

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2865 of 2018**

Dr. Durga Sharan Chandra, Professor D. P. Vipra College, Bilaspur,
S/o Shri I.L. Chandra, Aged About 49 Years. R/o D- 259, Rama Green
City Khamtarai, Bilaspur, District- Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary To The Govt. Of Chhattisgarh. Department Of Higher Education Mantralaya Mahanadi Bhawan, Naya Raipur, P. S. Rakhi, Raipur, Chhattisgarh.
2. The Governing Body (Constituted Under Statute 28 Of College Code Of C.G. Vishwavidyalaya Adhinium 1973 Of D.P. Vipra College) Through The Secretary, To The Governing Body Office Of Principal D.P. Vipra College Old High Court Road Bilaspur, Chhattisgarh.
3. D.P. Vipra College, Through The Principal D.P. Vipra College Old High Court Road Bilaspur, Chhattisgarh.
4. The Principal, D.P. Vipra College, Old High Court Road Bilaspur, Chhattisgarh.

---- Respondents**WPS No. 2866 of 2018**

Subir Sen S/o Shri R.B. Sen, Aged About 56 Years, Professor D.P. Vipra College, Bilaspur R/o 17/361, Sarju Bagicha, Azad Nagar Bilaspur, District Bilaspur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary To The Government Of Chhattisgarh Department Of Higher Education Mantralaya Mahanadi Bhawan, Naya Raipur Ps Rakhi, Raipur Chhattisgarh.
2. The Governing Body (Constituted Under Statute 28 Of College Code Of C.G. Vishwavidyalaya Adhinium 1973 Of D.P. Vipra College) Through The Secretary To The Governing Body Office Of Principal D.P. Vipra College Old High Court Road Bilaspur Chhattisgarh.
3. D.P. Vipra College, Through The Principal D.P. Vipra College, Old High Court Road Bilaspur Chhattisgarh.
4. The Principal D.P. Vipra College, Old High Court Road Bilaspur Chhattisgarh.

----Respondents

For Petitioners	:	Mr. Anurag Dayal Shrivastava, Advocate
For respective Respondents	:	Mr. B.P. Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

09/05/2018

1. These are the two writ petitions which have been filed challenging the order of suspension dated 23.12.2017 (Annexure P/2) placing the services of the petitioners under suspension and the order dated 17.01.2018, passed by the governing body also deciding to keep the services of the petitioners under suspension.
2. At the outset, the counsel for the petitioners submits that he intends to assail the order of suspension on the ground that the members, who were present in the meeting, held on 23.12.2017 while passing the order of suspension had in fact seized to remain as a members of the governing body by operation of law. That they were not eligible under the statute itself to discharge the functions of a member of the governing body. Accordingly the meeting and the decision taken thereon is per se illegal, ***ab initio void*** and the order of suspension also gets nullified.
3. Counsel for the petitioners relied upon the statutes as also the fact that the tenure of the members having already expired, they seized to remain a member any further and therefore the impugned order by implication of the statute would be one which is ***coram non judice***.
4. According to the counsel for the petitioners the two members i.e. one Shri Subhash Mishra and one Shri G.P. Kaushik, who were members of the governing body, as a result of they being elected in an election that was held on 13.12.2015. It was further contended that statute 28 of the college code envisages a clause in part-III dealing with governing body, wherein 6(2)(i) holds that the members of the governing body other than the ex-officio members shall hold the office for a period of 2 years.

5. Relying upon the aforesaid clause, counsel for the petitioners submits that the two members who were elected on 13.12.2015 seized to remain a member after the two years tenure period i.e. beyond 13.12.2017. According to the petitioners beyond 13.12.2017 they were no longer members of the governing body as they seized to remain members of the governing body by operation of statute. The petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of "**Chief Engineer, Hydel Project & others vs. Ravinder Nath & others**" AIR 2008 S.C. 1315, wherein the Hon'ble Supreme Court referring to an earlier judgment of Hon'ble Supreme Court in the case of "**Harshad Chiman Lal Modi v. DLF Universal Ltd. & Anr.**" (2005) 7 SCC 791 had enunciated the proposition of law that, where a Court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter and any order passed by a Court having no jurisdiction is a nullity.
6. Relying upon the aforesaid judgment, the petitioners tried to emphasize on the fact that the two members, who had participated in the meeting in fact had no jurisdiction over the subject matter and therefore prayed for the quashment of the order of suspension holding it to be bad in law as also null and void.
7. The counsel for the respondents countering the arguments of the petitioners submitted that the doctrine of **coram non judice** would not be applicable in the instant case. According to the respondents, the two members referred to by the petitioners are those members who were duly elected to the governing body and unless a fresh election is held and a fresh governing body takes charge the previous body,

would continue to discharge its duties with all the power which are otherwise conferred upon them.

8. According to the learned counsel for the respondents statute 28 of the college code does not envisage a clause, wherein it says that immediately beyond the period of two years, the members of the governing body would cease to be members and therefore impliedly the members would continue till fresh elections are conducted. The counsel for the respondents further referring to clause 7 (7) submitted that the action of the respondents otherwise also stands protected under the said clause, wherein it has been held that no action or proceeding of the governing body shall be invalid merely by reason of any vacancy in its membership or any defect or irregularity in the appointment, nomination or election of a member. It was lastly submitted by the counsel for the respondents that since the two petitioners have been prosecuted in a criminal case for the offence under Section 354A, 34 of the Indian Penal Code, and the nature of the allegations being serious and keeping in view the guidelines laid by the Hon'ble Supreme Court dealing with the issue of sexual harassment of women at work place in the case of "***Vishaka and others v. State of Rajasthan and others***" (1997) 6 SCC 241 has taken a decision and the criminal case also is still pending consideration and in the given factual background, the respondents were compelled to take a decision against the petitioners and the present writ petition has been filed challenging the order of suspension not on merits, but on hyper technical grounds and reasons. Thus, prayed for the rejection of the petition.

9. Having heard the contentions put forth by the counsel for the parties and on perusal of records let us first consider the provisions of statute 28. Part III of the said statute deals with the governing body. Clause (c) refers to the constitution of the governing body consisting of Chairman and other members. Sub-clause (f) of clause (c) envisages two representatives elected by the teachers from among the teachers of the college. Clause 6(2)(i) deals with the tenure of the members of the governing body wherein it has been held that the Chairman and the members of the governing body shall hold office for a period of two years. The said statute does not envisage a provision wherein it has been mentioned that beyond the period of two years, they shall cease to remain or hold office of the members of the governing body. Likewise, clause 7(7) also grants a protection to the extent of an act or proceeding of the governing body cannot be held invalid merely by reason of a vacancy in its membership or any defect or irregularity in the election of a member.
10. In the instant case the allegation is that the members were duly elected in 2015. The tenure was for two years. Beyond that they ceased to hold office of a member. If we read clause 11, it envisages that the governing body also has been clothed with the powers to take decision otherwise which are not provided under the Code. For ready reference clause 11 is reproduced herein under:-

“11. The Governing Body shall exercise all powers not otherwise provided for in this code and not inconsistent with the provisions of the Adhinyam, Statutes and Ordinances.”

11. Given the aforesaid facts and circumstances of the case, particularly keeping in view the provisions of statute 28, moreover when there is

no specific provision holding that beyond the tenure of 2 years, the members of the governing body would cease to hold the office of a member, the contention raised by the petitioners is unacceptable, particularly in the backdrop of the other provisions under the statute i.e. clause 7(7) and clause 11. So far as the judgment cited by the counsel for the petitioners is concerned, the same also has been decided under entirely different factual matrix and the issues raised and decided in the said judgment also were also entirely different and the principles of law laid down in the said judgment, deals with the issue of jurisdiction of a Court, which may not be applicable in the present facts of the case, for the reason that here undisputedly the two members were duly elected members from an election held and as long as the two members are not replaced, they would continue to discharge as members of the governing body. Moreover, a vacuum cannot be created in the governing body till a fresh election is conducted. Even otherwise for the smooth functioning of the day to day affairs of the college, the existence of the governing body is required and its decisions taken under such situations taken by the governing body stands protected under clause 7(7) and clause 11 of the statute.

12. For all the aforesaid facts and circumstances of the case, this Court is of the opinion that no strong case has been made out by the petitioners calling for an interference with the impugned order, the same therefore deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge