

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Moushumi Bhattacharya

IA No.: CAN 1 of 2021

in

WPA 9813 of 2018

Abhijit Kumar Talapatra

Vs.

State of West Bengal and Others

With

WPA 3508 of 2022

Abhijit Kumar Talapatra

Vs.

State of West Bengal and Others

For the Petitioner : Mr. Debasish Saha, Adv.
Mr. Moniruzzaman, Adv.

For the State : Mr. Swapan Kumar Datta, Adv.
Mr. Tapas Kumar Dey, Adv.

For the W.B.S.U. : Mr. Ashok Banerjee, Adv.
Mr. Santanu Kr. Mitra, Adv.
Mr. Amartya Pal, Adv.

Last Heard on : 18.05.2022.

Judgment on : 08.06.2022.

Moushumi Bhattacharya, J.

1. The writ petitioner prays for setting aside of an Enquiry Report dated 23.3.2018 and for allowing the petitioner to participate in the enquiry proceedings upon reopening the enquiry once again.

2. The impugned Enquiry Report dated 23.3.2018 concludes that all the 21 charges levelled against the petitioner, who was the Controller of the Examinations of the University at the relevant point of time, have been established in the enquiry on an unconditional and voluntary admission of the charges by the petitioner (Charged Officer) on repeated occasions. The petitioner was suspended by the University by an order dated 3.3.2017 in contemplation of a disciplinary proceeding.

3. Learned counsel appearing for the petitioner seeks setting aside of the Enquiry Report on several grounds. Counsel submits that the disciplinary authority deliberately delayed the enquiry proceedings and failed to produce the documents which the petitioner asked for. Counsel submits that the petitioner replied to the Enquiry Report by denying the findings of the Enquiry Officer and requested the Vice-Chancellor of the University to reopen the enquiry. It is further submitted that the petitioner suffered from a mental condition at the relevant point of time and was therefore not in a fit mental state at the time of admitting to the charges. Counsel also submits that the Enquiry Officer prevailed upon the petitioner to admit to the charges and plead guilty of the alleged wrong doing.

4. Learned counsel appearing for the West Bengal State University places documents to show that the petitioner was given every opportunity to

present his defence and that there was no breach of the principles of natural justice. Counsel submits that the disciplinary authority could not take a final decision on the Enquiry Report by reason of the pendency of the writ petitions which were earlier filed by the petitioner. Counsel disputes that the petitioner suffered from any mental condition at the relevant point of time.

5. Learned counsel appearing for the State supports the stand of the University in that the petitioner voluntarily admitted to the charges levelled against him and that the petitioner participated in the enquiry proceedings at every stage.

6. This Court has considered the material on record and the submissions made on behalf of the parties. The documents, which are germane to the matter, are being briefly described. The Memorandum of Charges dated 31.7.2017 indicates that the petitioner, who was the Controller of the Examinations of the University, gave assurance to various students for enhancing their marks and permitted students to appear in the examination on the basis of provisional Admit Cards without photographs of the students. The petitioner thereafter was responsible in withholding the results of the students on the pretext that such cases could not be entertained after the lapse of one and half years. The petitioner has also been charged of issuing provisional mark-sheets without following the process of re-evaluation or scrutiny which is against the rules of the University. There are a total of 21 charges of serious nature primarily of issuing mark-sheets to students without a proper re-evaluation or scrutiny. The petitioner responded to the charges by way of a detailed letter. An Enquiry Officer was appointed on 17.10.2017. The petitioner thereafter

participated in the hearing conducted by the Enquiry Officer; there were at least 8 hearings.

7. The 6th hearing conducted on 8.3.2018 is important. The record shows that the petitioner unconditionally pleaded guilty before the Enquiry Officer and submitted his plea of guilt to the Enquiry Officer which was marked as X-4. The record further shows that the petitioner/Charged Officer not only pleaded guilty to the charges levelled against him unconditionally but also expressed his desire to resign from the service of the University. The Enquiry Officer, in fact, after examining the entire situation, requested the Charged Officer/petitioner to reconsider his pleading of guilt by way of abundant caution. Sub-clause (ii) of the record of the 6th hearing held on 8.3.2018 indicates that the consequence of pleading guilty was explained to the petitioner in detail together with the fact that the disciplinary authority may issue suitable punishment against the petitioner on the charges being established. The relevant paragraph of this record of the 6th hearing is set out below.

“ The charged officer still sticks to his decision of pleading guilt unconditionally. However, his letter of pleading guilt dated 08.03.2018 is kept in the file without taking any final decision by the Enquiry Officer. The charged officer was once again advised to rethink the issue and to submit his considered final decision on 14th March, 2018 (i.e. after five days) before the Enquiry Officer. If the charged officer again pleads guilty on the next date, the same would be accepted.”

8. The record of the 6th hearing was corroborated by the petitioner by a letter dated 8.3.2018 in which the petitioner states that after going through the charge-sheets and copies of the documents which have been supplied to the petitioner and the detailed analysis of the case,

“..... as the then Controller of the Examination, I cannot evade my moral responsibilities for the mismanagement and the un-toward incidents that happened in the University during my tenure.

Hence, considering all aspects, I plead guilty to all the charges levelled against me vide charge sheet issued under Memo No. WBSU/VC/1021/17 dated 31.07.2017, unconditionally.”

9. The petitioner again reiterated his stand by a letter dated 21.3.2018 with the following words *“I am again pleading guilty to all the charges levelled against me vide charge sheet issued under Memo. No. WBSU/VC/1021/17 dated 31.07.2017, unconditionally and without any coercion, assuming full moral responsibility. My acceptance of guilt may kindly be considered as totally voluntarily and may kindly be accepted.”* The Enquiry Officer, based on the above, records at the 8th hearing held on 21.3.2018 that the petitioner attended the hearing on 21.3.2018 and once again pleaded guilty to all the charges unconditionally and has also given a written declaration on the aspect which is kept in the file and marked X-5. The Enquiry Officer accordingly accepted the plea of guilt of the petitioner. The University thereafter by a letter dated 23.3.2018 directed the petitioner to submit his representation to the Enquiry Report.

10. The impugned Enquiry Report records all the relevant facts particularly the petitioner pleading guilty to all the charges during the enquiry on 8.3.2018 and 21.03.2018. The petitioner also gave the voluntary admission of guilt in writing which is made part of the enquiry records. The Enquiry Report further records that the petitioner was duly cautioned and made aware of the consequence of pleading guilty but continued to admit to

the charges without any provocation or coercion. The conclusion of the Enquiry Report is set out below.

“Finally, after going through all the records, documents, submissions and detailed day-to-day proceedings, I find that all the 21 charges levelled against Sri A.K. Talapatra, Controller of Examination (US) through charge sheet issued vide Memo No. WBSU/VC/1021/17 dated 31.3.2017 of the Vice-Chancellor & the Disciplinary Authority have been duly established in the enquiry on specific unconditionally and voluntarily admission of charges and pleading guilty by the Charged Officer on repeated occasions during the enquiry.”

11. The change of stance of the petitioner came for the first time on 9.4.2018 in a letter to the Vice-Chancellor of the University. In the said letter, the petitioner states that the petitioner assumes moral responsibility since the petitioner was at the helm of the Examinations Department of the University but denied any involvement in the alleged malpractices. The petitioner specifically denied ever having taken any form of graft from any student and guardian in exchange for issue of “fake documents”. The petitioner repeats this new-found absence of guilt in a second letter to the Vice-Chancellor dated 4.6.2018. In this letter, the petitioner states that the petitioner signed the letter of 8.3.2018 (pleading his guilt) on the instruction of the Enquiry Officer and that this letter was drafted by the Enquiry Officer for the purpose of holding the petitioner guilty. The petitioner states, for the first time, that the petitioner had a “mental disorder(s)” at the relevant point of time and the letters of 8.3.2018 and 21.3.2018 should thus be withdrawn. The petitioner denied all the charges levelled against the petitioner.

12. The relevant facts which have been brought to the notice of the Court indicate that the petitioner unconditionally pleaded guilty of all 21 charges levelled against him, not once, but on repeated occasions. The petitioner even recorded his stand in writing which were made part of the enquiry records. The Minutes of the enquiry further indicate that the petitioner assumed full moral responsibility for the wrong doings including that of issuing false mark-sheets and allowing students to sit for examinations on the basis of provisional Admit Cards. The Minutes also show that the petitioner was made fully aware of the consequence of such admission of guilt but stuck to his stand nonetheless. The documents show that the statements made by the petitioner were voluntary and without any provocation or coercion from any other person including the Enquiry Officer. The sudden and belated change of stand is therefore suspicious and unwarranted.

13. On 9.4.2018, the petitioner continued to assume moral responsibility of the matter but denied taking any form of undue favour from any student and guardian in exchange for documents. There is no mention of any mental condition in this letter. The aspect of the petitioner not being mentally fit was brought to the notice of the Vice-Chancellor after two months on 4.6.2018 which is then made basis for withdrawing the two letters of guilt dated 8.3.2018 and 21.3.2018. The petitioner also, for the first time, levels serious charges against the Enquiry Officer in connection with the latter drafting the letter of guilt and misleading the petitioner to admit moral responsibility. Curiously enough, the petitioner had sufficient opportunity to change his stand of pleading guilty and to bring his mental condition on

record while participating in the enquiry proceedings which commenced from October/November, 2017 and continued till 21.3.2018. The petitioner did nothing of the sort and continued to take full moral responsibility of the wrong doings in the University at the relevant point of time. The petitioner has not been able to discharge the onus as to why the unconditional and voluntary admission of guilt which the petitioner made in sound mind is to be set aside on the sudden reversal of stand after conclusion of the enquiry proceedings and the Enquiry Report made pursuant thereto. There is also no evidence on record to prove that the petitioner was undergoing treatment for a mental condition at the relevant point of time. This Court is hence not inclined to reopen the enquiry proceedings or to interfere with the same.

14. In *Jagdish Prasad Saxena vs State of Madhya Bharat*, AIR 1961 Supreme Court 1070; the Supreme Court found that the petitioner before it was not given any reasonable opportunity of meeting the charge framed against him and was entitled to such under Article 311(2) of the Constitution. This case does not assist the petitioner since the petitioner in the present case participated in the enquiry and was given repeated opportunities to present his defence. On the other hand, in *Employees' State Insurance Corporation vs A.V. Tungare*, a Division Bench of the Bombay High Court relied on an unconditional admission in unequivocal terms by the Charged Officer to hold that the Enquiry Officer cannot be faulted in the facts of the case. This Court also agrees with the proposition advanced in *State of Rajasthan v Ganeshi Lal*; AIR 2008 Supreme Court 690 where in the words of Lord Denning, "each case depends on its own facts and a close similarity between one case and another is not enough because even a single

significant detail may alter the entire aspect, in deciding such cases.....”

Section 58 of the Indian Evidence Act, 1872, also comes to the aid of the respondent University; in that no fact needs to be proved in any proceedings where the parties themselves or through their agent agreed to admit by any writing, before or at the hearing or by any prevalent rule of pleading, they are deemed to have admitted to certain facts.

15. In view of the above reasons, this Court fails to see any merit in the writ petition for setting aside the impugned Enquiry Report or interfering with the findings contained in the same. The University and/or disciplinary authority is directed to complete the disciplinary proceedings based on the Enquiry Report within a period of 3 months from the date of communication of this judgment, if not already done. WPA 9831 of 2018 is accordingly dismissed without any order as to costs.

16. Learned counsel appearing for the petitioner prays for stay of the judgment. Considering the facts of the case, the prayer for stay is refused.

WPA 3508 of 2022

17. The petitioner prays for a direction on the University to continue the subsistence allowance of the petitioner till the date of retirement, namely, till the petitioner attains the age of 65 years on 31.7.2026.

18. Counsel submits that the petitioner is entitled to subsistence allowance and comes within the scope of a Notification dated 24.2.2021 issued by the Department of Higher Education, Government of West Bengal by which the retirement age of certain officials of State-aided Universities has been enhanced to 65 years.

19. The petitioner was admittedly suspended by an order dated 3.3.2017 in contemplation of disciplinary proceedings. It is not in dispute that the petitioner has drawn subsistence allowance since the date of his suspension i.e. from 3.3.2017 till October, 2021. The petitioner complains that the authorities suddenly stopped payment of subsistence allowance to the petitioner from 1st November, 2021 without any basis.

20. The petitioner is presently 61 years of age.

21. The respondent University opposes the relief sought for.

22. Upon pursuing the Notification dated 24.2.2021 of the Department of Higher Education, Government of West Bengal, there is no doubt that the said Notification applies to the petitioner. The said Notification pertains to the Registrar, Controller of Examinations, Inspector of Colleges and various other persons of State-aided Universities having continuous teaching background/experience of minimum 10 years. The retirement age of these persons have been enhanced to 65 years with effect from the date of issuance of the Notification. The petitioner was the Controller of Examinations of the University as on the date of the Notification and fulfils the conditions for being eligible for the benefit given in the Notification, which would also be evident from a letter of the University to the petitioner dated 29.11.2010 confirming the petitioner service in the position of the Controller of Examination with effect from 20.11.2009. There is no reason therefore for the respondents to stop the subsistence allowance of the petitioner from November, 2021. The respondents, including the West Bengal State University, are therefore directed to continue the subsistence

allowance of the petitioner till the petitioner's date of retirement, i.e., on the petitioner attaining 65 years of age on 31.7.2026. This direction will be subject to the result of the disciplinary proceedings and the decision taken by the disciplinary authority. The petitioner shall also be entitled to the arrears of the subsistence allowance from the date on which the subsistence allowance was stopped till the date on which the subsistence allowance would resume pursuant to this judgment. There shall be no further delay in the payment of subsistence allowance to the petitioner in accordance with the applicable Notification. The payment of subsistence allowance should start within a fortnight from the date of this judgment and continue till the petitioner reaches the age of superannuation i.e. 65 years of age or till the order passed by the disciplinary authority. WPA 3508 of 2022 is allowed and disposed of in terms of the above.

23. All connected applications filed with the writ petitions are disposed of.

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

(Moushumi Bhattacharya, J.)