

29.06.2022
13+15
sb

WPA 10638 of 2016
With
I.A. No. CAN 1 of 2016
(Old No. CAN 6263 of 2016)

with

WPA 17408 of 2016

Subhadro Choudhury @ Suvadro Chowdhury
Vs.
Satyajit Ray Film and Television
Institute & Ors.

Mr. Indranil Roy
Mr. Arnab Mukherjee
Mr. S. Pyne ...for the Petitioner

Mr. Bhudeb Chatterjee
Ms. Susmita Saha Dutta ...for the Respondents
(SRFTI)

Mr. Debashis Banerjee ...for the Private
respondent

The two writ petitions are taken up for consideration in presence of the learned advocates representing the petitioner, Satyajit Ray Film and Television Institute (SRFTI) and respondent nos. 6 and 7.

Out of these two writ petitions, the writ petition being WPA 17408 of 2016 is against the order of punishment dated 16th June, 2016 passed against the petitioner whereby the Governing Council of SRFTI decided to impose punishment of compulsory retirement against the petitioner.

While questioning the maintainability of this order of punishment dated 16th June, 2016, Mr. Indranil Roy, learned advocate representing the petitioner has drawn attention of this court to Rule 6 of the service Bye-Laws applicable in the present case. It has been submitted on behalf of the petitioner that as per Rule 6, Chapter-III-Recruitment, the Chairman of the Governing Council of SRFTI is the appointing authority who can pass an order of punishment in terms of Rule 41 of the said Bye-Laws. It has further been submitted in the present case that instead of the Chairman of the Governing Council, Governing Council itself took decision to impose punishment of compulsory retirement of the petitioner as it emanates from the order of punishment dated 16th June, 2016. The point has been taken on behalf of the petitioner since the petitioner is an Associate professor, the appellate authority in terms of the said Rule 6 is the Governing Council. Therefore, if Governing Council itself passes an order of punishment, petitioner will be denied an opportunity to prefer appeal before the appellate authority which is Governing Council.

It has also been submitted in connection with another writ petition being WPA 10638 of 2016 that challenge has been thrown to the finding of the Internal Complaints Committee (for short, ICC) as contained in the report dated 28th April, 2016. While

questioning such report of the ICC and the related proceedings initiated by the concerned authority of the SRFTI, it has been submitted that as it appears from the 56th Emergency meeting of the Governing Council dated 10th June, 2016 the Chairman apprised the members of the Governing Council as well as the Director of SRFTI that de novo enquiry by outside experts is required and in that regard it was also apprised that legal opinion has been obtained wherein it was opined by the legal experts that the reports of the Internal Complaints Committee on Sexual Harassment (for short, "ICCSH") were defective. Based on such appraisal made by the Chairman as contained in the emergency meeting dated 10th June, 2016 it has been contended on behalf of the petitioner that since on report of ICCSH, deliberations were made in the said meeting and it was found defective based on opinion of legal experts, there is requirement of de novo initiation of enquiry proceeding by the ICC.

Mr. Chatterjee, learned advocate appearing on behalf of SRFTI submits that Rule 6 of Bye-Laws which is applicable in case of SRFTI contemplates, preferring appeal against the order of punishment and in terms of Clause 1 under Rule 6, Governing Council is the appellate authority against the order of punishment passed by the Chairman of the Governing Council. With regard to the contents of the report of

ICCSH as was deliberated upon in the meeting of the Governing Council dated 10th June, 2016, no rebuttal has been made on behalf of the SRFTI on posing query to the learned counsel representing the said institute.

Mr. Banerjee, learned advocate appearing on behalf of the added respondents submits in view of Rule 41 of the said Bye-Laws the Governing Council being the higher authority can also pass an order of punishment and there is no impediment to that extent. According to the added respondents there is no illegality in the order passed by the Governing Council in view of the provision as contained under Rule 41 of the said Bye-Laws.

This court has heard the learned advocates representing the parties and perused the relevant materials available on record as well as the Bye-Laws which are applicable in case of proceeding against the petitioner.

Since it has been provided under Rule 6 of the said Bye-Laws that the member of teaching faculty of the SRFTI has the opportunity to prefer an appeal against the order of punishment to the Governing Council against the order of Chairman of the Governing Council, the concerned authority of the SRFTI ought to have taken it into consideration at the time of issuing order of punishment against the

petitioner. The authority of SRFTI is not expected to pass order of punishment in a fashion which would take away the right of the petitioner to prefer an appeal before the appellate authority which has exactly been done in the present case. On perusal of the punishment order dated 16th June, 2016 it appears that the Governing Council passed order of punishment and said authority is the appellate authority as per the contemplation made in the said Rule 6; the petitioner is denied of right to prefer an appeal against such order of punishment. Such position as emanates from the order of punishment dated 16th June, 2016 cannot be countenanced.

In view of the above discussion, the order of punishment dated 16th June, 2016 issued by the Governing Council is set aside.

Subsequently, the question comes whether the proceeding initiated against the petitioner by constituting ICC and its subsequent finding as contained in the report dated 28th April, 2016 would be permitted to be retained on the record or not? This court has considered the deliberation made by the authorities in the meeting of the Governing Council dated 10th June, 2016. Learned advocate representing the SRFTI has also not disputed the contents of the resolution of such meeting dated 10th June, 2016 wherein it has been apprised by the Chairman to the

members of the Governing Council that there is requirement of de novo enquiry based on the legal opinion obtained from the experts since it was found that the report of ICCSH was defective.

In view of such position as is appearing from the Minutes dated 10th June, 2016, the report of the ICC dated 28th April, 2016 also stands set aside.

However, this order shall not preclude the concerned authorities of SRFTI to proceed in accordance with law, if so advised, against the petitioner by initiating de novo proceeding since the complaints of the added respondents remain as on date. The authorities of SRFTI shall be at liberty to take steps based on such complaints.

Since the petitioner is still in service and there is an order of suspension subsisting against the petitioner and after disposal of these two writ petitions if the concerned authority of SRFTI decides to keep suspension of the petitioner alive then the said authorities of SRFTI are directed to pay subsistence allowance to the petitioner strictly in accordance with law along with arrears, if any.

Accordingly, both the writ petitions stand disposed of.

Applications, if any pending, stand also disposed of in view of the disposal of the writ petition.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Saugata Bhattacharyya, J.)