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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15608-2018 (O&M)
Date of Decision : Sept. 12 , 2018

National Institute of Pharmaceutical Education and
Research (NIPER) and another.

.... Petitioners.

Versus

Chairman, Board of Governors NIPER,
Mohali and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Argued by Mr. Puneet Bali, Senior Advocate
with Mr. Amar Vivek, Advocate,
and Mr. Paramveer Singh, Advocate,
for the petitioners.

Mr. Rohit Ahuja, Advocate,
for respondents No.1 and 2.

Mr. Rajiv Atma Ram, Senior Advocate,
with Mr. Sube Sharma, Advocate,
for respondent No.3.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing of ex-parte order dated 14.06.2018 (Annexure P/7) whereby respondent No.1 set-aside the order dated 13.06.2018 (Annexure P/2) passed by the petitioner No.2, suspending respondent No. 3 as Registrar, NIPER.

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Further prayer has also been made to quash the order dated 14.06.2018 (Annexure P/6) passed by respondents No.1 and 2 approving the draft agenda of 73rd Board of Governors' circulated by respondent No. 3 while under suspension, being totally illegal, arbitrary and contrary to the principles of natural justice.

2. Facts relevant for the purpose of decision of this writ petition; that National Institute of Pharmaceutical Education and Research (hereinafter referred to as “**NIPER**”) and its Director, petitioners No.1 and 2 herein, have filed this writ petition challenging orders dated 14.6.2018 (Annexure P/7) on the ground that petitioner No.2 has passed the order of suspension of respondent No.3 on the allegation of gross insubordination and for committing several acts of omission and commission due to which a detailed and comprehensive charge sheet has since been issued to him. Respondent No.1, Chairman, Board of Governors (BOG) of NIPER exercised purported appellate jurisdiction, which otherwise not vested in him and the present writ petition is maintainable before this Court. As there are allegations of *mala fides* against him as well, as such he has been arrayed as respondent No. 2 by name.

3. As per the petitioners, the Chairman of BOG of NIPER is Appellate Authority and can exercise the appellate jurisdiction only against the orders imposing penalties under the NIPER Act and Statute. He has acted in a grossly unfair and illegal manner entertained the appeal against order of suspension of respondent No.3. The said ex-parte order was passed without issuance of any notice to the petitioners and even

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rendered findings of *mala fide*, vindictive and biased attitude against petitioner No.2. No opportunity of hearing was granted to petitioner No. 2 before rendering such findings. The Chairman had no jurisdiction to entertain and decide the appeal at the behest of respondent No. 3 by deciding the same on the same date i.e.14.06.2018 without issuance of any notice to the petitioners.

4. As per the petitioners, the order of suspension dated 13.06.2018 was to take immediate effect and the same was served upon the Registrar at 20.15 hrs. and at that time, respondent no. 3 had lodged protest against the same. Having been placed under suspension, respondent No. 3 even misused his office and accessed the official e-mail and circulated the advance draft agenda of the proposed BOG meeting to be convened on 25.06.2018 by respondent Nos.1 and 2 and sent an e-mail to that effect on 13.06.2018 at 21.19 hrs. to the Chairman, BOG. By that time, the Chairman, BOG had already been informed by the petitioners and also by respondent No.3.

5. On 14.06.2018 at 21.32 hrs. acting in an illegal and arbitrary manner simply approved the draft agenda circulated by respondent No. 3 and at 23.45 hrs., respondent no.2 passed *ex-parte* order on 14.06.2018 (Annexure P/7) setting aside the suspension of respondent No.3.

6. In the short reply, filed by respondents No.1 and 2, an objection was taken that the writ petition itself is not maintainable and is liable to be dismissed as NIPER i.e., petitioner No.1 and its Director, i.e., petitioner No.2 have filed the present writ petition without any authority. As

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per clause 14(i) Table II of the NIPER Statutes 2003 (hereinafter referred to as “**Statute 2003**”), only the Registrar of the Institute has been authorised to represent the Institute in suits or proceedings by or against the Institute. The powers, duties and functions of the Registrar of the Institute are contained in clause 14 of the Statute 2003. As per the answering respondents, the writ petition is frivolous and has been filed with vested interests. There was no authorization by the BOG to the Director of the Institute to file the present writ petition. There is no illegality in the order passed by the Chairman, BOG of NIPER. The present writ petition is liable to be dismissed as competent authority has neither authorized the petitioners to file the present writ petition by any resolution nor the petitioners are competent to file the present writ petition. The petitioners have not been able to produce any valid resolution issued by BOG. Plea was also taken in the written statement that if at all, the petitioners were aggrieved by passing of the impugned order, they could have taken the matter before the BOG which is the Apex and superintending body of the Institute under NIPER Act, 1998. As per the respondents, the petitioners have filed this petition with *mala fide* motive to disrupt working of the Institute. The matter was considered in 72nd BOG meeting held on 12.12.2017 and the BOG took a very serious view of gross misconduct on the part of petitioner No.2 and has misled this Court by not disclosing the correct facts. Respondent no.1 has exercised the appellate jurisdiction under the NIPER Act, 1998. Appeal lies against the suspension order as per Rule 23(1) of the CCS (CCA) Rules, 1965 (for short, “**1965**

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Rules”). As per clause 14(q) of the Statue 2003, the Director of the Institute has the power to place any employee under suspension and take disciplinary action against the employees, but only for whom he is the appointing authority. It is well settled that an authority inferior or lower in rank of the appointing authority cannot take disciplinary action against the incumbent. As per Section 25 of the NIPER Act, the Director is not the appointing authority. The Appellate Authority, i.e. Chairman, BOG has passed the revocation order, Annexure P/7, in exercise of powers under Rule 27 of the 1965 Rules and also as per the powers delegated by the Board. Petitioner No.2 has knowingly by-passed the BOG and kept the BOG and its Chairman in dark.

7. The respondents have also taken the plea that revocation of suspension vide order dated 14.06.2018 (Annexure P/7) has also been challenged on the ground that the order passed was an *ex-parte* order and was in violation of principles of natural justice. As per rules, no notice was required to be given by the Appellate Authority. The suspension, though is not a penalty, but certainly carries a stigma and should have adequate justification. Thus, the Chairman, BOG decided to examine the issue on priority basis keeping in view the exigency and interest of the respondent-Institute as the 73rd meeting of BOG was scheduled for 25.06.2018 and agenda was to be circulated by the Registrar by 15th/16th June, 2018. Even after passing of revocation of suspension order, petitioner No.2 did not comply with the order of revocation order and directions to restore the facilities to respondent No.3. Even the Government of India, Ministry of

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Chemical and Fertilizers, Department of Pharmaceutical, vide letter dated 5.7.2018 (Annexure R/1-2) has issued directions that the order of the Appellate Authority/Chairman, BOG be implemented forthwith. The said letter was issued with the approval of Minister concerned. Petitioner No.2 has also taken the plea in the writ petition that the order of suspension, dated 13.06.2018 was served and still the Registrar circulated the draft agenda of 25.06.2018 meeting and the Registrar performed his duties before the revocation of suspension order became effective. The respondents prayed that the writ petition be dismissed.

8. Having considered the submissions made by learned senior counsel representing the parties and having gone through the record of this case file, this Court is of the considered view that the matter in controversy mainly revolves around the issues as to whether the writ petition filed by the petitioners is maintainable or not?

9. There are two petitioners in the present writ petition. Petitioner No.1 is National Institute of Pharmaceutical Education and Research (NIPER) through its Director and petitioner No.2 is Director, National Institute of Pharmaceutical Education and Research (NIPER).

10. As per Clause 14(1), Table II of the Statute 2003, only the Registrar of the Institute has been authorized to represent the Institute in suits or proceedings by or against the Institute. The powers, duties and functions of the Registrar of the Institute are contained in clause 14 of the Statute 2003, which is extracted below :-

“Registrar.

To perform such functions as may be determined by the

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Director.

(a) to (h). xx xx xx xx

(i). To represent the Institute in suits or proceedings by or against the Institute, sign powers of attorney and verify pleading or depute his representative for the purpose.”

11. The above provision makes it ample clear that any proceedings by or against the respondent-Institute, could be by the Registrar only and not by the Director and on that account, the present writ petition deserves to be dismissed. Such a view was taken by Hon`ble Karnataka High Court in **Vijayanagra Krishnadevaraya University rep. By Vice Chancellor, Bellary and another Vs. Katepaga Vijay Kumar, Ex-Registrar, Bellary and Ors. 2013(20) SCT 808.**

12. Learned senior counsel representing the petitioners contended that the present writ petition has been filed by two petitioners, i.e., National Institute of Pharmaceutical Education and Research (NIPER) through its Director and petitioner No.2 is Director, National Institute of Pharmaceutical Education and Research (NIPER). He fairly conceded that as per the above provisions of the Statute, the writ petition may not maintainable by the NIPER, but the writ petition filed by petitioner No.2, i.e. Director of the Institute, is maintainable mainly on the ground that the order dated 14.06.2018 (Annexure P/7) which has been challenged in the writ petition, is an ex parte order and certain strictures have been passed against petitioner No.2 without affording any opportunity of hearing and the law does not permit so. On this point, reliance was placed upon the judgments of Hon`ble Supreme Court in **State of Maharashtra Vs. Public**

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Concern for Governance Trust and Others, (2007) 3 SCC 587; Smt. Kiran Bedi Vs. Committee of Enquiry & Anr. (1989) 1 SCC 494; State of Bihar Vs. Lal Krishna Advani & Others, (2003) 8 SCC 361; Dr. Dalip Kumar Deka & Anr. Vs. State of Assam & Anr. (1996) 6 SCC 234 and Om Parkash Chautala Vs. Kanwar Bhan, (2014) 5 SCC 417.

13. In this regard, letter dated 17.06.2018 issued by the Director of the Institute, petitioner No.2 thereby authorizing the counsel to file a writ petition in this Court against the order dated 14.6.2018 (Annexure P/7) would be relevant. In the said letter, the Director, petitioner No.2, had written that the Director, NIPER is competent to sign the pleadings and Power of attorney in favour of Shri Amar Vivek, Advocate in terms of Section 16 of the NIPER Statute and as such, counsel was advised to take due steps in the matter at the earliest and file the writ petition. Apart from that, there was no authorization from the BOG. If petitioner No.2 was to file the writ petition in his personal capacity, at that time it could have been made clear and reliance was not to be placed upon letter dated 17.6.2018. As per the provisions contained in Clause 14(1), Table II of the Statute 2003, only the Registrar of the Institute has been authorized to represent the Institute in suits or proceedings by or against the Institute and not the Director. As such, the present writ petition filed by petitioner No.1, i.e. the Institute and petitioner No.2, as Director of the Institute on the basis of letter dated 17.6.2018 is not maintainable.

14. As regards to the contention raised by learned senior counsel for the petitioners that the appeal filed by respondent No. 3 has been

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decided in haste and the same is an *ex parte* order and the ground taken in the writ petition that there were certain strictures passed by the Chairman, BOG of the respondent-Institute against petitioner No.2 while hearing the appeal, without hearing him, the next point involved in the present case is – Whether the Director of the respondent-Institute, petitioner No.2 herein, is the Appointing Authority of the Registrar or not?

15. As per Section 25 of the Act, the Appointing Authority of the staff of the respondent-Institute is the Director and in case of Registrar, it is to be the BOG. In terms of Clause 14(q) of the Statute, 2003, the Director had the power to suspend the employees and take disciplinary action against them, but only for whom he is the Appointing Authority. As per Section 25 of the Act, the Director is not the Appointing Authority of the Registrar of the Institute. More so, even if the Director is to be deemed as the Disciplinary Authority, still the action taken by the Director is subject to report of the circumstances to the BOG.

16. Clause 3.1.2 of the Statute 2003 defines functions and powers of the Board. The same is extracted below:-

“Function and Powers of the Board.

In addition to the provisions under Section 8 of the Act, the Board shall have the following powers :-

(a). xx xx xx xx

(b). to appoint Professor, Associate Professors, Assistant Professor and other staff in equivalent grades, as may be necessary on the recommendation of the selection committees constituted for the purpose.

(c). to regulate and enforce discipline among employees in accordance with the Statutes, the Ordinances and the

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Regulations.

(d) to (i). xx xx xx xx

(j). to entertain, adjudicate upon and if thought fit, to redress any grievances of the employees of the institute.”

17. As per Rule 27 of the 1965 Rules, the appeal, including appeal against suspension order, is to be considered by the Appellate Authority.

Rule 27 (1) is extracted below:-

“27. Consideration of appeal.

(1). In the case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.”

18. The Chairman, BOG being Appellate Authority passed the revocation order, Annexure P/7, which is well within his jurisdiction.

19. As regard to deciding of appeal against suspension order on urgent basis, the Appellate Authority was again well within its right to decide the appeal expeditiously if the matter is of such a nature. Needless to mention that if the Registrar of the respondent-Institute had been suspended in extra-ordinary circumstances, the Appellate Authority was duty-bound to decide the appeal expeditiously and accordingly, the Chairman of BOG decided the appeal of respondent no. 3 expeditiously as 73rd meeting of the BOG was scheduled and even agenda was to be circulated in time-bound manner. There is no provision under the Act/State that notice was required to be issued to the Director of the respondent-Institute who had passed the order thereby suspending the Registrar of the

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Institute.

20. As regards to the contention raised by learned senior counsel representing petitioner No.2 that certain strictures have been passed against the Director, who had passed the order of suspension of respondent No.2, without hearing him. As per view taken by Hon`ble Apex Court in the judgments relied upon by learned senior counsel for the petitioners, i.e., **State of Maharashtra, Smt. Kiran Bedi, Lal Krishna Advani. Dr. Dalip Kumar Deka, and Om Parkash Chautala's cases (supra)**, it is not disputed that no person can be condemned unheard. However, if the order, Annexure P/7 is taken into consideration, the same does not amount to passing of strictures, rather the same is just decision on facts and making the facts more clear. In the totality of circumstances, it is clarified here that any observations recorded in the order, Annexure P/7, passed by the Chairman, BOG of the Institute shall not be taken as strictures against petitioner No.2.

21. In view of the above discussed facts and legal position, the present writ petition filed by both the petitioners is not maintainable and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

September 12, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes