

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Moushumi Bhattacharya

WPA 1668 of 2022

Rajesh K.V. @ Rajesh Kaleerakath Venugopal

Vs.

Visva-Bharati & Ors.

For the Petitioner : Mr. Arunava Ghosh, Adv.
Mr. Puspall Chakraborty, Adv.
Ms. Prishanka Ganguly, Adv.

For the University : Mr. Pranit Kumar Bag, Adv.
Mr. Anuj Kumar Mishra, Adv.

Last Heard on : 16.03.2022.

Judgment on : 30.03.2022.

Moushumi Bhattacharya, J.

1. The petitioner prays for quashing of a show-cause and a Charge-sheet dated 24th and 27th February, 2021 respectively and orders of suspension issued to the petitioner from 13th March, 2021 onwards.

2. The petitioner is an Assistant Professor of Drama in the Department of Rabindra Sangit, Dance and Drama, Sangit-Bhavana in the Visva-Bharati University and was confirmed to the said post with effect from 19th March, 2012. The petitioner is also the General

Secretary of Visva-Bharati Adhyapaka Sabha (Visva-Bharati Teachers' Association).

3. The impugned show-cause was issued to the petitioner on 24th February, 2021 asking the petitioner to explain why appropriate administrative measures will not be taken against him for negligence of duty and misconduct. The said letter was issued by the Registrar (Acting) of the University. The petitioner replied to the show-cause by a letter dated 26th February, 2021 disputing the allegation of negligence of duty and misconduct. The impugned Charge-sheet was issued against the petitioner on 27th February, 2021 by the Registrar (Acting) of the University; the Article of Charge states that the petitioner was involved in negligence of duty and misconduct. The petitioner addressed his defence to the Memorandum of Charges by way of a letter dated 8th March, 2021. The impugned order of suspension was issued thereafter on 13th March, 2021 by the Registrar (Acting) of the University by which the petitioner was placed under suspension with immediate effect pending disposal of the disciplinary proceedings. The disciplinary proceedings were extended several times thereafter which would be evident from orders until 20th December, 2021 by which the period of suspension was also extended.

4. Learned counsel appearing for the petitioner takes a point of jurisdiction in that the Registrar of the University was not empowered to issue the impugned notices or take any disciplinary action against the petitioner. Counsel relies on The Visva-Bharati Act, 1951 for this

purpose. It is also submitted that the Vice-Chancellor of the University also does not have the power to initiate any disciplinary action against any person of the petitioner's position. Counsel submits that since the Registrar did not have the jurisdiction to initiate disciplinary proceedings under the Act, all subsequent steps would be null and void. Counsel further submits that the Memorandum of Charge is vague as it does not contain any particulars of misconduct by reason of which the Charge-sheet should be quashed.

5. Learned counsel appearing for Visva-Bharati University submits that there has been no delegation of power or duty by the Vice-Chancellor to the Registrar and that the impugned disciplinary proceedings have been initiated and are being carried on through express direction of the Vice-Chancellor. Counsel relies on Office Notes to urge that the Registrar has been expressly authorized to take all steps by the Vice-Chancellor which would be evident from the signature of the latter on the Office Notes. Counsel relies on a Handbook published in 2019 by the University Grants Commission to submit that the Vice-Chancellor has the power to delegate his powers in special circumstances but that in the present case, there is no delegation of power and the direction of the Vice-Chancellor have been duly communicated to the petitioner by the Registrar of the University.

6. Since learned counsel appearing for the petitioner had taken the point of jurisdiction of the Registrar to issue the impugned notices, this point should first be dealt with.

7. Under clause 5.1 of The Statutes of the University, as amended upto May, 2012- *the Karma-Sachiva (Registrar)*, sub-clause 4(a) states that the “*the Karma-Sachiva (Registrar) shall have power to take disciplinary action against such of the employees, excluding adhyapakas of the University and other members of the academic staff, as may be specified by the Karma-Samiti (Executive Council), by order,*”

8. Under section 3(c) of The Visva-Bharati Act, 1951, *Adhyapaka* “*includes a Professor, Leader, Lecturer and any other person engaged in imparting instruction in relation to any learning process....*”. The petitioner is admittedly an *Adhyapaka* and hence the Registrar did not have the power under the Statutes of the University to issue the impugned notices of show-cause and suspension.

9. The power to suspend an *Adhyapaka* or other member of the academic staff is provided under section 38.A of the Act which includes the power of the *Upacharya* (Vice-Chancellor) to place an *Adhyapaka* or a member of the academic staff under suspension upon fulfilment of the conditions in section 38.A (1). 38.A (2) however requires the order of suspension to be reported forthwith to the *Karma-Samiti* (Executive Council) and 38.A (3) empowers the *Karma-Samiti* to revoke the order of suspension if it is of the opinion that the circumstances of the case do not warrant the suspension. The *Upacharya* is also empowered to take immediate action in any matter under section 14 of the Act but such action shall be reported to the authority which in turn may refer the

matter to the *Paridarsaka* (Visitor) whose decision on the matter shall thereafter be final. The second proviso to section 14(3) contains the provision for appeal by an employee against the action taken by the *Upacharya*. The appeal shall be placed before the *Karma-Samiti* (Executive Council) which has the power of confirming, modifying or reversing the action taken by the *Upacharya*. The aforesaid provisions, i.e., sections 38 and 14 stipulate a specific procedure for an order of suspension of an *Adhyapaka* or a member of academic staff. The procedure is democratic and takes due care against any arbitrary or unilateral act of suspension of an *Adhyapaka* or of the employee of the University by referring the same to the *Karma-Samiti* (Executive Council) which has a power to revoke the order of suspension or confirm/reverse the action taken by the *Upacharya*.

10. The admitted facts in the present case, as would be apparent from the records, do not indicate that the University followed the procedure provided for under sections 38 or 14. The issue of the show-cause notice, the Memorandum of Charges and the order of suspension are contrary to the Act and the Statutes of the University since a Registrar cannot initiate any disciplinary action against an *Adhyapaka* (clause 5.1 of the Statutes). Further, even if it is assumed that the Registrar was acting under the direction of the Vice-Chancellor in issuing the impugned notices, the procedure provided under sections 38 and 14 of the Act, which empowered the Vice-Chancellor to suspend an *Adhyapaka* or take steps against an employee, has not been followed.

The impugned order of suspension states, *inter alia*, that “*the undersigned is directed to communicate that Shri Rajesh K.V, Assistant Professor, is placed under suspension with immediate effect*”. There is no indication in any of the impugned notices as to who has directed the Registrar to take the steps complained of. In fact, there is no reference in the impugned documents of the Vice-Chancellor being the authority who has directed issuance of the show-cause, the Charge-sheet or the order of suspension. The order of suspension mentions the “competent authority” without any further reference as to the identity of the authority. The Office Notes relied upon by counsel appearing for the University shows handwritten endorsements with the words “Vice-Chancellor” on the notes but under the letter head of the “Visva-Bharati Establishment -III”. These Notes cannot be taken as evidence that the Vice-Chancellor was the directing authority in connection with the main action. The UGC Handbook and *Gambhirdan K. Gadhvi vs State of Gujarat; 2022 SCC OnLine SC 256*, placing reliance on the handbook is not an authority for the proposition that precipitate action can be taken against an *Adhyapaka* or an employee of a University without having the power to do so under the relevant Statutes.

11. Moreover, the Charge-sheet is vague and devoid of particulars. The Memorandum/Charge-sheet as stated is that “*Shri Rajesh K.V., was involved in negligence of duty. Such act may be regarded as misconduct.*” The term misconduct has not been defined in the Visva-Bharati Act, 1951 read with the Statutes of the University. Hence, it was

imperative for the person competent to issue the Charge-sheet to define the term misconduct and in what manner the petitioner was guilty of it. Significantly, the list of documents by which the article of charge was framed only consists of the show-cause notice and the reply of the petitioner to such show-cause notice. There are no other documents included in the list for proposing the charge of misconduct against the petitioner. The Supreme Court in *A.L. Kalra vs Project and Equipment Corporation of India Ltd.*; (1984) 3 SCC 316 noticed the grey area in cases of misconduct, particularly where the relevant statute does not define the term, and held that it is obligatory on the employer to specify and define the term with decision where misconduct entails penal consequences. The Supreme Court in *Union of India vs J. Ahmed*; (1979) 2 SCC 286, quoted Stroud's Judicial Dictionary to describe misconduct as that arising from ill motive and not acts of negligence, errors of judgment or innocent mistake (underlined for emphasis).

12. This Court is of the view that since the Registrar (Acting) did not have the power to initiate disciplinary action against the petitioner, who is an *Adhyapaka* of the University, the defect of jurisdiction goes to the root of the matter and nullifies all subsequent steps taken thereafter. The Charge-sheet and the order of suspension are hence without authority and should be quashed on that basis. In other words, to quote the legal maxim *sublato fundamento cadit opus*, if the foundation of the action is removed, the superstructure must fall; refer *Chairman-cum-M.D., Coal India Ltd. vs. Ananta Saha*; (2011) 5 SCC 142.

13. In view of the above reasons, WPA 1668 of 2021 is allowed in terms of prayers (a) and (b). The impugned show-cause notice dated 24th February, 2021, the Charge-sheet dated 27th February, 2021 and the orders of suspension commencing from 13th March, 2021 are revoked. The writ petition is disposed of accordingly.

Urgent Photostat certified copies of this judgment, if applied for, be given to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J)