

MAT 841 of 2022
With
CAN 1 of 2022

**The President, Nahata Jogendranath Mondal Smriti
Mahavidyalaya & Anr.**
-Vs-
Ranapati Roy & Ors.

Mr. Kumar Jyoti Tewari
Mr. Prantick Ghosh
Mr. Siddhartha Sarkar
Mr. Aniruddha Tewari

... for the Appellants

Mr. Samrat Sen
Mr. Nilotpal Chatterjee

... for the State

Mr. Amitabha Ghosh
Ms. Nabanita Chatterjee ... for the Writ petitioner/respondent

Party/Parties is/are represented in the order of
their name/names as printed above in the cause title.

The Governing Body of the College in issue along
with its Principal is in appeal before this Court.

Mr. Tewari, Learned Counsel appearing for the
appellants/the College, impugns the final Order of the
Hon'ble Single Bench dated 20th May, 2022 as passed
in the writ petition, being WPA 7208 of 2022.

By the said impugned Order the Hon'ble Single
Bench found the action of the College *qua* the writ
petitioner/who is the Respondent No.1 in this appeal,
to be *de hors* the principles of natural justice.

Mr. Tewari submits that such findings of the
Hon'ble Single Bench is against well settled canons of
law.

It is pointed out that the writ petitioner was suspended by the College by invoking Article 135(2)(a) of the First Statutes of the West Bengal State University to which the said College is affiliated.

The First Statutes therefore govern the actions of the management of the College *qua* its employees.

It is submitted that the writ petitioner was criminally charged with an alleged assault on the Principal of the said College. Such alleged assault happened on the 10th of January, 2022 and the First Information Report was lodged with the local Police Station under the Indian Penal Code on the same date, i.e. 10th of January, 2022.

It is further submitted that by a communication dated 27th of January, 2022 issued by the Secretary of the Governing Body of the said College addressed to the writ petitioner, the writ petitioner was asked to show cause as to why he should not be proceeded against for misconduct.

It is also submitted that by a subsequent communication dated 10th of February, 2022, the writ petitioner was informed that he has been placed under suspension with effect from 10th of January, 2022 invoking the provisions of Article 135(2)(a) of the First Statutes (*supra*).

Mr. Tewari clarifies that on a plain reading of the First Statutes relating to suspension, in view of the

custody undergone by the writ petitioner for a period of more than 48 hours, the employer/the College was within its rights to treat the writ petitioner to be under *deemed suspension*.

Accordingly, the Hon'ble Single Bench erred in holding that the College was under an obligation to grant an opportunity of hearing to the writ petitioner by serving a show-cause notice even at the stage of suspending him in terms of Article 135(2)(a) (*supra*).

Mr. Ghosh, Learned Counsel appearing for the writ petitioner/the Respondent No.1 in this appeal, submits that the said College has taken an ambivalent stand connected to the suspension of the writ petitioner.

On the one hand by its communication dated 10th of February, 2022, the College has relied upon Article 135(2)(a) of the First Statutes. At the same time, by the previous communication dated 27th of January, 2022, the College has, *inter alia*, communicated to the writ petitioner that he shall be proceeded against for misconduct in terms of the Service Rules which govern the employees of the said College, including the writ petitioner.

It is therefore submitted that the Hon'ble Single Bench did not err in requiring the employer/the said College to validate its action by complying with the principles of natural justice prior to taking *suo motu*

action by suspending the writ petitioner even during the period when he was in custody and bereft of any opportunity to defend himself.

Mr. Chatterjee, Learned State Counsel, submits that the College is correct in arguing before this Court that this is primarily a case of *deemed suspension*. Therefore the findings of the Hon'ble Single Bench requiring absolute compliance with the principles of natural justice require to be intervened with in this appeal.

Having heard the parties in detail and considering the materials placed, this Court finds substance in the stand taken by the appellant/the College that the suspension of the writ petitioner happened in view of the applicability of Article 135(2) (a) of the First Statutes having regard to the facts of this case.

Accordingly, this Court is of the view that in the case of a *deemed suspension* where it is admitted that the writ petitioner was in custody for more than 48 hours, the Hon'ble Single Bench failed to appreciate that there can be no insistence upon compliance of the principles of natural justice in the manner of service of a show-cause notice.

However, at the same time, this Court recognises the stand of Mr. Ghosh, Learned Counsel for the writ petitioner, that the College has expressed its intention

to proceed with a departmental enquiry against the writ petitioner on the grounds of alleged misconduct.

In the further view of this Court, the petitioner is entitled to avail of the principles of natural justice in the event the College proposes to carry forward its intention to hold a departmental enquiry.

In the interests of justice, this Court permits the College to conclude the departmental enquiry strictly following the due process of law within a period of four months from this date.

However, it is made clear that commencing from the 10th of January, 2022 the writ petitioner shall be paid his full subsistence allowance.

It is also made clear that in the event the departmental enquiry is not concluded by the College within the stipulated period as stated above, the writ petitioner shall be entitled to seek revocation of the order of suspension.

With the above directions, **MAT 841 of 2022** along with **CAN 1 of 2022** stand **disposed of**.

Since other allegations are not gone into, Affidavits are not invited and other allegations are therefore deemed to be denied and disputed.

The Order of the Hon'ble Single Bench stands accordingly set aside.

All parties to act on a server copy of this order

duly obtained from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat certified copy of this Order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Rai Chattopadhyay, J.)

(Subrata Talukdar, J.)