

Court No. - 35

Case :- WRIT - A No. - 7506 of 2023 (Leading writ petition)

Petitioner :- Professor Kamlesh Kumar Gupta

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Arvind Prabodh Dubey

Counsel for Respondent :- C.S.C., Bal Mukund Singh, Nitin Chandra Mishra, Shashi Prakash Rai

With

Case :- WRIT - A No. - 11594 of 2023 (Connected writ petition)

Petitioner :- Professor Kamlesh Kumar Gupta

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Kushmondeya Shahi, Arvind Prabodh Dubey

Counsel for Respondent :- C.S.C., Nitin Chandra Mishra

Hon'ble Vikas Budhwar, J.

1. Since common question of laws and facts are involved in both the writ petitions, thus, they are being decided by a common/composite order, for the sake of brevity, the Writ Petition No. 7506 of 2023 (Professor Kamlesh Kumar Gupta Vs. State of U.P & 2 Others) is treated as leading writ petition and Writ Petition No. 11594 of 2023 (Kamlesh Kumar Gupta Vs. State of U.P. & 3 Others) is treated as connected writ petition. A statement has been made by the learned counsel for the rival parties that they do not propose to file any further affidavits, thus, the this Court is proceeding to decide the writ petitions at the fresh stage.

2. Heard Sri Kushmondeya Shahi, along with Sri Arvind Brabodh Dubey, learned counsel for the writ petitioner in both the writ petitions, Sri Ratan Deep Mishra, learned Standing Counsel who appears for respondent No. 1 in both the writ petitions as well as Sri Nitin Chandra Mishra, learned counsel who appears for respondents No. 2 and 3 in the leading and connected writ petitions. Sri Nitin Chandra Mishra, learned counsel for the University submits that in the leading writ petition he also appears on behalf of the fourth respondent.

3. The leading writ petition had been preferred questioning the order dated 03.10.2022 placing the writ petitioner under

suspension as well as the memorandum dated 22.03.2023 and for quashing the entire disciplinary proceedings, this Court entertained the writ petition while granting interim protection on 10.05.2023. Thereafter, an order was passed on 28.06.2023 again placing the writ petitioner under suspension followed by a supplementary charge memorandum dated 19.07.2023.

4. Questioning the said order, the writ petitioner herein preferred the connected writ petition which was connected with the leading writ petition by virtue of the order dated 20.07.2023, an amendment application was also preferred challenging the supplementary charge sheet which also came to be allowed on 16.08.2023. For the same of brevity and clarity the order dated 07.11.2023 passed in the connected writ petition is being quoted hereunder.-

"1. The writ petitioner herein had preferred Writ-A No. 7506 of 2023 questioning the order dated 03.10.2022 passed by the Vice-Chancellor of the University placing the writ petitioner under suspension and the Charge Memorandum dated 22.03.2023 on jurisdictional issue. The said writ petition was entertained by this Court on 10.05.2023 while passing the following order:

"Heard Sri Kushmondeya Shahi, learned counsel for the petitioner and Sri Anil Bhushan, learned Senior Advocate assisted by Sri Bal Mukund Singh, learned counsel for the University.

By means of this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order of suspension passed by the Vice Chancellor of the University dated 3.10.2022 as well as chargesheet vide memorandum of charges in terms of charges issued by the Registrar dated 22.3.2023.

It is argued on behalf of the petitioner that initially the petitioner was placed under suspension vide order dated 20.12.2021 by the Vice Chancellor, but nothing proceeded further in the matter as no enquiry committee was constituted, nor any memorandum of charges was issued and so the Vice Chancellor recalled the suspension order on 8.2.2022. However, the petitioner has again been suspended vide order dated 3.10.2022 which should not have been passed. It is argued that University had no material to hold any enquiry into the alleged charges. He submitted that the power exercised by the Vice Chancellor was vitiated for inaction earlier in respect of the suspension order passed. He submitted that this is an act of utter harassment at the end of the University particularly the Vice Chancellor. He further submitted that the order of suspension dated 3.10.2012 could not have lasted for more than four weeks as the statute 16.07 very clearly provided that if the order of suspension is in contemplation of enquiry and for four weeks no chargesheet is communicate to the delinquent employee, the suspension would cease to operate. He submitted that as per the respondent's own case, the alleged memorandum of charges came to be issued only on 22.3.2023, therefore, the suspension order should be taken to have ceased to operate after expiry of four weeks period from 3.10.2012 and submitted that unless and until the suspension order was revived again the petitioner could not be treated to have continued under Suspension in the teeth of the provision as contained under first statute of the University.

Challenging the memorandum of charges dated 22.3.2023, it is argued on behalf of the petitioner that the statute 8.10 (1) clearly provided that the Executive Council shall constitute a disciplinary committee which shall consist of Vice Chancellor and two other persons to be nominated by it. He argued that no such committee came into existence by any resolution which can be said to have been adopted by the Executive Council and in the event of there being no valid constitution of disciplinary committee, the article of charges cannot be said to have been duly approved and hence the memorandum of charges or articles of charges deserved to be quashed.

Per contra, Sri Bhushan, learned Senior Advocate appearing for the University has placed instruction before the Court and submitted that the Executive Council in its meeting dated 7.11.2022 adopted a resolution vide resolution number 19 to constitute a disciplinary committee in the matter of enquiry against the suspended Principal, Professor Kamlesh Kumar Gupta, namely the petitioner and it is as a sequel to this resolution adopted by the Executive Council that the Registrar has come to issue a communication to the effect that the disciplinary committee has come to be constituted by the Executive Council consisting of Vice Chancellor of the University, one Justice Samsher Bahadur Singh and Prof. Kailash Sodani, Vice Chancellor of Vardhman Mahaveer Open University, Kota, Rajasthan.

He has further taken the Court to the new instructions placed today that includes letter written by the Vice Chancellor of the University dated 12.3.2023 wherein he acknowledges the approval to the chargesheet and has sought approval of the Vice Chancellor of the Open University, Kota, Rajasthan who also accorded his approval by making endorsement "approved as proposed". He has also taken the Court to the similar letter dated 12.3.2023 written to Justice Samsher Bahadur Singh (retired), Lucknow who also made an endorsement upon the same on 15.3.2023 like "approved as proposed".

Thus it is submitted by learned Senior Advocate that all the three members of the Disciplinary Committee have approved the chargesheet and the argument advanced by learned counsel for the petitioner cannot be sustained.

He further argued that though the Statute 16.07 provided that the suspension order would last for a period of four weeks in absence of any lawful chargesheet issued to delinquent employee but once the chargesheet got issued, the suspension order would get automatically revived. He submitted that the suspension order in absence of chargesheet would only be rendered as ineffective. In support of his interpretation of the statute 16.07, learned Senior Advocate has relied upon full bench judgment of this Court in the case of Chandra Bhushan Mishra vs. District Inspector of Schools and others in Special Appeal No.652 of 1993 decided on 24.2.1995 where the Court was dealing with the interpretation of Section 16G(7) of the Intermediate Education Act, 1921. The Court held that since the suspension order as per the language in which sub section 7 has been placed, would be subject to approval of the District Inspector of Schools otherwise shall not remain in force for more that 60 days and the order of Inspector shall be final and shall not be questioned in Court. It is while interpreting this provision that the full bench held that the object behind the relevant provision is to ensure that the District Inspector of Schools passes some order, either of approval or of disapproval and the 60 days' period which has been provided as a life of the suspension order until it is approved will only render it as ineffective.

Thus it is sought to be argued that once the chargesheet has been issued the matter ended.

The issue in the case involved is as to whether there has been a lawful constitution of disciplinary committee and so the chargesheet issued would not be a valid chargesheet. The provision as contained under Statute 8.10 of the first statute of the University reads as under:

"8.10 (1) The Executive Council shall constitute, for such terms as it thinks fit, a Disciplinary Committee in the University which shall consist of the Vice-Chancellor and two other persons nominated by it:

Provided that if the Executive Council considers it expedient, it may constitute more than on such Committees to consider different case or classes or cases.

(2) No teacher against whom any case involving disciplinary action is pending shall serve as a member of the Disciplinary committee dealing with the case.

(3) The Executive Council may at any stage transfer any case from one Disciplinary Committee to another Disciplinary Committee."

(Emphasis added)

Upon bare reading of the aforesaid provisions the language of the provision is found to

be quite unambiguous and in its plain and simple reading one can very safely conclude that disciplinary committee has to be constituted by the Executive Council of the University which will invariably be consisting of the Vice Chancellor of the University as a member of it. The other two members are also to be nominated by the Executive Council. The words and expression "two other persons nominated by it" in the last line before the proviso to clause 1 of Statute 8.10 denotes word referable to Executive Council alone. The Executive Council, therefore, in my considered view would be the only authority of the University to constitute a disciplinary committee.

Looking to the resolution as has been placed by learned Senior Advocate for the University dated 7.11.2022 I find vide resolution no.19, the Executive Council did resolve to appoint/constitute disciplinary committee on the basis of some preliminary fact finding enquiry report with the Vice Chancellor as its Chairman invoking its power under Statute 8.10 read with Section 49 of the The Uttar Pradesh State Universities Act, 1973 but failed to nominate members to the committee.

Except for this resolution no.19 there is no other resolution adopted by the Executive Council of the University to nominate other two members to the disciplinary committee. The resolution no.19 is reproduced hereunder:

"19- कार्य परिषद ने प्रो० कमलेश कुमार गुप्त, निलम्बित आचार्य, हिन्दी विभाग के प्रकरण पर जांच समिति की आख्या से अवगत होना एवं जांच समिति की संस्तुति के आधार पर निलम्बन की कार्यवाही किये जाने से अवगत होना तथा एवं अनुशासनात्मक समिति गठित किये जाने पर विचार किया।

सम्यक् विचारोपरान्त कार्य परिषद ने प्रो० कमलेश कुमार गुप्त, निलम्बित आचार्य, हिन्दी विभाग के प्रकरण पर जांच समिति की आख्या से अवगत होना एवं जांच समिति के संस्तुति के आधार पर निलम्बन की कार्यवाही किये जाने से अवगत होते हुये स्वीकृति प्रदान की साथ ही इनके विरुद्ध परिनियम के भाग-49 की धारा-8.10 में दी गई व्यवस्था के अनुसार कुलपति जी की अध्यक्षता में एक अनुशासनात्मक समिति गठित किये जाने का निर्णय लिया।"

The Registrar of the University did pass a consequential order as 'confidential' dated 9.11.2022 stating therein that the Executive Council in its order dated 7.11.2022 unanimously recommended the constitution of the disciplinary committee and also suggested name as per the provision under Statute 8.10 and this is how three member disciplinary committee has come to be constituted with the Vice Chancellor as its chairman and Justice Samsher Bahadur Singh (retired) and Prof. Kailash Sodani of Open University, Kota, Rajasthan as other two members. The resolution that has been referred to by the Registrar of the University is the same resolution which has been placed before me as dated 7.11.2022.

On a pointed query being made to the learned Senior Advocate as to whether on the same day any further resolution was adopted by the University, the learned Advocate could not place any other resolution of that date. He further submits that he be given time to file a detailed counter affidavit and the matter be disposed thereafter only.

Since the resolution dated 7.11.2022 did not contain any resolution regarding nomination of other two members of the disciplinary committee, nor the Registrar's communication refers to any other resolution except 7.11.2022, prima facie, the argument advanced by learned counsel for the petitioner appears to have substance that Executive Council of the University did not constitute any disciplinary committee so as to give a valid color to the alleged charge sheet.

Matter requires consideration.

Learned counsel for the University prays for and is granted four weeks' time to file counter affidavit. Rejoinder affidavit, if any, shall be filed within two weeks thereafter.

In the meanwhile, until further order of this Court the effect and operation of the suspension order dated 13.10.2022 and further proceeding of the enquiry pursuant to the memorandum of chargesheet dated 22.3.2023 against the petitioner shall remain stayed.

The petitioner shall continue as Professor of the institution and shall be paid salary.

However, it is still left open for the Executive Council of University to pass any resolution afresh to constitute disciplinary committee afresh and then proceed in accordance with

law to hold enquiry.

List this case on 20.7.2023."

2. According to the writ petitioner subsequently on 24.06.2023, the Vice-Chancellor of the University, revoked the suspension order and on 28.06.2023, proceeded to again suspend the writ petitioner on the ground that there was no improvement in the conduct of the writ petitioner.

3. Learned counsel for the writ petitioner has invited the attention of the Court towards Annexure-11, page-63 of the paper-book, Clause 30(7) at page- 69, being the resolution of the Executive Council dated 24.06.2023 has contended that, firstly, the ground taken for again placing the writ petitioner under suspension is that there happens to be communications dated 12.05.2023. 02.06.2023, 07.06.2023 and 26.02.2023 that despite service of the charge sheet dated 22.03.2023, the petitioner did not tender his reply and he was not participating in the inquiry proceeding.

4. Learned counsel for the writ petitioner submits that once this Court by virtue of the order dated 10.05.2023 passed in Writ-A No. 7506 of 2023, had stayed the suspension of the order dated 13.10.2022 and further proceedings pursuant to the Charge Memorandum dated 22.03.2023, thus the reliance placed upon by the respondent University upon the communications dated 12.05.2023. 02.06.2023, 07.06.2023 and 26.02.2023 are totally misplaced. He further submits that there happens to be an observation in the order dated 10.05.2023 passed in Writ-A No.7506 of 2023, to the extent that the Executive Council of the University was not precluded to pass a fresh resolution to constitute disciplinary committee and then proceed in accordance with law, but relying upon the resolution of the Executive Council of the year 7.11.2022/09.11.2022, the three member committee, which was earlier constituted without there being a fresh exercise have been made the member of the Enquiry Committee. He submits that there has been no compliance of the order dated 10.05.2023.

5. Learned counsel for the writ petitioner has also invited the attention of the Court towards the amendment application, which came to be allowed by this Court, wherein a supplementary charge sheet has been issued on 18.07.2023, as whereas the parent charge sheet dated 30.03.2023 was itself stayed. Thus, according to him, the entire basis for placing the writ petitioner under suspension and also proceeding of inquiry is per se illegal.

6. Sri Nitin Chandra Mishra, learned counsel for the University submits that some breathing time be accorded to him to obtain further instructions in the matter. He thus prays that the matter be adjourned for the day.

7. Put up this case on 21.11.2023 as fresh."

5. Today, when the matter has been taken up Sri Nitin Chandra Mishra, learned counsel who appears for the respondent University has made a statement at Bar that pursuant to the order dated 10.05.2023 passed in the leading writ petition while staying the effect and operation of the suspension order dated 03.10.2022 and the proceedings for the inquiry pursuant to the memorandum of charge sheet dated 23.02.2023 it was left open

for the Executive Council of the University to pass a resolution afresh to constitute disciplinary committee and to proceed in accordance with law to hold inquiry. He submits that only on the basis of the resolutions dated 07.11.2022/09.11.2022 the three member committee which had been earlier constituted based upon the same the writ petitioner has been placed under suspension and there has been no further constitution of the committee in that regard. He submits that since the interim order is already continuing, thus, the said exercise ought to have been undertaken. According to him the orders impugned be set aside, the matter be remitted back to pass a fresh order.

6. To such a submission, learned counsels for the writ petitioner has no objection.

7. In view of the stand and the statement made by Sri Nitin Chandra Mishra, the order dated 03.10.2022 placing the writ petitioner under suspension and the charge memorandum dated 22.03.2023 impugned in the leading writ petition as well as the order dated 28.06.2023 again placing the writ petitioner under suspension and the supplementary memorandum dated 19.07.2023 are set aside. The respondents are at liberty to pass fresh orders strictly in accordance with law.

8. With the aforesaid observations, both the writ petitions stand partly allowed.

Order Date :- 21.11.2023

Rajesh