

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: January 07, 2016

+ **W.P.(C) 4639/2015**

DR. BHIM SEN SINGH

..... Petitioner

Through: Ms.Jyoti Singh, Sr. Advocate with
Ms.Tinu Bajwa & Ms.Lakshmi
Gurung, Advocates

versus

THE UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Mr.Sudhir Nandrajog, Senior
Advocate with Mr.Mohinder J.S.
Rupal, Adv. for R-1
Mr.Pranav Kr. Jha, Advocate for
R-2 & R-3

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. In view of the order dated May 15, 2015, the only relief that survives for consideration in this writ petition is the following:

“(a) Allow the present writ petition by issuing a writ of mandamus or any other appropriate writ order/direction to reinstate the petitioner who vide suspension order dated 01.08.2012 had been placed under suspension declaring that such suspension order has not been reviewed and is invalid”.

2. It is the submission of Ms. Jyoti Singh, learned Senior Counsel appearing for the petitioner that even though, the ordinance XII of the University does not prescribe reviewing of the suspension, on expiry of certain period, the respondent No. 2-College has adopted the CCS (CCA) Rules, 1965 ('Rules of 1965' in short) to govern the departmental proceedings and the same is clear from page 510 of the paper book wherein it was noted by the learned Enquiry Officer, on an issue of applicability of Rules of 1965, on the statement made by Mr. Mittal, learned counsel for the college, that the college authorities have no objection in following the principles of Rules of 1965 in respect of departmental enquiry against the petitioner as well. She states, in view of such a statement, the Rules of 1965 deemed to have been adopted in toto to govern the suspension of the petitioner herein as well. In that regard, she would rely upon the judgment of the Supreme Court in the case reported as **2010 (2) SCC 222 Union of India Vs. Dipak Mali 1999**.

3. She would also state, subject matter of the departmental proceedings is a charge sheet issued to the petitioner on August 30, 2012. The charges have been enquired into and the Enquiry Officer has submitted his report to the Management Committee of the College. The departmental proceedings have concluded, there is no threat of petitioner

influencing the witnesses or fabricating the documents so as to keep him away from duties. In other words, it is her case that no ground exists to continue the petitioner under suspension. She would also refer to a second charge sheet issued to the petitioner in the month of November, 2014, which has also come to an end as the Enquiry Officer has closed the proceedings and has only to submit his report to the Management Committee for it to take a decision. Even on that ground, the continuance of petitioner under suspension is untenable. She also refers to the letter dated March 2, 2015 to contend, in the said letter, it is the stand of the University that they have given approval to the decision of the Governing Body at its meeting held on December 11, 2014 to allow keeping the petitioner under suspension during the pendency of the second enquiry. She states, no such decision can be seen from the proceedings of the Governing Body held on December 11, 2014 as there was no such agenda item for the said meeting, hence, there is no question of Vice Chancellor approving the continuance of the petitioner under suspension. She would also state, the reliance placed by the respondent No.1 University on the letter dated January 15, 2015 in support of their letter dated March 2, 2015, is not tenable as Dr. S.P. Gupta had no locus to write a letter to the Vice Chancellor, seeking his approval for continuance of the petitioner under suspension both on the ground of

being not competent, as the Governing Body is the appointing authority and being an interested party, as he is holding the post Acting Principal, the post earlier held by the petitioner. She would also state whether rules for review exists or not, the principles of natural justice demand timely review of suspension must be read in the rules so that the employee/officer does not remain incarcerated till the end of the proceedings without justification. In that regard she rely on the judgment reported as ***1999 (7) SCC 739 Yoginath Bagade vs. State of Maharashtra*** and ***2009 (112) DRJ 391 (DB) Prof. Bidyug Chakraborty vs. Delhi University & Ors.*** In the last it is her submission that till date there is no decision of the Governing Body reviewing the suspension of the petitioner. She would also rely on judgment of the Supreme Court in ***Ajay Kumar Choudhary vs. Union of India through its Secretary & Anr., Civil Appeal No. 1912/2015 decided on February 16, 2015*** in support of her submissions.

5. On the other hand, learned counsel appearing for the respondent No.2 College would state that the Rules of 1965 are not applicable to the University of Delhi and its constituent colleges. He would refer to Clause 7 of the Ordinance XII, which inter alia, contemplates suspension of an employee. According to him, there is no provision in the Ordinances adopting the Rules of 1965, which governs the suspension,

departmental proceedings etc. According to him, the contention of the learned Senior Counsel for the petitioner that the Rules of 1965 have been made applicable by placing reliance on the proceedings held against one Dr. S.C.Garg and also statement given by counsel appearing for the College before the Ld. Enquiry Officer in the proceedings against the petitioner, is only to follow the rules for the conduct of the departmental proceedings against Dr. Garg and the petitioner as the said rules lays down a definite procedure for holding departmental proceedings. The statement cannot be read to mean, adopting the Rules of 1965, as a whole. According to him, no statement to govern the suspension of the petitioner under Rule 10 of the Rules of 1965 has been made. In the absence of any provision for a periodical review, the suspension cannot be held to be bad. According to him, the reliance placed by the learned Senior Counsel for the petitioner on the judgment of the Supreme Court in the case reported as **2010 (2) SCC 222 Union of India & Ors. Vs. Dipak Mali** is untenable and the same is not applicable, as the judgment deals with a situation under the Rules of 1965. That apart, it is his submission, even if the Enquiry Officer has submitted his report, that would not entail revocation of the suspension of the petitioner. He states, the respondent No. 2 College has recommended the termination of the petitioner to the respondent No.1 University and the College is awaiting

the decision on that. He also states, noting the position, the petitioner held in the college, the revocation of his suspension would not like to be allowed by this Court. That apart, it is his submission that departmental proceedings qua the second charge sheet have only been closed by the Enquiry Officer but he is yet to give his report. Till such time the proceedings culminate in the final order(s), the plea of revocation of suspension is untenable. He relied upon the judgment of this Court in the case reported as **2009 (112) DRJ 54 (DB) Professor Ramesh Chandra vs. University of Delhi & Anr.**

6. Mr.Sudhir Nandrajog, learned counsel appearing for the respondent No.1 University would submit, the communication dated March 02, 2015 of the University was rightly issued and the same has to be read in conjunction with the letter dated January 15, 2015 of Dr. S.P. Gupta, written in his capacity as the Member Secretary of the Governing Body, wherein approval of the Vice-Chancellor was sought for continuance of the petitioner's under suspension in view of second charge-sheet. He states, the Governing Body in its meeting dated November 02, 2015 did consider the letter dated January 15, 2015 written by Dr. S.P. Gupta but did not comment otherwise, on the letter, which means, the Governing Body had accepted/agreed with the approval sought for continuance of the petitioner under suspension.

According to him, even though the learned Enquiry Officer had absolved the petitioner against some of the charges in the first charge-sheet, pursuant to a note of disagreement given to the petitioner, the Governing Body after considering the reply filed by the petitioner has decided to terminate the services of the petitioner. The decision has been sent to the Vice-Chancellor for approval. According to him, it is a case of loss of confidence, and his reinstatement in such circumstances is undesirable. He seeks the dismissal of the writ petition.

7. Having considered the submissions advanced by the learned counsel for the parties, insofar as the submission of Ms. Jyoti Singh, learned Senior Counsel for the petitioner, on the applicability of the Rules of 1965 by placing reliance on the order passed by the learned Enquiry Officer in the proceedings held against the petitioner, suffice to state, the statement made by Mr Mittal is very clear, that he has no objection in following the principles of the Rules of 1965 in respect of departmental proceedings against Dr. Singh, the petitioner herein. The said statement was noted by the Enquiry Officer (at page 510) in the following terms:-

“Faced with the said argument Mr. Mittal appearing for the college, has fairly submitted that the college authorities have no objection in following the principles of CCS/CCA rules also in respect of departmental enquiry against Dr. Singh. Further Mr. Mittal submitted that the

said rules are made applicable in the departmental proceedings against Dr. Singh. Further Mr. Mittal submitted that the said rules are made applicable in the departmental proceedings against Dr. Singh to the extent possible.”

8. The aforesaid statement has to be read in the context that there is no detail procedure laid down in the Ordinances of the University for conducting the departmental proceedings and the Rules of 1965 encompasses in itself the principles of natural justice/fair procedure. Surely, a “departmental enquiry” would not contemplate ‘suspension’ as a departmental enquiry starts with the issuance of charge-sheet and culminate with a final order. No doubt, the Rules of 1965, vide Rule 10 stipulates, ‘suspension’, but that is not part of the procedure governing the ‘departmental enquiry’. Further, as noted above there is a provision for ‘suspension’ in the Ordinance XII which does not contemplate timely review. The procedure to review the suspension after a particular time period, need to be prescribed in the Rules by the rule making authority, as prescribing such a provision would impose an obligation on the authority to review periodically. That apart, a procedure needs to be laid down as to in what manner the review needs to take place. That apart, any violation thereof leads to a particular consequence, that is the suspension becomes invalid. A statement made by a counsel would not make the complete Rules of 1965 applicable. This submission needs to

be rejected. The judgment of the Supreme Court in *Dipak Mali (supra)* is not applicable, as the CCS (CCA) Rules are not applicable.

9. Insofar as the submission of Ms. Jyoti Singh, by relying upon the judgment of the Supreme Court in the case of *Yoginath D. Bagde Vs. State of Maharashtra and Another, 1999 (7) SCC 739*, more specifically para 28 to contend that the principles of natural justice require that the suspension must be reviewed periodically, and such a procedure must be read in the rules, is concerned, suffice to state, the observation of the Supreme Court was in the context, where the principles of natural justice, giving a hearing to the delinquent employee when the disciplinary authority disagreed with the finding recorded by the Enquiry Officer, has been denied. The Supreme Court in that situation held, the principles of natural justice must be read into the rules. Such a proposition cannot be read in the case of this nature where there is no provision at all in the Rules to review a suspension after a particular period. Reading the opportunity of hearing in a rule is not the same as reading into a rule procedure, which imposes an obligation on the authority with a consequence i.e. making suspension invalid. So such a process cannot be read into the Rules on the premise that the same is in violation of the principles of natural justice. No doubt, the competent authority otherwise is required to review the suspension of an officer

from time to time without any obligation of time limit.

10. Insofar as the submission made by Ms. Jyoti Singh, relying upon the judgment of this Court in the case of *Prof. Bidyug Chakraborty Vs. Delhi University and Ors., 2009 (112) DRJ 391 (DB)* is concerned, no doubt in the said case, this Court based on the judgment of the Supreme Court in *Medha Kotwal Lele and Ors. Vs. Union of India and Ors., W.P.(C) 173-177 of 1999 decided on April 26, 2004* wherein, the Supreme Court has held that the Complaints Committee envisaged in *Vishaka and Ors. Vs. State of Rajasthan and Ors., (1997) 6 SCC 241* will be deemed to be an Enquiry Authority for the purposes of the Rules of 1965 and the report of the complaints committee shall be deemed to be an inquiry report under the Rules of 1965, and read into the Ordinance XV-D, 'Complaints Committee' to mean Enquiry Authority, which did not contain identical Clause (16) and (17) of Rule 14 of the Rules of 1965. Suffice to state, such a procedure was evolved by the Supreme Court in the cases of sexual harassment only, to obviate a situation of a woman employee facing two enquiries, one, fact finding enquiry pursuant to a complaint and two, an enquiry under the conduct rules. It is in view of the dicta of the Supreme Court, this Court has read into the Ordinance XV-D, the report of the Complaints Committee to mean the report of the Enquiry Authority. There is no dispute to the fact

that this Court was in fact, dealing with a case of sexual harassment in *Prof. Bidyug Chakraborty (supra)*, which is not the case here. Hence the submission of Ms. Jyoti Singh, needs to be rejected.

11. Insofar as the submission of Ms. Jyoti Singh that the decision of the Vice Chancellor communicated through letter dated March 2, 2015 to state that no such decision was taken by the Governing Body of the College, hence, the decision was totally extraneous, is concerned, suffice to state, a perusal of the letter dated March 2, 2015 does refer to a communication dated January 15, 2015, seeking approval of the Vice Chancellor to the continuance of suspension of the petitioner, even after issuance of second charge sheet. The said letter was written by Dr. S.P.Gupta as Member Secretary of the Kirori Mal College Governing Body and which reads as under:

*The Vice Chancellor
University of Delhi
Delhi-110007*

Date- 15.01.2015

Sir,

As directed by the Chairman of the college Governing Body on 14.01.2015, I am writing this letter.

The Governing Body at its meeting held on 11.12.2014 considered the reply of Dr. Bhim Sen Singh, Principal (under suspension) to the memorandum dated 6.11.2014 issued to him. The Governing Body decided to set up an enquiry in the matter because Dr. Bhim Sen Singh had denied all the charges in the memorandum dated 6.11.2014 and it further authorized the Chairman to

appoint the Enquiry Officer as well as the Presenting Officer.

A copy of the memorandum is enclosed herewith.

Please allow the Governing Body to keep the suspended Principal Dr. Bhim Sen Singh under suspension during this enquiry.

*With regards,
Yours Sincerely*

*(Dr. S.P. Gupta)
Member Secretary, K.M. College Governing Body.”*

12. The letter reveals that the same was written by Dr. Gupta on the directions of the Chairman of the Governing Body. The Governing Body which is the Disciplinary Authority, did note the letter dated January 15, 2015 in its meeting held on November 12, 2015 and did not decide to revoke the suspension of the petitioner. This submission is also rejected.

13. The submission of Mr.Nandrajog that the Governing Body, being the Disciplinary Authority, having prima facie found that the charges framed against the petitioner are sustainable, decided to terminate the services of the petitioner, which decision is pending approval of the Vice-Chancellor, and in such situation the suspension should not be revoked is appealing. Till such time the decision is taken by the Vice-Chancellor, the Governing Body's decision to terminate the services of the petitioner cannot be overlooked, in deciding the issue of revocation of his suspension.

14. In view of the aforesaid peculiar facts, the judgment of the Supreme Court in *Ajay Kumar Choudhary (supra)*, relied upon the learned Senior Counsel for the petitioner would also not be applicable. No doubt, the Supreme Court in para 14 held that the currency of suspension order should not extend beyond three months if within such period the Memorandum of Charge/Charge-sheet is not served on the delinquent officer/employee. The Supreme Court further held, if the Memorandum of Charges/Charge-sheet is served, a reasoned order must be passed for the extension of suspension, as according to the Supreme Court the Government is free to transfer the concerned person to any department in any of its offices within or outside the State so as to sever any local or personal contact which he may have and which he may misuse for obstructing the investigation against him. The Supreme Court although in the said case noting that the charge-sheet has been served, had not interfered with the suspension, however observed the appellant may challenge his continuous suspension in any manner known to law and the action of the respondents will be subject to judicial review.

15. In view of the above discussion, I do not see any merit in the petition. The same is dismissed.

(V.KAMESWAR RAO)
JUDGE

JANUARY 07, 2016/akb/km