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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15762-2018 [O&M]
Date of Decision : July 17, 2018

Indian Institute of Science Education and
Research (IISER) and another

.... Petitioners.

Versus

Chairperson, Board of Governors, IISER, Mohali
and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. R.K.Malik, Senior Advocate
with Mr. Amar Vivek and Mr. J.S.Lalli, Advocate,
for the petitioners.

Mr. Rajiv Atma Ram, Senior Advocate
with Mr. Ranjit Singh Kalra, Advocate,
for respondents No.1 and 2.

Mr. K.K.Gupta, Advocate,
for respondent No.3.

SHEKHER DHAWAN, J.

Present writ petition is the most unfortunate litigation involving
a premier institute of the country i.e., Indian Institute of Science Education
and Research (IISER), Mohali, hereinafter referred to as “**the Institute**”).

2. The matter in controversy; that respondent No.3, Registrar of
the Institute was placed under suspension under orders of the Director of
the Institute vide order dated 4.2.2018 (Annexure P/3) and the said

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suspension of respondent No. 3 has been revoked vide order dated 14.06.2018 (Annexure P/28) passed by the Chairperson of the Board of Governors of the Institute, respondent No. 1. Petitioner No. 2, Director of the Institute also claimed in the writ petition that subsequent communications, dated 21.06.2018 (Annexure P/32), 23.06.2018 (Annexure P/33) and 25.06.2018 (Annexures P/34 and P/35 Colly.) be also quashed.

3. The grounds taken in the writ petition are that the Institute was constituted by an Act of Parliament namely the National Institutes of Technology Act, 2007, as amended vide Act of 2012 (for short, "**the Act**"). The Director being the Principal Academic and Executive officer of the Institute is competent authority to sue and be sued on behalf of the Institute. As petitioner No.2, the Director the Institute was on tour, the present writ petition was filed and verified by the officiating Director of the Institute Shri Jasjeet Singh Bagla under the authorization of Director of the Institute under Clause 11(13) of the First Statutes of the Indian Institutes of Science Education and Research (IISER) issued vide notification dated 06.08.2014 (Annexure P/39), (hereinafter referred to as "**the Statutes**") and as such he has been arrayed as petitioner No.2. As per the petitioners, the suspension order, (Annexure P/3) was passed because of gross insubordination and for committing several acts of omission and commission by respondent No.3. Prior to passing of the said order, Annexure P/3, a Fact Finding committee was constituted and on the basis of the report submitted by the said Committee, the suspension order was passed. As per the petitioners, against the said order, the appeal lies

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before the Board of Governors of the Institute and there is absolutely no power with the Chairperson of the Board of Governors to pass an order and that too without issuance of any notice to any body and within minutes of uploading of order passed by this Court vacating the stay orders against order of suspension, on 14.6.2018. The appellate power is with the Board of Governors of the Institute and not with the Chairperson. More so, the suspension is purely an administrative order and not an order imposing any penalty and as such, the same is not amenable to the remedy of appeal in routine. As such, the Chairperson could not exercise its jurisdiction to entertain and decide the appeal at the behest of respondent No. 3 by entertaining and allowing the same on 14.6.2018.

4. The Fact Finding Committee submitted its report on 03.02.2018 (Annexure P/2) and *prima facie* found false claims and misuse of official position by respondent No. 3 to get undue benefit/committed grade misconduct in respect of the following acts:-

- “a). Issue regarding HAG scale.
- b) Drawl of Transport Allowance @ Rs.7,000/- p.m. + D.A thereon
- c) Change of option for fixation of pay and drawl of arrears amounting to Rs.32,436/-
- d) False LTC Claim:
- e) Fixation of pay in respect of Dr. (Mrs.) P. Visakhi (wife of Dr. Bapaiah) as Deputy Librarian consequent upon her placement into PB-4 with AGP of Rs.9000/-.
- f) Appointment of his wife, Dr. (Mrs.) P. Visakhi, as Librarian in IISER, Mohali
- g) Insubordination of higher authorities.”

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5. On this point, report from the Chief Vigilance Officer of the Institute was also obtained. The Chairperson of Board of Governors of the Institute had raised some doubts about passing of the suspension order on the same date showing her bias mind for passing the impugned order, Annexure P/28. As per the petitioners, the Director being administrative head of the institute can place a member of the staff appointed at the Institute under suspension and the Board of Governors of the Institute can revoke suspension order if circumstances of the case so warrant. Further Clause (18) of the Statutes provides that the Director may place a member of the staff appointed at the Institute under suspension and as per clause 18(4) of the Statutes of the Institute power of appeal is with the Board of Governors.

6. The matter in controversy was before this Court in an earlier litigation, i.e. CWP-7282-2018 on the ground that the appeal was preferred before Board of Governors of the Institute on 14.2.2018 and the same was to be produced before the Board of Governors of the Institute in its meeting to be held on 28.03.2018. As the said appeal was to be discussed on 28.03.2018, the Director of the Institute requested the Chairperson that respondent No. 3 be not allowed to participate in the proposed meeting of the Board of Governors as agenda was to be discussed therein about charges levelled against respondent No.3. However, the Chairperson observed that only when the agenda relating to respondent No. 3 was to be discussed, at that time, respondent no. 3, Registrar would be asked to go out of the meeting of the Board of Governors of the Institute. The

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arguments in the writ petition were heard on 1.6.2018 and the order was uploaded on the web-site of this Court on 14.06.2018 at 16.26 hours. Since the copy of the order of this Court was uploaded, respondent No.2 acted at a lightening speed and passed the impugned order dated 14.6.2018 at 16.34 hrs. revoking the suspension of respondent No.3, though she had no such power to pass such an order without issuance of any notice and the same is liable to be set-aside.

7. In the short reply, respondent No.1 has submitted that the Institute has been impleaded as petitioner No.1 through its Director/Acting Director by petitioner No.2. The Institute is a body corporate as per Section 4 of the Act, which reads as under:-

“4(1). Each of the Institutes mentioned in column (3) of the First Schedule and the Second Schedule shall be a body corporate having perpetual succession and a common seal and shall, by its name, sue and be sued.

(2). The body corporate constituting each of the said Institutes shall consist of a Chairperson, a Director and other members of the Board for the time being of the Institute.”

8. As per the above provisions, a body corporate could file a petition if the same is authorized by its Board of Directors/Governors. However, the Board of Governors of the Institute had not authorized the filing of the present writ petition, and as such the Director of the Institute was not competent to file this writ petition. More so, the authorization letter dated 27.06.2018 given by Prof. Debi P. Sarkar, Director of the Institute is only with regard to the filing of the writ petition on his behalf, but

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the same never authorized to file petition on behalf of the Institute which is otherwise a body corporate and on that account, the writ petition is liable to be dismissed.

9. As per minutes of the meeting of Board of Governors of the Institute dated 28.03.2018, vide agenda No. 18.31.30, the respondent no. 1 was authorized to constitute a Committee and the Committee constituted by her comprised the following members :-

- (i) Hon'ble Mr. Justice S.S. Sodhi, former Chief Justice of Allahabad High Court and former Telecom Regulatory Authority of India (TRAI) as Chairperson.
- (ii) Mr. Rajan Kashyap, IAS, Retd. Former Chief Secretary, Govt. of Punjab and former State Chief Information Commissioner, Punjab as Vice Chairperson.
- (iii) Mr. M. Radhakrishnan, Registrar, IISER Thiruvananthapuram as Member and Secretary.

10. Terms of reference were also framed. The said committee conducted its proceedings which were duly video-graphed and the Director of the Institute appeared before the Committee alongwith six staff members (teaching and non-teaching) and the Registrar and one Assistant Registrar were also present with the Director. The Committee concluded the hearing on 2.7.2018 and submitted its report on the same date. Respondents No.1 called an emergent meeting of Board of Governors of the Institute on 13.07.2018 to consider and take appropriate action.

11. As the report of the Committee is yet to be considered by the

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Board of Governors of the Institute, copy of the same was not placed on the file with the written statement. However, the said report of the Committee has been produced in the Court and the same has been perused by this Court during the hearing of the proceedings of the present writ petition and the same was returned to learned senior counsel representing respondents No. 1 and 2.

12. In 32nd meeting of the Board of Governors of the Institute held on 19.5.2018, legal notice issued by the Registrar (respondent No. 3) due to non-restoration of functions of the Registrar was considered. Board of Governors endorsed the view of the Chairperson that respondent No.3 was mandated by this Court to function as Registrar w.e.f. the date of joining i.e., 23.3.2018. Respondents No. 1 and 2 prayed that the present writ petition be dismissed being not maintainable.

13. In a separate written statement filed by respondent No.3, Dr. P. Bapaiah, Registrar of the Institute took almost similar pleas as have been taken by respondents No.1 and 2 that the Institute was not duly represented and the writ petition has been filed on behalf of the Institute that too, without any cause of action. The withdrawal of the statutory powers and other function of the respondent was also deprecated by the Board of Governors of the Institute in its meeting held on 19.5.2018 in which the Director was also present as one of its members. The Director had not restored the statutory powers and functions of the Registrar and was himself taking all such decisions for which the Director is not even competent under the Act and the Statutes of the Institute. Therefore, the Chairperson of Board of Governors of the Institute in exercise of powers

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under Clause 10(2) of the Statutes passed the order dated 14.6.2018 (Annexure P/28), revoking the suspension of respondent No. 3 which even otherwise had become inoperative. The said order was circulated by the Chairperson amongst the members of the Board of Governors of the Institute, but no body had raised any objection to the said decision and thereafter, the same is deemed to have been approved even by the Board of Governors. Even otherwise also, the revocation of the suspension order is being reported by the Chairperson to the Board of Governors in its forthcoming meeting scheduled for 13.07.2018 as is evident from the agenda, copy of which has been placed on record as Annexure R/3-2 and respondent No. 3 prayed that the present writ petition is without any merit and is not maintainable. So, the same be dismissed.

14. Learned senior counsel representing the parties have based their arguments in the above lines. Apart from this, learned senior counsel representing the petitioner contended that all the ministerial and administrative staff, including Registrar of the Institute was under the control of the Director in terms of Clause 18(2). He further contended that as per Clause 11(13) of the Statutes, the Director was competent to file the present writ petition.

15. Having considered the submissions made by learned counsel for the parties and going through the record available on the file of this case, this Court is of the considered view that there is no dispute about certain basic facts that respondent No. 3, Dr. P. Bapaiah was working as Registrar of the Institute. The Institute was enacted as per the Act of the Parliament and is a body corporate, as per provisions of Section 4 of the

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Act. The institute being a body corporate is certainly competent to file a petition, but the same must have authorised by the Board of Governors of the Institute. However, in the present case, the Board of Governors had not authorized the filing of the writ petition and the Director himself was not competent to file the same on behalf of the Institute without the approval of the Board of Governors of the Institute in view of the provisions of Section 4 of the Act, as reproduced above.

16. Apart from the above, the Board of Governors of the Institute considered Agenda Item No. 18.31.13 in its meeting dated 28.03.2018 regarding suspension of respondent No. 3 and resolved as under:-

“ The Agenda item no. 18.31.13 regarding suspension of Dr. P. Bapaiah, Registrar, IISER Mohali was discussed. Dr. P. Bapaiah (who was present in the meeting as Secretary, BOG) and the Special Invitees were requested by the Chairperson BOG, not to be present during discussion of this sensitive agenda item. As requested by Chairperson Senior Counsel Shri Vivek Singla was present for a while at the beginning of this agenda to clarify legal issues on the case filed by Dr. Bapaiah in the Punjab High Court regarding his suspension. After discussing the various angles of the agenda item and given that the Fact Finding Committee's report was already submitted to the court of law (and hence potentially sub-justice), the BOG, IISER Mohali, resolved to empower the Chairperson to constitute an unbiased Committee to look into all aspects of the matter, keeping legal issues in mind and in accordance with principles of Natural Justice. Regarding suspension of Dr. Bapaiah, BOG, IISER Mohali decided to wait upon the decision of the Hon'ble Punjab High Court, to avoid any scope of contempt of court. Keeping in view the interests of the respondents in the case for stay of suspension filed by

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Dr. Bapaiah, the members of the board and the Chairperson felt that any submissions in the court of law should be with prior consent and permission of the Board.”

17. At any rate, there was no authorization by the Board of Governors to the Director of the Institute to file the present writ petition.

18. Now, coming to the facts of the present case, the Director of the Institute passed order dated 4.2.2018 (Annexure P/3) thereby placing the Registrar of the Institute, respondent No. 3 herein under suspension. As per Clause 18 of the Statute, the Director was competent to place a member of the staff appointed at the Institute under suspension. The relevant extract of Clause 18 of the Statute reads as under :-

18. **Suspension, Penalties, Disciplinary proceedings**

(1) The Director may place a member of the staff appointed at the Institute under suspension:-

- (i) where a disciplinary proceeding against him is contemplated or is pending; or
- (ii) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that where a member of the staff is detained in custody, whether on a criminal charge or otherwise.

(2)	X	X	X	X	X
(a)	X	X	X	X	X
(b)	X	X	X	X	X
(c)	X	X	X	X	X
(3)	X	X	X	X	X

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(4) The Board of Governors may, if it is of the opinion, that the circumstances of the case do not warrant the suspension of the member of the staff, revoke such order.”

19. As per sub clause (9) of Clause 18 of the Statutes, a member of the staff aggrieved by any order imposing penalty passed by the Director against him shall be entitled to prefer an appeal to Board of Governors against the order and there shall be no further appeal from the decision of the Board.

20. There is no dispute on the fact that the Registrar could be placed under suspension by the Director of the Institute and the remedy to challenge the same order is by way of appeal before the Board of Governors. In the present case, the appeal was preferred before the Board of Governors and the same came up for hearing in its meeting on 28.3.2018 and the Board of Governors authorized the Chairperson, respondent No.1 herein, to take required action. On 14.06.2018, the Chairperson passed the order under challenge (Annexure P/28) as the Registrar, who is otherwise the main functionary of the Institute, was placed under suspension by the Director. The said Committee has already conducted the enquiry and this Court has gone through the report submitted before the Board of Governors, which was scheduled to be discussed by the Board of Governors in its meeting to be held on 13.07.2018. The said Committee's report deals with allegations against respondent no.3, but as the said report is still to be considered by the Board of Governors in its next meeting, the contents of the same are not being discussed in the present order, rather, at this stage, it is suffice to

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say that the Chairperson was duly authorized by the Board of Governors to take a decision.

21. Taking the case from another angle, Clause 10(2) of the Statutes, which explains the position of the Chairperson of Board of Governors, makes it ample clear that the Chairperson was competent to pass order dated 14.06.2018 (Annexure P/28) revoking the suspension of respondent No. 3 and the same are required to be intimated to the Board of Governors in its next meeting for its approval. For ready reference, Clause 10(2) of the Statues is being reproduced hereunder:-

“10. The Chairperson, Board of Governors

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2. In emergent cases, the Chairperson may exercise the powers of the Board and inform the Board of the action taken by him for its approval in its next meeting.”

22. The above provisions make it ample clear that in emergent cases, the Chairperson may exercise the powers of the Board and inform the Board of the action taken by him/her for its approval in its next meeting. It is needless to say that if the Registrar of the Institute, who is otherwise main functionary, has been placed under suspension and it is a matter of dispute whether he has been placed under suspension because of actual misconduct on his part or such an order was passed by the Director because of his biased mind against the Registrar, at any rate the Chairperson was legally competent to pass such an order in emergent cases. The present case was an extreme emergent case and taking the matter to be such, the Chairperson has passed the impugned order,

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Annexure P/28 and she is in the process of intimating the Board of the action taken by her in emergent situation for its approval in the next meeting which was scheduled to be held on 13.07.2018. As such, there is absolutely no illegality in the impugned order, Annexure P/28 passed by respondent No.1, rather she has been duly authorized under the Act and the Statutes.

23. In view of the above, the present writ petition is not maintainable and is without any merit and as such, the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

July 17, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes