

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

FMA 2689 of 2015

Julficar Sardar

-Vs-

The State of West Bengal & Ors.

For the Appellant

: Mr. Ajay Debnath

Mr. Pradip Kar

Mr. Sujit Saha

Mr. Devranjan Das

Mr. Asit Kumar De

For the State- Respondents

: Mr. Supriyo Chattopadhyay

Ms. Tapati Samanta

Heard On : 07.11.2022

Judgement Delivered On : 31.01.2023

Supratim Bhattacharya, J.:- The instant appeal is directed against the Judgment and Order dated 14.05.2015 passed in the writ petition being WP 9324(W) of 2015. The appellant in the instant appeal was the petitioner in the said writ petition while the respondents were the respondents to the said writ petition.

The issue before the Hon'ble Single Bench was as to whether the respondent authorities were correct in not permitting the appellant to join the voluntary force in which the appellant petitioner was working as a Home Guard.

Initially, the petitioner being a home guard was not allowed to join his service on the ground that the petitioner was in judicial custody for 84 days being implicated in a criminal case following a dispute between the appellant/ petitioner's family and the family of his relatives. Being unable to join his service the appellant petitioner filed a writ petition being WP 27663 (W) of 2014 praying for allowing him to join his post. The then Hon'ble Single Bench had

directed the petitioner to make a written representation to the concerned Deputy Commissioner of Police for his consideration in accordance with law. The appellant/ writ petitioner had prayed for allowing him to join his post which was ultimately disallowed by the then Deputy Commissioner. On being refused by the Deputy Commissioner of Police to join his post the appellant preferred another writ petition before this Hon'ble Court. The said second writ petition stood dismissed, against which the instant appeal has been preferred.

The crux of this appeal is as to whether the Order passed by the Hon'ble Single Bench in the writ petition being No. WP 9324 (W) of 2015 is in accordance with law or not.

The Learned Counsel appearing on behalf of the appellant /petitioner has submitted that the appellant/ petitioner cannot be disallowed from joining his service as he does not have any criminal antecedents. He has further argued that on a false allegation against the appellant petitioner the criminal proceedings has been initiated which is not at all tenable in the eye of law. He has further submitted that considering the false criminal allegation the

appellant/ petitioner cannot be divested of his service and he ought to be allowed to join in the post he was deployed prior to the false allegation against him.

The Learned Counsel appearing on behalf of the respondents has submitted that in the first round of litigation between the parties, the Hon'ble Court had come to the conclusion directing the Deputy Commissioner of Police to look into the petition which was to be filed by the appellant/ petitioner and after considering all the aspects a reasoned decision was to be passed by the said Deputy Commissioner. He has further submitted that the Police authorities looked into the prayer of the appellant/ petitioner and had come to a finding that it would be injudicious to allow persons with proven misconduct unbecoming of a member of a disciplined volunteer force to join.

He has further submitted that against the said order of the Deputy Commissioner the appellant petitioner has preferred the second round of writ petition which has also been disallowed. In this regard the Learned Counsel has submitted that Rule 9 of the West Bengal Home Guard Rules, 1962 lays down that the

appointing authority may by a written order remove any officer or other member of the Home Guard who by reason of his misconduct or neglect of duty or breach of discipline is considered by the appointing authority to be unfit to act and continue as an officer or member or unlikely to make an efficient officer or member of the Home Guard and the decision of the appointing authority in this respect shall be final. The Learned Counsel has further submitted that the second round of writ petition is barred by *res judicata* and principles analogous thereto as the issue has finally been settled by the first writ petition.

The Learned Counsel has further submitted that the allegation against the appellant/ petitioner includes Section 302 of the Indian Penal Code which is a grave offence and the said criminal trial has not yet concluded. In such circumstance no question arises as regards to allowing the appellant/ petitioner to rejoin his service.

Having heard the parties and considering the materials placed, this Court finds that against the appellant/ petitioner a criminal case has been instituted and in connection with the said criminal case the appellant/ petitioner was in custody for 84 days and

thereafter having been released the appellant/ petitioner went to join his service when he was disallowed. As a consequence of which the appellant/ petitioner preferred the first round of writ petition wherein the Hon'ble Single Bench directed the writ petitioner to submit his written representation before the Deputy Commissioner of Police praying for considering the same in accordance with law. The said representation was negated and in consequence of which this writ petition has been preferred.

From the aforesaid discussion and the provisions of the Home Guard Act, 1962 it is apparent that Home Guards are volunteers. Considering the aforesaid facts, this Bench is also of the same view that a volunteer of a disciplined force is required to have a clean antecedent as regards to his character which the appellant has forgone. It is expected that a member of a disciplined force is to have a clear image which the appellant/ petitioner has tarnished by his previous act. The criminal charges which has been alleged against the appellant/ petitioner includes Section 302 of the Indian Penal Code which itself is a grave offence and as the said criminal case is still pending adjudication, so the representation of the

appellant / petitioner as regards rejoining his service is not at all acceptable.

Considering the aforesaid discussion, this Court finds no infirmity in the Judgement and Order impugned of the Hon'ble Single Bench.

FMA 2689 of 2015 stands accordingly **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(Subrata Talukdar, J.)

(Supratim Bhattacharya, J.)

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