

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

+ **W.P.(C) No. 10006/2015**

% **14th February, 2017**

NANDITA NARAIN

..... Petitioner

Through: Mr. Jayant Bhushan, Sr.
Advocate with Ms. Reeja Varghese and Ms.
Sabha Iqbal, Advocates.

versus

DELHI UNIVERSITY AND ORS.

..... Respondents

Through: Mr. M.J.S. Rupal, Advocate for
University of Delhi.

Ms. Shrutee Aradhana, Advocate for R-4 &
6.

Ms. Mamta Tandon, Advocate for R-7.

Mr. Aakash Yadav, Advocate for R-9.

Mr. Rajesh Gogna, Advocate for R-10.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Petitioner by this writ petition under Article 226 of the Constitution of India, impugns the notice dated 13.10.2015 issued by respondent no. 1/University of Delhi for constituting a fact finding committee to examine certain issues which had come up against the petitioner.

2. This impugned notice dated 13.10.2015 reads as under:-

“NOTICE

Attention of Ms. Nandita Narain, teacher, St. Stephen's College is invited to the fact that the University is in receipt of complaints from various colleges/institutions of the University against her conduct. In addition, she has reportedly made derogatory statements in the media against various University/college authorities.

The University has constituted a Fact Finding Committee to examine the issues in clear, fair and efficient manner to ascertain whether the alleged acts of Ms. Nandita Narain, prima facie constitute an act of misconduct under the Act, Statutes and Ordinances of the University.

She is hereby required to present herself before the said Fact Finding Committee on **Monday, the 19th October 2015 at 11:30 a.m. in the Registrar's Committee Room, University of Delhi**, failing which the committee shall conduct the proceedings ex-parte.

Officer – Assisting FFC

Ms. Nandita Narain
A-3, Teacher's Bunglow,
St. Stephen's College,
University of Delhi,
Delhi – 110007.”

3. More or less the same issue came up before this court in the case of the petitioner itself in W.P. (C) No. 2342/2014 titled as *Nandita Narain Vs. University of Delhi and Ors.*, where petitioner had sought intervention of quashing a decision of the Governing Body of the respondent no. 4/St. Stephen's College/employer seeking to initiate preliminary inquiry against the petitioner. In the judgment dated 9.1.2015 in the said W.P. (C) No. 2342/2014 this Court held that a preliminary inquiry or a fact finding inquiry does not create or fasten any right or liability, and which situation arises only on the report of the Inquiry Officer given on holding regular disciplinary proceedings and which is accepted by the disciplinary authority, which may impose

a particular type of punishment. Putting it in other words, it has been held that an employee has no *locus standi* to challenge any fact finding and preliminary inquiry proceedings which are not regular disciplinary proceedings. The relevant paragraphs of the judgment dated 9.1.2015 in W.P. (C) 2342/2014 are contained in paras 6 to 9(ii) and the same read as under:-

“6. At the commencement of hearing itself, I put it to the counsels who are appearing for the respondent nos.2 to 4, viz the college, its governing body and the college principal as to whether against the petitioner in terms of the aforesaid decisions of the governing body and the show cause notice any departmental proceedings have been initiated viz the proceedings in question which have to be held whether are in the nature of disciplinary authority enquiry either for the purpose of recommending a punishment or for the purpose of imposition of punishment on the facts and issues which are mentioned in the minutes of the meeting of the governing body dated 8.1.2014 read with the minutes of the ordinary meeting of the governing body dated 1.5.2014 and the show cause notice dated 3.4.2014. To this query, counsels who appear for the respondent nos.2 to 4 specifically confirm to this Court that irrespective of the language of the minutes of the meeting of the governing body as per the respondents the same in fact are only with respect to a preliminary enquiry and/or a fact finding body enquiry only. Counsels for the respondents no. 2 to 4 state that even in the reply filed by these respondents it has been so stated by the respondent nos.2 to 4. Also, a statement to the same effect is made before this Court today that by virtue of the show cause notice dated 3.4.2014 read with the minutes of the meetings of the governing body dated 8.1.2014 and 1.5.2014, no departmental proceedings or departmental enquiry or disciplinary proceedings under conduct rules etc etc are commenced against the petitioner and at present there is only a preliminary enquiry or fact finding body constituted and which body has no right whatsoever either to recommend or to impose a punishment against the petitioner.

7. The law with respect to holding of a preliminary enquiry, and which is only a fact finding enquiry, is well-settled. Such a preliminary enquiry which is done by a fact finding body does not result in the said body recommending a punishment, leave aside the same resulting in imposition of any punishment on the noticee. In fact, the law is that a preliminary enquiry can in fact be an *ex parte* enquiry without any notice.

Thus, merely because a show cause notice has been issued against the petitioner, and only which shows that the stand of the petitioner is to be heard by the preliminary enquiry body or the fact finding body, the same cannot mean that the body will not remain only a preliminary enquiry body or a fact finding body and that body which becomes an enquiring authority or a disciplinary authority or any other departmental authority under the conduct rules to look into the conduct or misconduct of a person and thereafter to give a finding of misconduct for imposition of punishment or recommend imposition of punishment. By holding of a preliminary enquiry and constitution of a fact finding body which has to do the preliminary enquiry, no legal rights of the petitioner are in any manner affected because the preliminary enquiry body as stated above has no right to even recommend a punishment, leave aside imposing a punishment upon the petitioner. No judgment has been pointed out to me which shows that at the stage of a preliminary enquiry itself a person has a right to challenge the appointment of a fact finding body which has to do a preliminary fact finding enquiry.

8(i) Learned senior counsel for the petitioner places reliance upon the judgment of the Supreme Court in the case of ***Union of India and Another Vs. Vicco Laboratories (2007) 13 SCC 270*** (para 31) and a judgment delivered by this Court in the case titled as ***Dr. M.S. Frank Vs. Delhi University & Ors.*** in W.P.(C) No.9037/2011 decided on 29.10.2013 to argue that a person being the respondent no.4 and who is the principal of the respondent no.2-college cannot be a member of the governing body which would initiate the enquiry against the petitioner because respondent no.4 is biased and in fact a complainant against the petitioner. It is also argued that in accordance with the aforesaid judgments, petitioner has a right to challenge the preliminary enquiry at the stage of issuing of a show cause notice by the preliminary enquiry body.

(ii) I am unable to agree with the arguments urged on behalf of the petitioner because the judgment of the Supreme Court in the case of ***Vicco Laboratories (supra)*** is a judgment where departmental proceedings had commenced and at that stage show cause notice issued by the disciplinary authority was challenged whereas in the present case departmental proceedings under the conduct rules definitely has not commenced. Surely, a show cause notice which is issued by the disciplinary authority can be challenged on certain legal grounds including of lack of jurisdiction in the disciplinary authority or any other such equal ground which would nullify or hold as void the show cause notice, however, in the present case, the show cause notice has not been issued by any disciplinary authority/departmental authority or the similar body etc etc and therefore the judgment in the case of ***Vicco Laboratories (supra)*** will have no application with respect to a show cause notice issued by a preliminary enquiry body. For the selfsame reasoning, judgment in the case of ***Dr. M.S. Frank (supra)*** will also not apply because in the facts in

the case of *Dr. M.S. Frank (supra)* departmental enquiry proceedings had commenced against the charged officer.

9(i). Learned senior counsel for the petitioner then argued that the preliminary enquiry body consists of three members, and one of which is the nominee of the respondent no.4 in the governing body and therefore such a person will have bias against the petitioner and in favour of the respondent no.4 and accordingly the proceedings of the preliminary enquiry are to be quashed. It is argued that the initiation of the preliminary enquiry is therefore to be faulted with on this ground itself and accordingly the preliminary enquiry proceedings cannot go on.

(ii) I cannot agree with the argument urged by the petitioner because a petitioner has a right to approach the Court only if his/her legal rights are violated. By a preliminary enquiry, no legal rights of a person are violated because the findings of a preliminary enquiry body have no legal backing either for imposition of punishment or even for recommending of punishment. I have already stated above that it is the categorical stand of the respondent nos.2 to 4 that under no circumstances the preliminary enquiry body will either recommend a punishment or impose any punishment against the petitioner and which in any case cannot be in view of the fact that such a body is not a body under the conduct rules in the nature of disciplinary authority or departmental authority or a similar such body. The issue therefore of bias cannot come into existence at the present stage and the same will be an aspect in the main departmental proceedings if the departmental authority relies upon the report of the preliminary enquiry body so as to hold the petitioner guilty in such departmental proceedings and take action on the basis of the enquiry report.”

4. Learned senior counsel for the petitioner has drawn my attention to the fact that against the judgment dated 9.1.2015 in W.P. (C) No. 2342/2014 an appeal being LPA No. 47/2015 was preferred and the Division Bench of this Court vide order dated 2.2.2015 admitted the appeal and stayed the further proceedings with respect to the preliminary fact finding inquiry proceedings in the said case, and therefore, it is argued that this Court ought not to proceed ahead on the basis of the judgment dated 9.1.2015 in W.P. (C) No. 2342/2014. The

order of the Division Bench dated 2.2.2015 in LPA No. 47/2015 reads as under:-

“CM No.1675/2015

Allowed.

LPA 47/2015

1. Admit

2. Hearing expedited.

CM No. 1674/2015

1. Issue needs consideration concerning preliminary fact finding enquiries when malice is alleged in view of the law declared by the Supreme Court in the decision reported as (1998) 5 SCC 493 R.C. Sood Vs. High Court of Judicature at Rajasthan and Ors which decision we find has not been discussed by the learned Single Judge in the impugned decision.

2. Looking at the nature of the allegations against the appellant in respect whereof a fact finding inquiry is proposed to be held and the fact that the members of the fact finding inquiry are the members of the Governing Body we stay the proceedings concerning the preliminary fact finding enquiry directed against the appellant.

3. CM is disposed of.

4. No costs.”

5. I cannot agree with the submission urged on behalf of the petitioner because whenever an appeal is filed against the judgment of a Court below, in a particular case the judgment itself may be stayed, with or possibly without the issue of whether the ratio of the judgment is also stayed and that consequently no further case can be decided by any Court on the basis of the ratio of the earlier case, however, in the present case the order of the Division Bench dated 2.2.2015 does not

even stay operation of the judgment dated 9.1.2015 and the order dated 2.2.2015 merely stays the proceedings concerning the preliminary fact finding inquiry against the appellant in that case, and who is also the writ petitioner in the present writ petition.

6. In view of the above following the ratio of the judgment dated 9.1.2015 in W.P. (C) No. 2342/2014 titled as ***Nandita Narain Vs. University of Delhi and Ors.***, this writ petition is also dismissed holding that at the stage of a preliminary fact finding inquiry there is no *locus standi* in an employee to challenge the same, inasmuch as, no rights or liabilities accrue to any of the parties on the basis of preliminary fact finding inquiry and which are only a pre-cursor to the holding, if any, of regular disciplinary proceedings and only which authorities order can create right on liability.

7. The writ petition is accordingly dismissed. Interim order stands vacated.

FEBRUARY 14, 2017

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VALMIKI J. MEHTA, J