

Court No. - 7

Case :- WRIT - A No. - 5876 of 2023

Petitioner :- Dr. Mohd. Haneef

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Deptt. Of Higher Education Lko. And 4 Others

Counsel for Petitioner :- Tushar Mittal, Gaurav Mehrotra

Counsel for Respondent :- C.S.C., Tanveer Ahmad Siddiqui

Hon'ble Abdul Moin, J.

1. Supplementary affidavit filed today in Court by the learned counsel for the petitioner is taken on record.
2. Learned counsel for the petitioner contends that the issue involved in the instant writ petition as well as in connected writ petitions namely Writ-A No. 7477 of 2023 Inre; Dr. Mohd. Hayatul Islam Vs. State of U.P and Ors & Writ-A No. 7476 of 2023 Mohd. Salman Khan Vs. State of U.P and Ors, is one and the same. As such, the Court proceeds to hear all the writ petitions together. For convenience, facts of Writ-A No. 5876 of 2023 are being taken into consideration.
3. Heard learned counsel for the petitioner, Sri Tushar Mittal, learned counsel appearing on behalf of the the petitioner in connected writ petitions namely Writ-A No. 7477 of 2023 and Writ-A No. 7476 of 2023, learned Standing counsel appearing on behalf of the respondent no. 1 and Sri H.G.S.Parihar, learned Senior Advocate assisted by Sri Tanveer Ahmad Siddiqui, learned counsel appearing on behalf of the respondent nos. 2 to 6.
4. Under challenge is the suspension order dated 21.07.2023, a copy of which is annexure 1 to the writ petition. Also under challenge is the Show Cause Notice dated 20.05.2023, a copy of which is annexure 2 to the writ petition. A further prayer is for a mandamus commanding the respondents to permit the petitioner to continue to perform his duties on the post of Assistant Professor, Department of Bio-Engineering, Integral University, Lucknow.
5. The contention of learned counsel for the petitioner is that a Show Cause Notice had been issued to the petitioner on 20.05.2023 requiring him to show

cause to the charges as indicated in the said notice. It was also provided that failure to respond to the said notice would result in initiation of disciplinary proceedings as per University rules.

6. The petitioner claims to have submitted his reply to the same on 26.05.2023, a copy of which is annexure 7 to the writ petition.

7. The respondents initially passed an order of suspension dated 21.06.2023, a copy of which is annexure 13 to the writ petition. Being aggrieved, the petitioner filed Writ-A No. 5126 of 2023 Inre; Dr. Mohd. Hanif Vs. State of U.P and Ors.

8. The learned Senior Advocate appearing on behalf of the respondent-University submitted before this Court that the respondents had an intention of withdrawing the suspension order and prayed that it may left open for the University to pass a fresh order. Considering the aforesaid statement given by the learned Senior Advocate, the writ petition was disposed of vide order dated 19.07.2023 leaving it open to the University to withdraw the impugned order (suspension) and it was also left open for the University to pass a fresh order in accordance with law.

9. Subsequent thereto, the respondents have passed the impugned suspension order dated 21.07.2023. Thereafter, the respondents have also issued a charge sheet dated 20.09.2023, a copy of which is annexure SA 1 to the supplementary affidavit filed today.

10. The argument of learned counsel for the petitioner is that the order of suspension is an exercise in malice on the part of the University inasmuch as a perusal of the charges as leveled in the suspension order, the Show Cause Notice as well as the charge sheet would indicate that it is simply because the petitioner was adjudicating for his rights in two petitions filed by the petitioner before this Court that a malacious order of suspension has been passed.

11. Another ground which has been taken by the learned counsel for the petitioner is that when the respondents issued a Show Cause Notice dated 20.05.2023 and the petitioner had submitted a detailed reply to the said Show

Cause Notice on 26.05.2023 consequently, though the respondents have indicated in the impugned order of suspension regarding the petitioner having submitted his reply but the callous and cavalier manner in which the reply of the petitioner has been dealt with itself vitiates the impugned order of suspension and as such, on both the grounds the order of suspension merits to be quashed.

12. The further contention is that the charges as indicated in the impugned order of suspension as well as in the charge sheet would indicate that they are all frivolous charges and would not stand scrutiny for single moment and consequently, it is simply because the petitioner had approached this Court on two earlier occasions that he is being victimized by placing him under suspension and by issuing a charge sheet against him.

13. Another argument of learned counsel for the petitioner is that a perusal of the charge sheet which has followed the impugned order of suspension would indicate that the respondents have referred to various documents in support of the charges which are leveled against him but despite the petitioner having asked the respondents to supply relevant documents in order to enable him to submit his reply, though he has already denied the charges as leveled against him in the charge sheet, yet the said documents have not been supplied to him till date.

14. On the other hand, Sri H.G.S.Parihar, learned Senior Advocate argues that the power of suspension is vested with the competent authority as conferred on him under Section 17 (6) of the Private Universities Act No. 12 of 2019 and as per the provisions of Statute 28 (5), read in conjunction with Clause 65 (1) (a), Section-II of Chapter VII of the Services Rules of the Integral University and in accordance with Clause 30 A (1 & 2) of Chapter XII of the General Ordinances of Integral University. The contention is that the said power of suspension is not hedged with any condition of issuance of a Show Cause Notice as has been done in the instant case inasmuch as in the fairness of things, the petitioner was given an opportunity by way of a Show Cause Notice to submit his reply. It is contended that after consideration of the reply and the report of the fact finding committee which had been constituted, it was found reasonable and feasible to place the petitioner under suspension through the order impugned dated

21.07.2023. It is also contended that the relevant portions of the fact finding inquiry have also been indicated in the impugned order of suspension which would indicate the serious charges against the petitioner.

15. It is also contended that once as per the relevant rules and regulations, there was no requirement of any show cause notice prior to placing an employee under suspension consequently, even if in the instant case a show cause notice had been issued to the petitioner, his reply had been called for and even if as per the argument of learned counsel for the petitioner, the same had been dealt with in a casual and cavalier manner and no reasons have indicated as to why the reply of the petitioner has not been found to be satisfactory to the said show cause notice the same cannot and will not take away the power of the competent authority to place the petitioner under suspension on the reasons as indicated in the impugned order of suspension.

16. The further argument is that as now the petitioner has already been issued with the charge sheet dated 20.09.2023 consequently, it is always open for the petitioner to submit his reply to the said charge sheet and the respondents would endeavour to complete the inquiry within a reasonable period of time.

17. Having heard the learned counsel appearing for the contesting parties and having perused the record what emerges is that while the petitioner was working on the post of Assistant Professor, Department of Bio-Engineering, he was initially placed under suspension vide order dated 21.06.2023. Upon a challenge being raised to the said order by filing a writ petition before this Court, learned counsel for the respondent had indicated the intention of the University to withdraw the said order but had prayed that it may be left open for the University to pass a fresh order. Considering the aforesaid, the writ petition was disposed of leaving it open to the respondents to withdraw the order of suspension and to pass a fresh order, if required. Even prior to the initial order of suspension dated 21.06.2023, the petitioner had been issued with a Show Cause Notice dated 20.05.2023 to which he had submitted his reply. A Fact Finding Committee had been constituted. Subsequent thereto, i.e after withdrawal of the aforesaid writ petition, the respondents have passed the impugned order of

suspension dated 21.07.2023, after considering the reply of the petitioner to the Show Cause Notice which has not been found to be tenable and feasible in the eyes of law. The respondents have also reproduced the relevant portions of the report of fact finding inquiry committee constituted by them and on the basis of the charges, as indicated in the suspension order which has been followed by the charge sheet dated 20.09.2023 and the petitioner has been placed under suspension.

18. A perusal of Statute 28 (5), read in conjunction with Clause 65 (1) (a), Section-II of Chapter VII of the Services Rules of the Integral University and Clause 30 A (1 & 2) of Chapter XII of the General Ordinances of Integral University would indicate that the competent authority is vested with the power to place any employee under suspension where disciplinary proceedings against him are contemplated or pending. Neither the statute nor the rules provide for issuance of any Show Cause Notice prior to placing an employee under suspension. Thus, even if a Show Cause Notice had been issued to the petitioner and he had been asked to submit his reply which reply was in fact submitted by the petitioner yet the same has been dealt with in a casual and cavalier manner the same cannot resile from the fact that the respondent-University has got ample power to place an employee under suspension even without issuance of a Show Cause Notice. Even if the said Show Cause Notice has been issued to the petitioner, the same cannot and will not take away the power of the competent authority to place an employee under suspension on the ground of disciplinary proceedings being contemplated or pending.

19. A perusal of the impugned order of suspension dated 20.05.2023 would indicate that the respondents have indicated in paragraph 7 of a detailed inquiry being contemplated against the petitioner. This has been followed by the charge sheet dated 20.09.2023. Thus, no case for interference with the impugned suspension order is made out.

20. As regards the argument of learned counsel for the petitioner of challenging the show cause notice dated 20.05.2023 is concerned, suffice it to say that once the petitioner has already been submitted his reply to the same and further action

has been taken by the respondents consequently, for all practical purposes, the challenge to the notice has been rendered redundant.

21. However, at this stage, the Court may observe that as the petitioner has submitted an application for supply of the documents vide application dated 03.10.2023 which is pending at the end of the inquiry officer, there cannot be any occasion for the inquiry officer to not supply the documents as asked for by the petitioner provided that the petitioner has given the reasons as to why the said documents are required. Sri H.G.S. Parihar, learned Senior Advocate fairly states that the aforesaid documents as are required by the petitioner would be given to the petitioner in accordance with rules within a period of one week from today. The aforesaid statement is recorded.

22. Thus, keeping in view the aforesaid discussion, none of the grounds as raised by the learned counsel for the petitioner are found to be legal and tenable in the eyes of law.

23. Accordingly, the writ petition is dismissed but with the observations that the dismissal of the writ petition would not be construed by the respondents as if the Court has entered into the merits of the charges as leveled against the petitioner. It is provided that the inquiry shall be proceeded against the petitioner strictly in accordance with rules after giving due opportunity of hearing to the petitioner.

Order Date :- 11.10.2023
Pachhere/-