

WPA 6331 of 2020

Shrabanti Ganguly
Vs.
Visva-Bharati & Ors.

Mr. Anjan Bhattacharjee

...For the Petitioner

Mr. Soumya Majumdar,
Mr. Victor Chatterjee

...For Visva-Bharati

Petitioner was appointed on March 23, 2013, as a 'Documentation Assistant' in Bhasha Bhavana under Visva-Bharati.

It further appears from a subsequent letter dated August 9, 2014, issued by the Principal of Bhasha Bhavana that the petitioner's appointment was approved by the University.

A show-cause letter was issued against the petitioner by the Registrar of the University on March 20, 2020. The said show-cause notice is quoted below in extenso:

"VISVA-BHARATI
SANTINIKETAN

No. REG/117/1524 (ix)
Smt. Shrabanti Ganguli
Casual Worker
Bhasha-Bhavana

Date : 20.03.2020

3.6Sub : Show Cause Notice

It has come to the notice of the University authority that some staff member(s) including Casual Worker(s) of Bhasha Bhavana are alleged to have been involved themselves with the

practice of misuse of fund allocated to Bhasha Bhavana from time to time by raising of fake bills/vouchers in the name of one Bapi Das. In this connection, if it is found that you were involved with the said practice, it may be treated as punishable offence.

In view of the above, you are hereby directed to show cause as to why disciplinary action/appropriate action shall not be taken against you, to the undersigned by 25th March, 2020.

Sd/-
Registrar (Acting)
Visva-Bharati”

The petitioner gave a reply to the show cause notice.

Her reply was as follows :-

“To
The Registrar (Acting)
Visva Bharati
Santiniketan

Ref : REG/117/1524 (ix), dt. 20/03/2020

Respected sir,

Kindly note that on 23/03/2020 I have been served the aforesaid show cause notice with a time stipulation to reply within 25/03/2020 in a lock down situation of the country combating with fatal COVID19 attack.

However, from your show cause notice only I came to know & understand about the alleged misuse of fund of Bhasha Bhavana.

Kindly note that I am not related to official works of Bhasha Bhavana office as attached for duty at reading room, Bhasha Bhavana Library only.

As I am totally ignorant and innocent about the alleged matter I sincerely request you to withdraw the show cause notice served against me.

Thanking you,
With regards.

Your humble and loyal employee,
Yours faithfully,
Shrabanti Ganguli
Documentation Assistant
Attached at Reading room,
Bhasha Bhavana Library
Visva Bharati”

Thereafter, it appears, that an enquiry committee was

appointed to enquire into the allegations levelled against the petitioner and some other employees. Petitioner was also asked to appear before the said enquiry committee on June 29, 2020, by a letter dated June 25, 2020.

Thereafter on July 4, 2020, the impugned order of termination against the petitioner was passed. The order of termination is also required to be quoted in extenso.

“Smt. Shrabanti Ganguli
Outsourced Worker
Bhasha Bhavana, Visva-Bharati

Sub: Termination from temporary
service at Visva-Bharati

After careful consideration of your replies against show cause notice issued by Visva-Bharati, your deposition to the Enquiry Committee and on the basis of the recommendations made by the Enquiry Committee, it is found that you were involved with the act of misappropriation of fund at Bhasha Bhavana by raising fake bills/vouchers in the name of a fictitious person, which is termed as forgery on your part.

Consequent upon such act of forgery committed by you, the Executive Council (Karma Samiti) of the University in its meeting held on 03.07.2020 under Resolution No. Miscellaneous Item – 2(ii) has terminated your temporary engagement at Visva-Bharati with a one month's notice from the date of issuance of this letter i.e. with effect from 04.08.2020.

Sd/-
Registrar (Acting)
Visva-Bharati”

Though the enquiry report was never provided to the petitioner, fortunately, the University has disclosed the same in its affidavit-in-opposition.

When the matter was taken up for hearing yesterday,

this Court insisted Mr. Majumder, learned advocate appearing for Visva-Bharati, to show from the enquiry report about the involvement of the petitioner in the alleged misappropriation of fund. Nothing could be demonstrated. The matter was adjourned to enable Mr. Majumder find out any evidence collected against the petitioner that weighed in the mind of the disciplinary authority during the course of enquiry.

When the matter is taken up today for hearing, Mr. Majumder could only point out the following part of the enquiry report which runs as follows :

“Though the other outsourced persons and Bhasha Bhavana Office Staff members except Sri Dibas Mondal (Sr Assistant) and Sri Soumen Saha (Section Officer) stated that they were not known about the fake bills of Bapi Das prepared in the Bhasha Bhavana and the amount paid to others, it was not believable. How the matter was going on for about two years and nine months in the office of Bhasha Bhavana where they all were working in the same building. They might compromise with unethical matter.”

Nothing else has been placed before this Court to implicate or connect the petitioner with the alleged charge.

The above-quoted part of the enquiry report, needless to mention states nothing against the petitioner. It makes clear that there is no iota of evidence collected against the petitioner by the enquiry committee. The enquiry report does not reflect that the petitioner's version was at all

considered by the enquiry committee.

This is a case where the petitioner has been punished without any evidence against her. It need not be reiterated that the extent of judicial review in a disciplinary proceeding is limited in examining the maintenance of procedural propriety, but where the punishment has been imposed without any evidence, the Court must interfere.

In this case, neither the procedural propriety has been maintained nor there was any evidence collected against the petitioner.

It has been submitted by Mr. Majumdar that the petitioner was appointed on a temporary basis and the principle of natural justice has been complied with by giving her the opportunity to give a reply to the show-cause notice.

Even the service of a probationer or temporary employee cannot be terminated without following a regular departmental enquiry if the order of termination is stigmatic and based on a foundation.

The present case is squarely covered by the celebrated decision of the Supreme Court reported at **(1999) 3 SCC 60 (*Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta*)**. The relevant part of the said judgment is quoted below:

“21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as “*founded*” on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an

enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

...

36. It was in this context argued for the respondent that the employer in the present case had given ample opportunity to the employee by giving him warnings, asking him to improve and even extended his probation twice and this was not a case of unfairness and this Court should not interfere. It is true that where the employee had been given suitable warnings, requested to improve, or where he was given a long rope by way of extension of probation, this Court has said that the termination orders cannot be held to be punitive. [See in this connection *Hindustan Paper Corpn. v. Purnendu Chakrobarty*, *Oil & Natural Gas Commission v. Dr Md. S. Iskender Ali*, *Unit Trust of India v. T. Bijaya Kumar*, *Principal, Institute of Postgraduate Medical Education & Research, Pondicherry v. S. Andel* and a labour case *Oswal Pressure Die Casting Industry v. Presiding Officer*.] But in all these cases, the orders were simple orders of termination which did not contain any words amounting to stigma. In case we come to the conclusion that there is stigma in the impugned order, we cannot ignore the effect it will have on the probationer's future whatever be the earlier opportunities granted by the respondent-Organisation to the appellant to improve.

...

42. It was argued that the appellant was given notice of the above enquiry by the Committee but he was "not cooperative". In our view, findings arrived at by such an informal committee against the appellant, which committee was, in fact, constituted on a complaint by the appellant against Mr Chakraborty, cannot be used for terminating the appellant's probation, without a proper

departmental enquiry. The said findings, in our view, were the *foundation* for the impugned order among other facts. Such findings must, in law, be arrived at only in a regular departmental enquiry.”

The order of termination makes it absolutely clear that her service was terminated on the basis of the recommendations made by the Enquiry Committee, and also on the findings that the petitioner was involved with the act of misappropriation of the fund at Bhasha Bhavana by raising fake bills/vouchers in the name of a fictitious person.

The allegation levelled against the petitioner in the order of termination as quoted above clearly casts a stigma upon the petitioner. It is a clear case of foundation. The conduct of the University in passing the order of termination, therefore, is undoubtedly illegal and cannot be sustained.

It may also be noted that it is no one’s case before this Court that the petitioner was anywhere gainfully employed during the period of termination.

Accordingly, this writ petition being WPA 6331 of 2020 is allowed directing the respondents to reinstate the petitioner in service with 50% back wages within two weeks from the date of communication of this order. Such back wages are to be calculated on the basis of the average of the last six months’ wages paid to the petitioner immediately before her termination. Additionally, the University will pay the litigation cost of Rs. 20,000/- to the petitioner within two weeks from the date of

communication of this order.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)