Bangiya Gramin Vikas Bank (BGVB), the

writ petitioner was found guilty of cheating and misappropriation of bank funds causing wrongful loss to the bank to the tune of ₹40,00,000/-. On the basis of the findings of the enquiry officer, the disciplinary authority passed the impugned order No. 28 dated December 30, 2016 imposing a punishment of 'removal from service which shall not be a disqualification for future employment'. Such order was duly communicated to the petitioner.

14. On October 10, 2018, the writ petitioner preferred a statutory appeal against such order dated December 30, 2016 in terms of regulations 49, 50 and 51 of the amended Bangiya Gramin Vikas Bank (Officers and Employees) Service Regulations, 2010. Such appeal was however, was rejected by the appellate authority on the ground that the same was out of time and the regulations of 2010 did not contain any provision for condonation of delay.

15. In the meantime, the writ petitioner approached before this Court by way of a writ petition being WP 8286 (W) of 2016, challenging the legality and validity of simultaneous actions by the respondents in the form of criminal case as well as departmental proceeding over the self-same cause of action against the petitioner. By an order dated May 12, 2016 passed in such writ petition, a Coordinate Bench of this Court directed to the following:

“The petitioner complains of parallel proceedings being conducted with a criminal complaint and a departmental

action in respect of the same alleged misconduct being pursued in tandem.

It does not appear that the criminal complaint filed by the employer has matured in any charge-sheet being filed yet.

Let this petition appear a week after the summer vacation.

The employer will cite this order before the investigating agency so that the investigation into the alleged offence is taken up with utmost expedition and that an appropriate report is filed before the relevant criminal court without undue delay.

The petitioner should file his reply to the charge-sheet by the time the matter appears next, but the inquiry proceedings should not be commenced without the leave of court.

This order is made since the criminal and departmental actions pertain to the same transaction or series of transactions.

The desirability of continuing both the sets of actions together will be considered on the returnable date.”

16. WP 8286 (W) of 2016 was subsequently, dismissed for default by an order passed on June 13, 2016. Such order recorded that since none appeared in support of the petition, the writ petition was directed to be dismissed for default. However, by an order dated August 5, 2016 the writ petition being WP 8286 (W) of 2016 was restored to its file and number. The said order recorded as follows:-

“Cause shown is sufficient. The order of dismissing the writ petition for default stands recalled.

The writ petition is restored to its original file and number

The application for restoration stands allowed.

Put up the writ petition as 'Motion' in the Combined Monthly List of September, 2016."

17. The said writ petition was thereafter listed on July 15, 2024 when the learned advocate for the writ petitioner submitted that the writ petitioner was not willing to proceed with the writ petition. He undertook to file written instruction in this regard by the next date i.e. July 22, 2024. However, no such written instruction was filed on behalf of the writ petitioner on such date and by an order passed on July 24, 2024 the writ petition was again dismissed for default for non-representation on behalf of writ petitioner. Such order specifically noted that, "interim order, if any, shall stand vacated."

18. After the statutory appeal filed by the writ petitioner against the order of disciplinary authority was dismissed, the writ petitioner filed the instant writ petition challenging the order passed by the disciplinary authority as well as that by the appellate authority. Such writ petition was initially, disposed of by an order passed on December 12, 2019. The said order noted that,

"The petitioner complains of breach of the provision of Article 311(1) of the Constitution of India. Article 311 (1) of the Constitution of India reads as follows:-

No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

The petitioner was appointed by the Chairman of the Bangiya Gramin Vikash Bank on 18th June, 2014.

Pursuant to a disciplinary proceeding initiated against him, the petitioner was removed from service by the order passed by the disciplinary authority and the General Manager on 30th December, 2016.

The appeal preferred by the petitioner before the Chairman stood rejected on 31st December, 2018.

The petitioner is aggrieved by the same.

The petitioner submits that as the petitioner was appointed by the Chairman who is a superior authority he could not have been removed from service by the order of the General Manager who is junior in rank.

The petitioner prays for setting aside the order of punishment imposed upon him.

The Bank submits that by a notification dated 12th August, 2013 published in the Gazette of India, Extraordinary on November 18, 2013, the Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulations, 2010 was amended. By virtue of the amendment, the “competent authority” meant the Chairman in respect of officers in Scale 3, 4 and 5 and General Manager in respect of officers in Scale 1 and 2. As the petitioner is a Scale 1 officer, the General Manager is the competent authority in view of the 2013 amendment of the Regulation.

The order removing the petitioner from service appears to have been passed by an authority subordinate to the appointing authority. The same is impermissible.

In view of the above, the order passed by the disciplinary authority is bad in law and liable to be set aside. The same is accordingly, set aside.

The parties shall be at liberty to take steps strictly in accordance with law.

W.P 10285 (W) of 2019 is disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.”

19. Respondents in the writ petition 10285 of 2019 preferred an appeal against the order dated December 12, 2019 being FMA 1237 of 2021. By an order passed on July 28, 2025 the appeal was disposed of setting aside the order dated December 12, 2019 passed in the writ petition 10285 of 2019. Such order directed as follows:

“1. Mr. Mishra, learned Counsel for the appellants and Mr. Bhattacharyya, learned Counsel for the respondent no.1/writ petitioner are present.

2. With the consent of the parties, the appeal and the connected application are taken up together and are finally heard.

3. Learned Counsel for the appellant/Bank submits that as per the Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulations, 2010, the writ petitioner’s services were terminated by the General Manager, who is the Competent Disciplinary Authority for inflicting such punishment against a Scale-I Officer. The learned Single Judge has assigned the following reason for interference in the impugned order of punishment:

“The order removing the petitioner from service appears to have been passed by an authority subordinate to the appointing authority. The same is impermissible.”

4. Learned Counsel for the appellants advance singular contention and submits that the learned Single Judge appears to have drawn analogy from Article 311 of the Constitution of India and, therefore, came to hold that the removal of the writ

petitioner by an Authority inferior to the appointing Authority is bad in law. However, the learned Single Judge has failed to consider the aspect whether Article 311 of the Constitution of India can be pressed into service for a Bangiya Gramin Vikash Bank employee who was not a civil post holder. Thus, the impugned order may be set aside and the writ petition may be restored to its original file and number.

5. Learned Counsel for the other side supported the impugned order but could not point out anything from the impugned order which throws light about any discussion regarding applicability of Article 311 of the Constitution of India in relation to an Officer of Bangiya Gramin Vikash Bank.

6. Thus, we find substance in the argument of learned Counsel for the appellant/Bank that the question of competence of the Disciplinary Authority needs to be looked into in sufficient detail.

7. The impugned order dated 12th December, 2019 is set aside. The writ petition is restored to its original file and number. It will be open to the parties to raise all possible points while arguing the writ petition, keeping in view the writ petitioner is out of employment from December, 2016. We deem it proper to request the learned Single Judge to take up the matter at the earliest and decide in accordance with law.

8. The appeal being FMA/1237/2021 and the connected application being IA No: CAN/2/2021 are accordingly disposed of.

9. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.”

20. At the time of hearing learned advocate for the petitioner pressed the writ petition mainly on two points, namely:

- i. “The authorities while passing the impugned order of ‘removal from service’ of the petitioner, did not consider that such order was passed in violation of Article 311 of the Constitution of India i.e. by an officer who is inferior to the appointing authority of the petitioner; and
- ii. Such order was passed ignoring an order passed in the earlier writ petition at the behest of the petitioner where it was specifically directed that the inquiry proceedings should not be commenced without the leave of court. The inquiry proceeding was commenced and conducted without seeking such leave and therefore, the entire departmental proceeding and the impugned order passed therein, was a nullity.”

21. As to the first point, apparently, the writ petitioner was appointed by the Chairman of the Bangiya Gramin Vikas Bank (BGVB). He was offered appointment as a Probationary Officer, JMG Scale I; by a letter issued in the pen of the Chairman vide Ref. No. BGVB/HO/CM/1402/2014 dated June 18, 2014 and his services as such officer were subject to terms and conditions stated in the letter. It would be apposite to set out conditions ‘H’ and ‘I’ of such letter, which are as follows:

- H. Your services as an Officer JMG Scale-I in the bank will
be governed by the existing Bangiya Gramin Vikas Bank

Officers and Employees Service Regulation, 2010 and also by such rules and regulations as may be introduced or amended from time to time. One of such rules is that every Officer JMG Scale-I is liable for transfer to any place or branch of the bank.

- I. Notwithstanding anything contained hereinabove, you will be bound to abide by the instructions of the Competent Authority to be issued from time to time.

22. A departmental enquiry was conducted against the petitioner and on conclusion of such enquiry, the disciplinary authority & General Manager of the bank passed the order of punishment imposing a penalty of 'Removal from Service which shall not be a disqualification for future employment'.

23. It was contended that the disciplinary authority being inferior in rank to the appointing authority of the petitioner being the chairman, could not have passed the order of removal from service in view of Article 311 of the Constitution of India. Therefore, such order is bad in law and cannot be acted upon. The relevant provision of Article 311 of the Constitution of India reads, thus:

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed

by an authority subordinate to that by which he was appointed.

(2)

(3)”

24. In **S.L. Agarwal (Dr)** (supra), the Hon’ble Supreme laid down to the following:-

“10. On the other hand, in State of Bihar v. Union of India [(1970) 1 SCC 67]. Hindustan Steel Limited was not held to be a “State” for purposes of Article 131. The question whether Hindustan Steel Limited was subject to the jurisdiction of the High Court under Articles 226 and 227 was left open. In dealing with the above conclusion, reference was made to the incorporation of Hindustan Steel Limited as an independent company and thus a distinct entity. In Praga Tools Corpn. v. C.V. Imanuel [(1969) 1 SCC 585] it was pointed out that a company in which 88% of the capital was subscribed by the Union and the State Governments could not be regarded as equivalent to Government because being registered under the Companies Act it had a separate legal existence and could not be said to be either a Government Corporation or an industry run by or under the authority of the Union Government. Similar views were also expressed in the High Courts. In Lachmi v. Military Secretary to the Government of Bihar [AIR 1956 Pat 398] the expression “civil post under the Union or the State” was held to mean that the civil post must be in the control of the State and that it must be open to the State to abolish the post or regulate the conditions of service. Although the case concerned a Mali employed in Raj Bhavan, it was held that it was not a post under the State even though the funds of the State were made available for paying his salary. In a later case Subodh Ranjan Ghosh v. Sindhri Fertilisers

and Chemicals Ltd. [AIR 1957 Pat 10] the employees of the Sindhri Fertilizers were held not entitled to the protection of Article 311. Our brother Ramaswami (then Chief Justice) noticed that the corporation was completely owned by the Union Government; that the Directors were to be appointed by the President of India who could also issue directions. He nevertheless held that in the eye of law the company was a separate entity and had a separate legal existence. In our judgment the decision in the Patna case is correct. It has also the support of a decision reported in Ram Babu Rathaur v. Divisional Manager, Life Insurance Corporation of India [AIR 1961 All 502] and another in Damodar Valley Corporation v. Provat Roy. [LX CWN 1023] Our brother Ramaswami relied in particular upon an English case Tamlin v. Hennaforde [(1950) 1 KBD 18] . In that case it was held in relation to a business that although the minister was really incharge, the corporation was different from the Crown and the services of the corporation were not civil services. Justice P.B. Mukherjee of the Calcutta High Court, to whose judgment we referred earlier distinguished the English case by pointing out certain differences between the Corporation in that case and Hindustan Steel Limited. He pointed out that (a) in the English Corporation no shareholders were required to subscribe the capital or to have a voice in the affair, (b) the capital was raised by borrowing and not by issuance of shares, (c) the loss fell upon the consolidated fund and (d) the corporation was non-profit making. In our judgment these differences rather accentuate than diminish the applicability of the principle laid down in the English case to our case. The existence of shareholders, of capital raised by the issuance of shares, the lack of connection between the finances of the corporation and the consolidated fund of the Union rather make out a greater independent existence than that of the

*corporation in the English case. **We must, therefore, hold that the corporation which is Hindustan Steel Limited in this case is not a department of the Government nor are the servants of it holding posts under the State. It has its independent existence and by law relating to Corporations it is distinct even from its members. In these circumstances, the appellant, who was an employee of Hindustan Steel Limited, does not answer the description of a holder of “a civil post under the Union” as stated in the Article. The appellant was not entitled to the protection of Article 311. The High Court was therefore right in not affording him the protection. The appeal fails and is dismissed but in the circumstances of the case we make no order about costs.***

(Emphasis supplied)

25. Applying the ratio laid down in **S.L. Agarwal (Dr)** (supra), Bangiya Gramin Vikas Bank cannot be said to be a government within the meaning of Article 311 of Constitution of India and as an employee of such bank, the writ petitioner cannot be held to be holding a civil post under the Union or the State. In that view of the facts, the petitioner cannot be extended the protection of such provisions of the Constitution of India. Moreover, the service conditions of the officers and employees of Bangiya Gramin Vikas Bank are governed by Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulations, 2010. As noted above, the petitioner agreed to be governed by such regulations, with his eyes open, at the time of joining. Such regulations, specifically define the ‘Competent Authority’

and its powers. The petitioner cannot be allowed to turn around to say that he is entitled for the benefits of Article 311 of the Constitution.

26. So far as the second point is concerned, it is evident from the materials placed before this Court that the writ petitioner was served with a charge sheet, contemplating a departmental proceeding on March 18, 2016. The enquiry proceeding was started on April 26, 2016 and it was concluded on September 9, 2016. Materials on record also demonstrate that notices were issued upon the writ petitioner for each and every date fixed in the enquiry proceeding. It was noted in the proceeding every day that the enquiry officer took up the proceeding after waiting for the appearance of the writ petitioner. However, the petitioner never turned up at such proceeding, though, the petitioner had submitted his written statement of defence in such proceeding. The petitioner also prayed for supply of documents sought to be relied in the departmental proceeding. He also prayed for an adjournment of the proceeding on April 26, 2016. In view of the aforesaid materials, I am of the opinion that the writ petitioner was provided with sufficient opportunity to defend himself in the proceeding.

27. The writ petitioner then filed a writ petition being WP 8286 (W) of 2016. In the said writ petition an order was passed on May 12, 2016 to the effect that 'the petitioner should file his reply to the charge-sheet by the time the matter appears next, but the inquiry proceedings

should not be commenced without the leave of court'. Such order passed by the High Court was communicated by the writ petitioner to the Chairman BGVB by a letter dated May 12, 2016. Subsequently, the said writ petition was dismissed for default on June 13, 2016. However, by an order dated August 5, 2016 the writ petition being WP 8286 (W) of 2016 was restored to its file and number. According to learned advocate for the petitioner, since the order dismissing the writ petition did not specifically spoke about vacating of the interim order, such order automatically revived with the restoration of the writ petition to its original file and number.

28. In support of such contention learned advocate for the petitioner placed reliance upon **Vareed Jacob** (*supra*), where upon consideration of various decisions of different High Courts, the Hon'ble Supreme Court laid down to the following:

"18. In the case of Saranatha Ayyangar v. Muthiah Moopanar [AIR 1934 Mad 49 : ILR 57 Mad 308] it has been held that on restoration of the suit dismissed for default all interlocutory matters shall stand restored, unless the order of restoration says to the contrary. That as a matter of general rule on restoration of the suit dismissed for default, all interlocutory orders shall stand revived unless during the interregnum between the dismissal of the suit and restoration, there is any alienation in favour of a third party.

19. A similar view has been taken by the Patna High Court in the case of Bankim Chandra v. Chandi Prasad [AIR 1956 Pat 271 : 1956 BLJR 454] in which it has been held that orders of stay pending disposal of the suit are ancillary orders

and they are all meant to supplement the ultimate decision arrived at in the main suit and, therefore, when the suit, dismissed for default, is restored by the order of the court all ancillary orders passed in the suit shall revive, unless there is any other factor on record or in the order of dismissal to show to the contrary. This was also a matter under Order 39.

20. In the case of Nandipati Rami Reddi v. Nandipati Padma Reddy [AIR 1978 AP 30: (1977) 2 APLJ 64] it has been held by the Division Bench of the Andhra Pradesh High Court that when the suit is restored, all interlocutory orders and their operation during the period between dismissal of the suit for default and restoration shall stand revived. That once the dismissal is set aside, the plaintiff must be restored to the position in which he was situated, when the court dismissed the suit for default. Therefore, it follows that interlocutory orders which have been passed before the dismissal would stand revived along with the suit when the dismissal is set aside and the suit is restored unless the court expressly or by implication excludes the operation of interlocutory orders passed during the period between dismissal of the suit and the restoration.

21. In the case of Nancy John Lyndon v. Prabhati Lal Chowdhury [(1987) 4 SCC 78] it has been held that in view of Order 21 Rule 57 CPC it is clear that with the dismissal of the title execution suit for default, the attachment levied earlier ceased. However, it has been further held that when the dismissal was set aside and the suit was restored, the effect of restoring the suit was to restore the position prevalent till the dismissal of the suit or before dismissal of the title execution suit. We repeat that this judgment was under Order 21 Rule 57 whose scheme is similar to Order 38 Rule 11 and Rule 11-A CPC and therefore, we cannot put all interlocutory orders on the same basis.”

29. Similarly, in the case of **West Bengal Kerosene agents' welfare Association** (supra), a Division Bench of this Court upon noting the ratio laid down in **Vareed Jacob** (supra) observed as follows:-

“18. In the backdrop of the above, observations of the Supreme Court and the discussions on the facts indicated hereinabove, the only conclusion that one can reach in the instant case is that the interim order dated 28th October, 2016 confirmed until disposal of the writ petition on 24th April, 2017 stood revived upon the recall of the order of dismissal of the writ petition.”

30. In the case of **Amar Kumar Behera** (supra), the Orissa High Court noted that,

“In the case of Manohar Lal (dead) by LRs vs. Ugrasen (dead) by LRs & Ors, reported in (2010) 11 SCC 557, the Apex Court relying upon its earlier decision in the case of Gurunath Manohar Pavaskar & Ors vs. Nagesh Siddappa Navalgund & Ors , reported in (2007) 13 SCC 565 held that any order passed by any authority in spite of the knowledge of the interim order of the Court is of no consequence as it remains a nullity and therefore the parties are to be brought back to the same position as if the order had not been violated. In other words, in such cases, restoration of the status quo ante is the appropriate relief to be granted.

As has already been held hereinbefore, the Government by issuing the impugned order without obtaining leave of the Tribunal despite clear orders to do so must therefore be held to have acted in violation thereof for which the impugned order has to be treated as a nullity in the eye of law and is therefore, held as such.

Consequently, the impugned order is set aside and the parties are restored to the position as existing prior to issuance of the impugned order. Further, the opposite party authorities are restrained from passing any final order in the disciplinary proceeding till finalization of the writ petition.”

31. However, in the case at hand, nothing appears to have been placed on record that such orders were communicated to the respondents or the enquiry officer enabling them to hold their hands from the inquiry proceedings. Incidentally, the writ petition being WP 8286 (W) of 2016 was never pursued by the petitioner and it was again dismissed for default on July 24, 2024. As apparent from materials on record of the writ petition, no steps were taken by the writ petitioner to obtain a specific order with regard to stay of the departmental proceeding after its restoration. As noted above, the writ petitioner never appeared in the enquiry proceeding despite several notices served upon him on each and every date fixed therein.

32. Not only that, the enquiry proceeding concluded in an order of punishment on December 30, 2016. Statutory appeal was provided in the relevant regulations. However, the writ petitioner filed such appeal after much delay and it was dismissed on the ground that there was no provision in the regulations for condonation of delay. Such appeal was decided on December 31, 2018. Such conduct on the part of the petitioner demonstrates that the writ petitioner was not at all diligent.

He sat tight over his rights. He ignored the departmental proceeding and approached the appellate authority with considerable delay.

33. In the instant case the writ petitioner was found guilty of embezzlement of an amount of ₹40,00,000/- in the departmental proceeding. In **Bela Bagchi** (supra), the Hon'ble Supreme Court observed as follows:-

“15. A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik [(1996) 9 SCC 69: 1996 SCC (L&S) 1194] , it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance.”

34. As regards the scope of a writ petition, the Hon'ble Supreme Court in the case of **P.C. Kakkar** (supra) held to the following:-

“12. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.”

35. Similarly in **Nemi Chand Nalwaya** (supra), it was laid down the following observations:-

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations

have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.”

36. Also in **P. Gunasekaran** (supra), the Hon’ble Supreme Court was of the view that,

“19. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to reappreciate the evidence in exercise of its jurisdiction under Articles 226/227 of the Constitution of India.”

37. Therefore, on the basis of discussions made hereinabove, I am of the opinion that the writ petitioner has not been able to demonstrate that the disciplinary authority/competent authority passed the impugned order imposing punishment upon the petitioner with the knowledge and in wilful disobedience of order of this Court in an earlier writ petition filed at the behest of the petitioner which rendered it a nullity. As such, I find no merit in the writ petition.

38. The writ petition being **WPA 10285 of 2019** is, accordingly, disposed of. Connected applications, if any shall also stand disposed of.

39. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]