

28.11.2022
Court No.2
Item No.28
Cp

**HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

WPA 2927 of 2022

Subinay Saha Roy

Vs.

The State of West Bengal and Ors.

Mr. Jagriti Mishra
Mr. Subham Gupta
Mr. Debayan Goswami
Mrs. Ria Paul

... For the Petitioner.

Mr. Subir Kumar Saha
Mr. Pretom Das

... For the State.

Mr. Biswaroop Bhattacharya
Mr. Pratik Majumder

...for the respondent nos. 3 and 4.

The petitioner has assailed a charge-sheet issued by the disciplinary authority dated October 18, 2022. According to Mr. Mishra, learned advocate for the petitioner, the charge-sheet is vague and has been issued with a closed mind. He submits that the proposal to initiate the disciplinary proceeding was based on personal vendetta as the petitioner had raised his voice against certain illegalities in the appointment of the Dean in Uttar Banga Krishi Viswavidyalaya (hereinafter referred to as 'the said Viswavidyalaya').

Mr. Bhattacharya, learned advocate appearing on behalf of the said Viswavidyalaya, submits that the petitioner issued a letter undertaking to face the enquiry. According to him, at the relevant point of time the petitioner did not raise any allegation about the vagueness of the charge-sheet.

Heard the parties.

A charge-sheet is usually neither quashed nor set aside in judicial review unless the contents thereof are in contravention to the service rules or so vague and unreasonable that even a common man would consider the same to be so. A charge-sheet can also be quashed in a rare situation where the same had been issued with a closed mind or was mala fide motive. The allegations have to be highly improbable and not based on any material particulars.

Upon perusal of the Articles of Charges and the Statements of Imputation of Misconduct, it appears that the allegation of directly communicating with the Chancellor or any other person about the affairs of the university, has been classified as a 'Misconduct' in the definition clause. Articles II, III and IV of the charges, had been framed on the basis of clauses (e), (f) and (g) of the

definition of the expression 'Misconduct' in the service rules.

Whether the charges as framed, have the ingredients of misconduct and were adequate to hold a person guilty of the same, is a matter of enquiry and evidence.

It is alleged that the petitioner not only wrote an e-mail to the Chancellor alleging illegalities in the selection process of the Dean, he also gave press statements and approached the media with such allegations. These issues were published on the visual media and also on the print media and the disciplinary authority was of the opinion that the same had undermined and diminished the prestige of the university.

These are allegations which have to be proved in the enquiry. Whether the prestige of the university had been lowered, whether the petitioner had resorted to activities which would diminish the reputation of the university or be detrimental to the corporate life of the university, are matters of evidence.

Whether writing a protest mail or being a whistle blower about the activities of the university, would amount to misconduct and whether communicating with press, without the authorization of the Vice-Chancellor would also be

a misconduct, are also matters of enquiry and proof.

Although the petitioner submits that it is within his democratic right and right to freedom of speech to raise a protest against irregularities in the organization in which he works, the issue has to be decided in the enquiry. Whether the alleged e-mail, the contents thereof and the communication with the media houses could be classified as 'misconduct', under the facts and circumstances of the case and in terms of the service rules, shall be decided in the enquiry.

Under such circumstances it would not be proper to quash the charge-sheet. All the points raised by the petitioner shall be available before the enquiry officer. The disciplinary authority shall hand over all the documents relied upon in the charge-sheet to the petitioner, within this week.

The petitioner shall file his written statement to the charge-sheet. Such written statement shall be filed within a period of five weeks from the date of receipt of the documents.

Needless to mention, the principles of natural justice shall be followed by the enquiry officer.

An independent and experienced enquiry officer who is not connected with the university will be appointed.

All points are kept open for a decision by the enquiry officer. The petitioner shall have the liberty to challenge the entire disciplinary proceeding at the appropriate stage including challenging the charge-sheet on the same grounds which have been urged in this writ petition.

The writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)