

11.03.2022
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Sl. No. 05
Ct. No. 05

WPA 2143 of 2022

[Via Video Conference]

Goutam Jana
-Versus-
State of West Bengal & Ors.

Mr. Biswaroop Bhattacharya
Mr. Bilwadal Bhattacharyya
Mr. Debanik Banerjee
Mr. Anish Kumar Mukherjee
Mr. Amit Sinha
Mr. Surojit Saha

..... for the petitioner

Md. T.M. Siddique
Mr. D. Ghosh

..... for the State

Mr. Sabir Ahmed
Mr. Mujibar Ali Naskar
Mr. T. Ahmed

... for the respondent nos. 2 & 3

The petitioner prays for setting aside of an impugned document issued by the concerned College on 22nd December, 2021 by which the petitioner was suspended from service and instructed not to attend College till completion of inquiry process and related matters. The College is attached to the Vidyasagar University. The petitioner is a Laboratory Attendant in the Department of Physics in the concerned College.

A point of maintainability has been taken by the respondent College on the ground that the petitioner should prefer an appeal to the University within 30 days from receipt of the order imposing the penalty. This Court is not

inclined to accept the said ground since the relevant provision of the First Statutes, 1983 of the Vidyasagar University indicates that the order referred to in clause 7(e) must be in the nature of imposition of a penalty specified in clauses (iii) to (vii) of paragraph (1) of Statute 170- “Discipline and Conduct”. Clauses (iii) to (vii) mention various situations including recovery from pay, reduction to a lower stage, compulsory retirement and removal or dismissal from service, which do not come within the purview of the notice impugned in the present proceeding. Hence, the question of maintainability is decided in favour of the petitioner and the writ petition is held to be maintainable.

This Court hence proceeds to deal with the merits of the matter.

The impugned document issued by the College suspending the petitioner from service refers to decisions taken by the Governing Body on 2nd November, 2021 and further resolutions taken in the meeting of 18th December, 2021. The petitioner was also asked to appear before the Enquiry Committee on 10th January, 2022 to explain three charges framed against the petitioner.

Upon perusal of the impugned document, it is evident that besides the decisions of the Governing Body taken at the two meetings which were not being shown to the petitioner, all three charges lack material particulars. The petitioner has been charged of a) Violation of orders regarding attendance and office discipline; b) Commission of offence involving moral turpitude pursuant to a complaint lodged by one Munmun Sardar and c) dissatisfaction with the reply to the show-cause letter dated 2nd January, 2021. None of the three charges are supported by any factual basis. The college has also not provided any corroborating facts with regard to the complaint lodged by a student. The third charge is even more vague; the word “dissatisfaction” can mean anything – the why and wherefore of the alleged dissatisfaction should have been indicated in the impugned communication.

The overbearing conduct of the College would also be evident from a letter dated 16th February, 2022 asking the petitioner to appear before the Enquiry Committee on 28th February, 2022, which is after filing of the present Writ Petition and more significantly after orders were passed in the said Writ Petition.

Moreover, paragraph (2) of Statute 170 of the Vidyasagar University First Statutes, 1983, sets out a particular procedure where the University proposes to take action against an employee. In such cases, the proposed action is required to be reduced in the form of a definite charge and indicated to the employee with a statement of facts on which the charges are based and other circumstances which is proposed to be taken into consideration in passing orders on the cases. The employee so charged may put in a written statement of his defence within a minimum period of two weeks along with documentary evidence and upon receipt of the statement of defence, the authority after examination of relevant facts, may either drop the case or decide to proceed further. A formal enquiry has to be held informing the employee concerned and the penalty provisionally proposed to be imposed upon him only if the authority decides to proceed further. The authority shall thereafter take a decision on the findings of the enquiry. Paragraph (3) provides for the Governing Body of a College placing an employee under suspension where an enquiry is contemplated against him under paragraph (2) or where any such enquiry is pending.

It is evident that the procedure set out in paragraph (2) has not been followed in the present case. The petitioner has been presented with charges lacking in material particulars and the College has proceeded to suspend the petitioner even before a formal enquiry has been held. The impugned notice indicates that the enquiry proceedings commenced against the petitioner as on the date of notice and further that the stages prior to a formal enquiry were not initiated or completed before the Enquiry Committee was set up by the College.

The decisions cited on behalf of the petitioner are relevant in the context of the authority being required to apply its mind upon receipt of a reply from the chargesheeted employee; *State of Punjab Vs V.K. Khanna and Others*; (2001) 2 SCC 330. *Surath Chandra Chakrabarty Vs State of West Bengal*; (1970) 3 SCC 548 reiterated the importance of granting an adequate opportunity to the concerned person to defend himself and the necessity of indicating specific and definite charges to the person. The Supreme Court in view of the decision held that a person needs to be told clearly and definitely what the allegations are and the specific charges framed against him since he cannot discover all the facts and circumstances involved in the

contemplation of the authorities which may be established against him. The ratio of this decision was also followed by the Supreme Court in *Anant R. Kulkarni Vs Y.P. Education Society and Others*; (2013) 6 SCC 515 which further held that where the statement of allegations are not served with the chargesheet, the enquiry stands vitiated as having been conducted in violation of the principles of natural justice.

In view of the above reasons, W.P.A 2143 of 2022 is allowed and disposed of in terms of prayer (b). The impugned letter dated 22nd December, 2021 is quashed and set aside. It is made clear that this order is restricted only to the impugned document which has been challenged in the present Writ Petition and the Court has not gone into any other facts related to the charges framed against the petitioner.

Urgent Photostat copies of this order, if applied for, be supplied to the respective parties, upon fulfillment of usual formalities.

(Moushumi Bhattacharya, J.)