

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24317 of 2015

and

W.M.P.No.1 of 2015

Dr.Kiran Sidgonda Patil

... Petitioner

Vs.

1.The Registrar,
Post Graduate and Research Institute,
Dakshina Bharat Hindi Prachar Sabha,
T.Nagar, Chennai - 600 017.

2.Prof. Nirmala S. Mourya,
The Registrar,
Post Graduate and Research Institute,
Dakshina Bharat Hindi Prachar Sabha,
T.Nagar, Chennai - 600 017.

3.The Secretary,
Dakshina Bharat Hindi Prachar Sabha,
Dharwad - 580 001, Karnataka.

4.Mr.K.Vijayan,
The Secretary,
Dakshina Bharat Hindi Prachar Sabha,
Dharwad - 580 001, Karnataka.

5.Dr.C.N.Mugatakar, Principal Incharge,
Dr.B.D.Jatti College of Education,
Belgaum - 590 001 and
Principal of Shiksha Snatak College,
Civil Hospital Road, Ayodhya Nagar,
Belgaum - 590 001, Karnataka.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the first respondent in Ref.No.PG//2015-2016/188 dated 15.07.2015 issued by the first respondent and quash the same.

For Petitioner : Mr.Richardson Wilson
For Respondents: Mr.Balan Haridas (for R1 to R3 & R5)
No appearance for R4

O R D E R

Heard Mr.Richardson Wilson, learned counsel appearing for the petitioner and Mr.Balan Haridas, learned counsel appearing for respondents 1 to 3 and 5. With the consent of the learned counsel appearing for the petitioner and the respondents 1 to 3 and 5, the Writ Petition is taken up for final disposal at the admission stage itself.

2.The charge memo cum suspension order issued against the writ petitioner by the first respondent in proceedings dated 15.07.2015 is under challenge in this Writ Petition.

3.On a perusal of the impugned charge memo dated 15.07.2015, the allegations against the writ petitioner are serious in nature and relating to the misappropriation of funds. The charges are extracted here under:

"CHARGE No.1:

That Dr.B.D.Jatti College of Education, Belgaum is conducting B.Ed. (Hindi) Course and Shiksha Snatak College is conducting Diploma in Teacher Training Education (Hindi). The maximum intake of students for the academic year is 100 and 40 respectively. For the purpose of remitting the fee and other financial transactions, the Management has opened Saving Bank Accounts in Indian Overseas Bank, Belgaum, in the name of the Sabha. Dr.B.D. Jatti College of Education and the Account Number of S.B.A/c is No.02, Civil Hospital Road, Ayodhya Nagar, Belgaum operated by Secretary & Treasurer and SB A/c. No.03, Civil Hospital Road, Ayodhya Nagar, Belgaum operated by the Principal himself. During the academic year 2014-15 out of the fees collected from the students a sum of Rs.6,40,005/- has not been remitted into the account by you, as verified during the visit to the B.Ed. College on 08/06/2015 / 09/06/2015 collection & remittance of fees from students was being done by you. This speaks of your irresponsibility & negligence in handling the finance of the College.

CHARGE No.2:

Further a sum of Rs.5,000/- was received from the student of Shiksha Snatak College. When this

came to the notice of the Management, you had given a written assurance dated 08.06.2015 stating that the amount will be remitted. However till date the amount has not been remitted in the Bank Account. Thus failure to remit the aforesaid money collected from the students towards fees will amount to misappropriation of funds of the Management.

CHARGE No.3:

It is reported that the funds of the College collected as fees from the students has been remitted in your personal account and further the money in the account of the Principal has been utilized by you or your personal use, without prior permission from the competent authority. The act of remitting the money of the Management in your personal account and making withdrawals from the account of the Management for your personal use, if proved will amount to gross misconduct of misappropriation of funds of the Management.

CHARGE No.4:

It is observed from accounts records that you have withdrawn Scholarship amount sanctioned by the Govt. of Karnataka of Rs.54,575/- and misused without disbursing to the students in time. It is an offence on your part. Further it is observed that you have utilized the funds of the Sabha according to your whims & fancies. This is considered as serious & irresponsible lapse on the part as Principal added cheating to students.

CHARGE No.5:

It is reported that you have collected a sum of Rs.3,63,537/- from the students of B.Ed. Course and Shiksha Snatak Course during the period from 2010-11 to 2014-2015 towards issue of Transfer Certificate, Character Certificate, Course Completion Fees, Course and Conduct, Centenary Function Fees, Hostel fees and Study Materials. However, it is reported that the amount so collected by you has not been credited in the College Account and you have misappropriated the same. You have given a written assurance dated 08.06.2015 to remit the amount of Rs.3,63,537/-. However till date the amount has not been remitted by you.

CHARGE No.6:

It is reported that you have collected a sum of Rs.52,800/- on various dates from the students of Shiksha Snatak College for the year 2014-2015 towards Convocation, Degree and Provisional Certificate Fees and the same has not been credited in the account of the College and thereby misappropriated the same.

CHARGE No.7:

It is reported that from the academic year 2010-2011 to 2013-2014 you have collected a sum of Rs.1,86,000/- towards Application Form fee for the B.Ed. Course and you have not sent the same to the Registrar Office, Post Graduate and Research Institute, Madras and misappropriated the said amount. It was your duty to remit the said amount to the Sabha in time which has resulted in financial constraint to the Sabha.

CHARGE No.8:

A candidate by name Smt.Meenakshi, resident of Mangalore has informed that you have collected a sum of Rs.50,000/- being the Part payment for admission to the B.Ed. Course for the academic year 2014-2015. This amount has been collected when there is no seat to be allotted to Smt.Meenakshi. The said candidate had informed about this after she noticed that she has not been given admission for the B.Ed. Course for the year 2014-2015. The allegations if proved will amount to cheating an innocent student and also bringing bad reputе to the name of the College. It is reported that you have not refunded the illegally collected sum of Rs.50,000/- to the student aforementioned. It amounts to cheating a lady student.

CHARGE No.9:

It is reported that Smt.Neelam was a student of the B.Ed. Course during the academic year 2013-2014, Roll No.5273 and after the course she has given a sum of Rs.2,150/- to you for issuing Transfer Certificate and Course Completion Certificate. This amount has not been remitted in the College Account and Transfer Certificate and Course Completion Certificate has not been issued to the aforesaid student. The student has given

complaint dated 17.06.2015 in this regard. The same act of cheating has been repeated in this case also.

CHARGE No.10:

The mandatory qualification for being Lecturer in the B.Ed. Hindi College is Post Graduate Degree plus M.Ed. Two Lecturers viz. Madhale Shiladevi Sadashiv and Sangita Baburao Patil joined as Lecturers in the College and at the time of joining they were having only B.Ed. Degree. They were advised by the Management to complete the M.Ed. Degree course as per National Council for Teachers Education (NCTE) norms within a period of two years. The aforesaid Lecturers were working as Lecturers in the Dr.B.D.Jatti College of Education. Both the Lecturers belong to State of Maharashtra. In the Dr.B.D.Jatti College of Education a Lecturer by name Mr.Desai Dattatreya Dnyanadev was also working at that point of time, who had completed his M.Ed. Degree from Choudhary Charan Singh University, Meerat, Uttar Pradesh (Formerly Meerat University). It is reported that you have obtained the original M.Ed. Degree and Marks Sheets from Mr.Desai Dattatreya Dnyanadev under the pretext that the same has to be sent for verification to PG & RI, Madras. Accordingly Mr.Desai Dattatreya Dnyanadev had given the original of his M.Ed. Marks Sheets to you. Utilizing his original Marks Sheet, it is reported that you have created forged Marks Sheets in respect of Madhale Shila Sadashiv and Sangita Baburao Patil as if they have completed M.Ed. Degree. The forged mark sheets so created have been submitted by the Lecturers as if they had completed M.Ed. Degree. When the Marks Sheets in respect of the aforesaid two Lecturers and along with the Marks Sheets in respect of Desai Dattatreya Dnyanadev were sent for verification to Registrar (Evaluation), Choudhary Charan Singh University, Meerat, it has been informed by the University by its communication dated 25.03.2015 that all the Marks Sheets do not tally with their University Records. Thus Marks Sheets have been forged to continue their employment, with the Sabha and it is reported that you are the brain behind the forgery and fabrication of records in respect of Madhale Shiladevi Sadashiv and Sangita Baburao Patil. The aforesaid two Lecturers have given letter to the Sabha in this regard. In the letter of Sangita Baburao Patil, has stated that you have received

Rs.1,50,000/- from her for securing M.Ed. Degree and this amount has been received by posing threat to her. By this you have resorted to criminal activity of cheating two innocent lady Lecturers. This is a very serious offence on your part. The allegations if proved in this regard will amount to huge fraud on your part, cheating the Lecturers bringing bad name to the Sabha.

CHARGE No.11:

It is reported that you have collected a sum of Rs.2,500/- from the students by name Ishwaraya Kattimani, Veenashri, Roopa, Shankar Vyapari, I.K.Mastamaradi (each one of them) purporting to be towards issuing Provisional and Migration Certificate. However the amount was not remitted in the College Account and the aforesaid students were also not issued with the Provisional and Migration Certificate. Thus the amount has been misappropriated and the students have been cheated. The students have so given letter to this regard to the Sabha for necessary actions.

CHARGE No.12:

During the academic year 2011-2012 new building was constructed. You were authorized to make payment to the contractor. The construction cost was about Rs.1.5 crores. The entire construction cost was released by the Management and you also gave an impression to the Management that the account of the contractor was settled. While so, the contractor has sent letter dated 15.10.2014 to the Chairman of the Sabha to the effect that still a sum of Rs.14,74,000/- is due from the Sabha. Thus the amount which is payable to the contractor has not been settled by you, leading to confusion as to whether entire amount has been paid to the contractor or not. In spite of repeated instruction given to you right from 2011-12 you have failed to submit records regarding process & progress of construction and mode of payment. The process of construction and even finalization of accounts have not been completed. The management is feeling something fishy about your activity in this behalf. If there is any mismanagement of Accounts, you will be personally held responsible.

CHARGE No.13:

It is reported that the students Admission Register for the academic year 2014-2015 has not been updated deliberately to camouflage the illegalities in the matter of admission. It shows your utter failure in controlling the administration of the College.

CHARGE No.14:

As per the curriculum of B.Ed. all the students should undergo teaching practice. However 40 students of the Academic year 2014-2015 have not been given teaching practice. Thus you have failed in discharging your duties as Principal Depriving the students of the knowledge they should have got.

CHARGE No.15:

It is reported that the students attendance register for the academic year 2014-2015 is not maintained properly. It is reported that the Attendance Register marking have been made en-block by you on a given day. Therefore, the attendance register does not give the true strength as to who attended the classes. The internal mark register of the students for the previous academic year 2013-2014 as well as for the academic year 2014-2015 has not been maintained properly. It is further reported that the internal marks have been assigned by you to you whims and fancies without consulting the Teaching facilities. This again gives to prove that you have not discharged the duties of the Principal & has failed in controlling the office.

CHARGE No.16:

It is reported that for the Library no new book has been purchased for last five years. No proposal for acquiring books has been submitted in the last five years. The Accession Register in the Library and the Issue Register are also not maintained properly. As a Principal you have not taken any steps to improve the Library and other infrastructures as per the norms of NCTE.

The above charges if proved would amount to serious misconducts under Rules 25(a), 25(c), 25 (d), 25(i) and 25(m) of the Dakshin Bharat Hindi Prachat Sabha, Madras, Uchcha Shiksha Aur Shodha

Sansthan Service Rules.

Rule - 25(a)- Willful insubordination, disobedience of a lawful order of a superior.

Rule - 25(c) - Theft, fraud or dishonesty acting in connection with the affairs business or property of the institution.

Rule - 25(d) - Taking or giving bribes or any illegal gratification whatsoever.

Rule - 25(i) - Habitual negligence or neglect of work or indifferent turnout.

Rule - 25(m) - Tampering with the records maintained in the Sansthan."

4.All the charges framed against the writ petitioner are to be enquired into, in accordance with the rules in force. The writ petitioner has to submit his explanations/objections to prove his innocence before the enquiry proceedings to be conducted by the Disciplinary Authority. Even before participating in the enquiry proceedings, the present writ petition is filed challenging the validity of the charge memo.

5.A writ against the charge memo shall be entertained only on exceptional circumstances and not in a routine manner. A writ can be issued if a charge memo was issued by the authorities having no jurisdiction and on the ground of mala fides. Even in the case of rising the allegation of mala fides, the authority, against whom, such an allegation is raised, has to be impleaded as a party in the writ proceedings in his personal capacity. If a charge memo is in violation of statutory rules, then also, a writ can be entertained. In the absence of any one of the grounds, no writ can be entertained challenging the charge memo.

6.On a perusal of the affidavit, the writ petitioner has made an attempt to adjudicate the matter on merits, which cannot be considered at this point of time to move this writ petition and it is left open to the writ petitioner to submit his explanation to prove his innocence before the enquiry proceedings to be conducted, in this regard by the Disciplinary Authority.

7.The learned counsel appearing for the writ petitioner states that the charges are vague in nature and therefore, the same have to be set aside.

8.On a perusal of the charge memo, which is enclosed in page No.51 of the typed set of papers filed along with this writ petition, this Court is of the firm opinion that specific allegations are set out in the charge memo and the instances of misconduct and imputations are also stated. Thus, it is for the writ petitioner to submit his explanation and prove his

innocence before the enquiry officer concerned. In this view of the matter, this Court cannot adjudicate the merits of the charges in this writ petition proceedings.

9. Accordingly, the writ petition stands dismissed. However, there is no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

ah/ms

To

1. The Registrar,
Post Graduate and Research Institute,
Dakshina Bharat Hindi Prachar Sabha,
T.Nagar, Chennai - 600 017.
2. The Secretary,
Dakshina Bharat Hindi Prachar Sabha,
Dharwad - 580 001, Karnataka.

+1 Cc to Mr. Balan Haridos, Advocate sr 62452.

+1 CC to Mr. Richardson Wilson, Advocate sr 63014 (11/01/2018)

सत्यमेव जयते

W.P.No.24317 of 2015
and

W.M.P.No.1 of 2015

SK(CO)
sp(27/09/2017)

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