

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.1429 OF 2010**

Professor Dr. Harish Kumar S/o Late Shri Ram Singh, Occupation Service, Working as Professor In Guru Ghasidas University In Department of Management Studies, R/o M.I.G. STD-11, Laxmi Niwas Shriv Ghat, Sarkanda, Bilaspur (CG).

...Petitioner(s)

Versus

1. Chancellor, Guru Ghasidas University, Raj Bhawan, Raipur (CG).
2. State of Chhattisgarh Through the Secretary, Department of Higher Education D.K.S. Bhawan Mantralaya Raipur (CG).
3. Guru Ghasidas Vishwavidyalaya Through Registrar, Guru Ghasidas Vishwavidyalaya Koni Bilaspur (CG).

... Respondent(s)

For Petitioner	:	Shri Mateen Siddique, Advocate.
For Respondent-State	:	Shri SP Kale, Dy. Advocate General.
For Respondent No.3	:	Shri Ashish Shrivastava and Shri Somya Rai, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13.08.2018

1. The challenge in this petition is to three orders dated 27.07.2007 (Annexure P/3), dated 01.08.2007 (Annexure P/1) and order dated 10.11.2008 (Annexure P/2).
2. Annexure P/3 is an order of punishment whereby the petitioner was inflicted with stoppage of 3 annual increments with cumulative effect. Annexure P/1 is a subsequent order whereby the Registrar has issued an order holding that the petitioner inspite of fact that he was working as HOD in the department of Management Studies was ordered not give any important work for discharge. Lastly, Annexure P/2 is an order passed by the Governor whereby the appeal preferred by the petitioner stood partly allowed and punishment was

reduced to the stoppage of one increment with cumulative effect instead of three annual increments with cumulative effect.

3. Though the petitioner has assailed the orders on various grounds, but this court is inclined to entertain the first ground which the petitioner has raised i.e. the entire enquiry proceeding conducted is in total contravention to the basic principles of natural justice inasmuch as the charges which have been levelled against the petitioner were at the behest of the enquiry officer and secondly the enquiry officer later on has also given an opinion for enhancing charges and has also prepared the draft charges to be levelled against the petitioner.
4. The counsel for the petitioner submits that once when the disciplinary authority appointed a particular person as enquiry officer, the enquiry officer thereafter is bound to conduct departmental enquiry to ascertain the truth in the charges which have been framed against the petitioner. The enquiry officer cannot substitute itself as a disciplinary authority and enhance the charges or advise the disciplinary authority for enhancement of the charges as it would be in excess of the jurisdiction and powers which are otherwise vested upon the enquiry officer. He further refers to the document Annexure AD-5 which is the contents of note sheet of the enquiry officer before the charges were framed at the first instance and also the note sheet dated 13.06.2006 which again is a note sheet of the enquiry officer giving opinion for framing additional charges.

5. According to the petitioner, this observation which the enquiry officer has given to the university by itself would show that he had made up his mind before the enquiry proceeding itself had commenced and therefore, there are all chances of the enquiry officer sitting with predetermined mind and the chance of being bias cannot be ruled out and the entire enquiry proceeding would stand vitiated only on this ground.
6. Per contra, learned counsel for the University refers to the enquiry report Annexure P/11 submitted by the enquiry officer wherein he had discussed and dealt with the objections of the petitioner so far as the allegation of bias is concerned. The respondent also tried to emphasize the fact that the petitioner was granted full opportunity of defence and all relevant documents and evidences brought before the enquiry officer has been duly considered by the enquiry officer while preparing the enquiry report. Therefore, the allegations or the contentions of the petitioner are baseless and without any force to sustain the grounds that he has raised.
7. The counsel for the respondents relied upon 2017 (2)SCC 308, Allahabad Bank & Ors. Vs. Krishna Narayan Tewari, 2017 (9) SCC 404, Mihir Kumar Hazara Choudhury Vs. Life Insurance Corporation and Another and 2015 (2) SCC 610, Union of India & Ors. Vs. P. Gunasekaran, all dealing with the issue of scope of interference of the High Court in a disciplinary proceeding under Article 226 of the Constitution of India.
8. Having heard the contentions put forth on either side and on perusal of records and considering the objections of the petitioner that of

enquiry officer being biased, it would be relevant at this juncture to refer to the note sheet of the enquiry officer which reads as under :

“I have drafted the charges and statement of allegations. The case appears to be serious and prompt action requires to be taken.

The files were perused further today. Some more charges must also be framed in order to avoid multiplicity of enquiry. Draft charges No. 5 to 8 are enclosed herein”

9. A plain perusal of observation of the enquiry officer before the charge was issued to the petitioner, it would reveal that the enquiry officer had prima facie made up his mind of the allegations being serious and prompt action had to be taken against the petitioner. Likewise, the note sheet also reveals that it was the inquiry officer who had advised the disciplinary authority for adding charges and the inquiry officer has further facilitated the disciplinary authority by himself drafting the additional charges which also had to be framed in addition to the charges already framed and the inquiry officer advised for the same as would be relevant from the document Annexure P/10 where while framing the charges, it has been mentioned as under :

“1. He admitted unqualified candidate to the university Ku. Subhadra Devi, in MBA course without ascertaining her qualification and thereby acted with gross negligence which amounts to dereliction of duty.

2. He conducted MAT examination in May, 2005 in the University campus without having obtained written prior permission from the university authorities. This is a grave misconduct.

3. He failed to obtain prior permission from the Executive Council for participation in the MAT test and also failed to remit

50 percent of the remuneration received for conducting MAT test to Guru Ghasidas University. This amounts to criminal misappropriation which is a grave misconduct.

4. Whereas he was only appointed a Professor in the Department, he has styled himself as Director of the Institute of the Management which clearly amounts to misrepresentation which is a grave misconduct.”

10. it is settled position of law that while conducting a departmental enquiry, it is the disciplinary authority who has ultimate control and charge over the proceedings. It is always expected that the disciplinary authority who should conduct an enquiry so far as allegations of misconduct against the delinquent employee is concerned, but when the disciplinary authority is not in a position to conduct an enquiry for whatsoever reason, the disciplinary authority delegates the powers of enquiry to an enquiry officer. The inquiry officer is made over with the charge sheet along with imputation of charges and the inquiry officer is supposed to act as a quasi-judicial authority granting fair opportunity of representation to the either side i.e. the management to either prove the charge and the delinquent to prove the innocence, as the case may be. The inquiry officer is always considered to be a neutral person and unassociated with either the management or the delinquent employee.
11. The documents which have been referred to in the preceding paragraphs clearly reflect that before issuance of the charge sheet to the petitioner, the respondents had in fact consulted the inquiry officer so far as the allegations against the petitioner are concerned. It appears that the inquiry officer in the capacity of advisor to the

university had given an opinion for conducting departmental enquiry against the petitioner and had framed additional charges to be framed against the petitioner on the basis of which the proceedings had been initiated thereafter the inquiry officer. Further also before the charge sheet were issued the enquiry officer was again of the opinion that certain more charges are to be framed and the inquiry officer again gave an opinion as well as drafted the additional charges to be framed and finally it was only those charges which drafted by the inquiry officer which were levelled against the petitioner in the charge sheet.

- 12.** Note sheet, Annexure AD-5 reflects that the inquiry officer at the first instance itself was of the view that the allegation against the petitioner are quite serious and prompt action has to be initiated. This by itself gives an impression that the inquiry officer began his inquiry with the aforesaid observations in his mind and which again will give rise to a great element of bias in the mind of the inquiry officer while conducting the departmental enquiry.
- 13.** Once when the disciplinary proceeding has been initiated on the legal opinion of an inquiry officer, in the capacity of an advisor and later on when the same advisor has been appointed as inquiry officer, there is all possibility that the inquiry officer would try to justify his opinion that he had given and would try to also hold that the allegations which were levelled by him against the delinquent employee stand proved.
- 14.** This, in the opinion of this court, was a clear case of violation of principles of natural justice. An inquiry officer is always supposed to

be a quasi judicial authority and that he has to act as a neutral person while conducting an enquiry against a person. Once when the inquiry is being conducted by a person who has at the first instance given a legal opinion against the petitioner, chances of bias cannot be ruled out.

15. The Supreme Court in case of 2010 (2)SCC 772, State of UP Vs.

Saroj Kumar Sinha in paragraph 28 has held as under :

“28. An inquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government.....”

In paragraph 30 of the same judgment, it has been further held as under :

“30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

16. It would also be relevant at this juncture to refer judgment of the

Division Bench of MP High Court in 2005(1)LLJ 931 (MP) in case of Union of India Vs. Mohd. Naseem Siddique, decided on 05.01.2004, whereby the principles for conducting departmental enquiry has been laid down in paragraph 7 which is reproduced herein as under :

“7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well recognized facets:

- (i) The adjudicator shall be impartial and free from bias,
- (ii) The adjudicator shall not be the prosecutor,
- (iii) The complainant shall not be an adjudicator,
- (iv) A witness cannot be the Adjudicator,
- (v) The Adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges,
- (vi) The Adjudicator shall not decide on the dictates of his Superiors or others,
- (vii) The Adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations. If any one of these fundamental rules is breached, the inquiry will be vitiated.”

17. The Division Bench further went on to lay down the guidelines as to the manner in which the inquiry officer has to conduct himself which is reflected in paragraph 16 of the same judgment which for ready reference is being reproduced herein as under :

“16. We may summarize the principles thus:

- (i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.
- (ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry.
- (iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognized that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.”

18. As early as in 1966, the Supreme Court in *Workmen of Lambabari Tea Estate Vs. Management, Lambabari Tea Estate*, 1966-II-LLJ-315 while discussing with the role of an inquiry officer has held as under :

“.....The manager did not keep his function as the Enquiry Officer distinct but became witness, prosecutor and manager in turn. The record of the enquiry as a result is staccato and unsatisfactory.....”

19. Recently, the Allahabad High Court in *Shashi Kumar Vs. Regional Food Dontrroller and Ors.*, decided on 23.01.2018, reported in MANU/UP/0284/2018, in Writ Application No.33788 of 2000, has held in paragraph 23 as under :

“23. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

20. Thus, once when we refer the role played by the inquiry officer in the instant case it clearly reveals of firstly giving advice to the disciplinary authority for framing additional charge against the employee and thereafter proceeded to provide a draft charges proposed to be levelled against the petitioner. The same advisor further also gave opinion to frame additional charges against the petitioner and for which also the draft charges were being provided by the inquiry officer. That, to add further prejudice he has also given an opinion that the charges levelled against the delinquent are serious in nature and prompt action requires to be taken. All these would clearly establish that the inquiry officer had already a broad picture of the allegations which were levelled against the petitioner. Further, that it was he who had advised for taking action against the employee. That, once when he himself has been appointed as inquiry officer, the chances of bias cannot be ruled out.

21. The respondent ought to have taken into consideration this aspect and should have ensured that the enquiry is conducted by a neutral person who was not associated with the allegations or the charges

which were levelled against the petitioner and who could have conducted the enquiry in a more fair manner without being influenced by any of the observations which are referred to in the preceding paragraphs.

22. So far as the judgments cited and relied upon by the counsel for the respondents with regard to scope of interference of the High Court under Article 226 of the Constitution in a matter of disciplinary proceeding is concerned, this court is quite conscious of the scope of judicial review under Article 226 of the Constitution. But the Supreme Court time and again have reiterated the aspect that where there is distinct violation of principles of natural justice, then the High Court has all the powers vested on it for entertaining a writ petition.

23. In the instant case also the ground on which this court entertains the writ petition is the fact that the inquiry officer was said to be a biased person as he had initially acted as an advisor to the management by framing charges inasmuch as the inquiry officer has given opinion and has also drafted the charges against the petitioner and later on has also given opinion that certain additional charges which were of all added together while issuance of charge sheet and subsequently it was the same advisor who has also been appointed as enquiry officer. Thus, the judgments relied upon by the counsel for the respondent-University would be distinguishable on its facts itself.

24. As the enquiry conducted by the enquiry officer is bad in law and is a biased one, the same also is not in consonance to the principles of fair play and natural justice, the appointment of the enquiry officer

and the enquiry proceeding thus vitiates and the impugned order of punishment deserves to be and is hereby set aside/quashed.

25. As a consequence, the subsequent orders passed by the Registrar on 01.08.2007 and the decision of the appellate authority vide Annexure P/2 dated 10.11.2008 both also would not be sustainable and accordingly set aside/quashed.

26. Reserving the right of the respondents, if they so chooses, to proceed further in accordance with law from the stage of appointment of the inquiry officer that is to say that the respondents would be at liberty to appoint altogether a fresh enquiry officer, the present writ petition stands allowed.

Sd/-
(P. Sam Koshy
Judge