

Court No. 22
19.9.2022
(Item No. 16)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 17640 of 2022

Sukanta Deb Mandal
VS
The State of West Bengal & Ors.

Mr. Gautam Chakraborty
Mr. Kartik Kumar Ray
..... for the petitioner
Mr. Swapan Kumar Datta
Mr. Tapas Kumar Mandal
..... for the State
Mr. Nilotpal Chatterjee
Mr. Satyaki Banerjee
.... For Calcutta University
Mr. Ranajit Chatterjee
Ms. Tanuja Basak
..... for respondent Nos. 4 & 5
Mr. Ekramul Bari
Mr. Sk. Imtiaj Uddin
..... For respondent No. 6

The writ petitioner is a cashier and is a regular employee at ***Naba Ballygunge Mahavidyalaya (formerly known as Charu Chandra Evening College) (for short, the College)***. On the basis of a show cause notice dated April 11, 2022, **Annexure P-15** to the writ petition to which the petitioner have already replied by its letter dated April 12, 2022, **Annexure P-16** to the writ petition, the governing body of the College took a decision on November 9, 2022 part of **Annexure P-22** to the writ petition (at page 89 of the writ petition) and suspended the petitioner temporarily and expressed their intention to initiate a necessary disciplinary proceeding by framing a proper charge sheet on the issue.

The show cause notice date April 11, 2022 describes diverse charges, inter alia, defalcation of College fund. The statutes relating to the terms of employment and the conditions of service of non-teaching employees of the College affiliated to the University other than Government College, **Annexure P-1** to the writ petition, inter alia, provides that an employee under suspension shall be entitled to get a subsistence grant at one-half of the pay of the post held by him plus admissible allowances (at page 48 of the writ petition).

The petitioner in this writ petition has challenged the said decision of suspension along with the letter of the Principal dated July 14, 2022.

Mr. Gautam Chakraborty, learned counsel appearing for the petitioner submits that, the suspension is wholly illegal and without following the procedure of law. He submits that, the suspension is also in violation of the principle of natural justice and no opportunity of hearing was granted to him before such suspension. He submits that, the petitioner has also not been receiving the subsistence allowance as he is eligible under the relevant Rules during such suspension.

Mr. Ranajit Chatterjee, learned counsel appearing for the respondent Nos. 4 and 5 submits that, the College authority is entitled to suspend the petitioner in the facts of this case. Suspension does

not mean termination of service. Suspension only means a temporary restraint of an employee from attending his office. He submitted that, in the event, ultimately the entire disciplinary proceeding goes in favour of the petitioner holding him not guilty, automatically this suspension would become meaningless and without of any consequences.

Mr. Ekramul Bar, learned counsel appearing for the respondent No. 6 submitted that, the College authority had caused this suspension of the petitioner in due process of law. He also assured this Court that, the disciplinary proceeding can be concluded within a specific time framed in terms of direction that may be made by this Court. He further assured this Court that, the suspension allowance, in terms of the Rules, if has not yet been paid to the petitioner the same shall be paid to the petitioner in accordance with law forthwith.

Mr. Swapan Kumar Datta, learned senior counsel appears for the State respondent Nos. 1 and 2.

Mr. Nilotpal Chatterjee, learned counsel appearing for the respondent No. 3.

Considering the rival contentions raised on behalf of the appearing parties and considering the materials on record, this Court is of the considered view that, justice can be sub-served if the College authority is directed to conclude the disciplinary

proceeding which they intend to commence and shall commence within a period of two weeks from the date of communication of this order by serving the necessary charge sheet upon the petitioner and after granting opportunities to the petitioner to reply to the said charge sheet and participate in the hearing of the disciplinary proceeding strictly in accordance with law.

In view of the above, the respondent No. 5 is directed to initiate the necessary disciplinary proceeding, if any, the respondent No. 5 thinks fit to initiate positively within a period of two weeks from the date of communication of this order and then after giving adequate opportunity to the petitioner to file its reply thereto and after giving him an opportunity of hearing, the Enquiry Committee shall come to a reasonable conclusion with a reasoned order/decision strictly in accordance with law and file the enquiry report forthwith immediately after conclusion of the enquiry proceeding. The disciplinary authority shall forward the report to the petitioner for his response with an adequate opportunity to deal with the same if the enquiry report goes against the petitioner and then the disciplinary authority shall proceed further in accordance with law.

The entire exercise directed above, shall be carried out within a period of six months from the date of service of the charge sheet upon the petitioner.

It is made clear that, from the date of the suspension till the entire enquiry proceeding comes to an end in all respect, in accordance with law, the petitioner shall receive the subsistence grant with the admissible allowances strictly in terms of the rule mentioned in page 48 to the writ petition without any interruption.

It is made clear that, this Court has not gone into the merit of this writ petition. All points are kept open for the parties to urge during the disciplinary proceeding. The petitioner shall be at liberty to rely upon whatever documents and record it wishes to rely upon.

Since affidavits are not called for the allegations made in the writ petition are deemed not to have been admitted by the respondents.

On the above terms, this writ petition being **WPA 17640 of 2022** stands disposed of.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)