

22 15.03.2023  
Sc Ct. no.238

**WPA 3898 OF 2022**

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Soumen Saha

Vs.

The Visva Bharati & Ors.

Mr. Anjan Bhattacharya  
Ms. Anita Shaw  
Ms. Taniya Khatun.

....For the Petitioner

Mr. Pronit Bag  
Mr. Anuj Mishra.

....For the University

This writ petition has been filed for implementation of an order dated February 25, 2022 passed by a Coordinate Bench of this Court in the earlier round of writ petition **[WPA 13856 of 2021 (Soumen Saha - Versus-The Visva Bharati & Ors.)]**.

Before delving into the merits of the case, it is crucial to note that a second writ petition seeking the implementation of an order passed in the earlier round of writ petition is maintainable. Reference may be made to the judgment reported at **(2003) 1 WBLR (Cal) 213 (Bibekananda Mondal -vs.- The State of West Bengal)** in this regard.

The petitioner was a Section Officer of Visva-Bharati University. The University, following a disciplinary proceeding, imposed a major penalty of compulsory retirement against him. The petitioner challenged the said order of punishment dated August

24, 2021, by filing a writ petition and a Coordinate Bench of this Court by its order dated February 25, 2022, quashed the said order of punishment. Of significance, the relevant part of the said order is quoted below :

*“The contents of the Enquiry Report show that Professor Senapati had actually signed the bills. Therefore, the stand of the Disciplinary Authority in imposing minor penalty on Professor Senapati despite his actually signing the bills and imposing major penalty on the petitioner when the petitioner had no role in signing the said bills, appears to be inconsistent, disproportionate to the petitioner’s involvement and an improper exercise of discretion by the Disciplinary Authority. It is evident that in imposing a major penalty of compulsory retirement to the petitioner, the Disciplinary Authority failed to take into consideration the relevant circumstances of the case including the petitioner’s role in the misappropriation as compared to the role of Professor Senapati in the same wrongdoing. Even if Professor Senapati is governed by different Service Rules, there should be consistency in the decision of the University particularly where the Rules are silent on the circumstances in which the penalty should be minor or major. The petitioner should hence be given the benefit of the silence and ambiguity in the Rules.*

*In view of the above reasons, this Court finds substance in the contention urged on behalf of the petitioner and WPA No. 13856 of 2021 is allowed by quashing the impugned*

*order dated 24<sup>th</sup> August, 2021 imposing the major penalty of compulsory retirement on the petitioner. This order shall not prevent the University from taking a fresh decision based on the Enquiry Report under the relevant Act and Regulations.*

*The Writ Petition is disposed of in accordance with the above.”*

The learned advocate for the petitioner submits that the University has not complied with the order on the specious plea that there was no explicit direction upon the University to reinstate the petitioner into service. He further, submits that the petitioner should be allowed to resume his post following the order dated February 25, 2022 given that the order of compulsory retirement has been quashed by this Court.

On behalf of the University, it has been submitted that an appeal has been preferred against the said order dated February 25, 2022. While the appeal was heard by the Division Bench, a final decision on the matter is yet to be reached.

It has been, further, submitted by the University that the learned Coordinate Bench, in the earlier round of writ petition, did not overturn the enquiry report which found the petitioner guilty of the alleged misconduct and, as such, the petitioner should not be allowed to re-enter service.

I am unable to accept the submission advanced on behalf of the University. This writ petition had been adjourned on several occasions to allow the University sufficient time to secure a stay order from the appeal court. Till date, the University has not been able to obtain any such stay order.

The University cannot be allowed to disregard the order of the learned Single Judge dated February 25, 2022 merely on the ground that an appeal has been preferred against the said order. I am also unable to accept the contention posited by of the University that since the enquiry officer had found the petitioner guilty of the alleged misconduct, he should not be allowed to resume his duty.

An enquiry officer merely collects evidence for the disciplinary authority. Given that the decision of the disciplinary authority imposing the punishment of compulsory retirement upon the petitioner has been set aside by this Court, the petitioner should be allowed to resume his duty. Only thereafter further steps be taken in terms of the said order dated February 25, 2022.

Accordingly, this writ petition, **WPA 3898 of 2022** is allowed with a direction upon the University to allow the petitioner to resume his duty within a period of seven days from date and to pay the petitioner his regular salary subject to outcome of the appeal being **MAT 744 of 2022 (Visva Bharati & Ors. -vs.- Soumen Saha)**.

With the aforesaid direction, **WPA 3898 of 2022** is disposed of.

There will be no order as to costs.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

**(Kausik Chanda, J.)**