

19.01.2023

ss
72

W.P.A. 5009 of 2019

**Mukesh Sarma @ Mukhesh Sharma
Vs.
University of Burdwan & ors.**

Mr. Shataroop Purokayastha
Ms. Jagriti Bhattacharya
... for the petitioner

Mr. Manish Sen
Ms. Oisani Mukherjee
... for the College

Mr. N. C. Bihani
Mr. P. Banerjee Bihani
Mr. Soumyajit Ghosh
.... For the University

The petitioner was served with a letter dated February 5, 2019 issued by the Principal, Memari College, whereby it was intimated, inter alia, as follows :-

“ The Administrative Meeting resolved that given the fact that Mukesh Sharma is inexperienced due to his young age and he has a dependent family to take care of the incumbent may be given an opportunity ‘start from the scratch’ following the two Breaks of Service. The College Authority has been kind enough on humanitarian grounds not to pose a severe penalty such as Dismissal of the incumbent’s service yet. The incumbent’s first Break of Service was made vide agendum No.17 of administrative meeting dt. 09.08.2018 due to his unauthorized absence from 01.06.2018 to 25.06.2018, and the incumbent’s second Break of Service was made vice agendum No.5 of administrative meeting dt. 11.09.2018 i.e.w. his unauthorized absence from 20.07.2018 to 31.08.2018. It was decided that the incumbent’s Service Book be

appropriately updated as to his aforementioned Break of Service.

It was decided unanimously that instead of dismissing the incumbent outright for his misconduct, the incumbent (Mukesh Sharma, Library Clerk, Memari College) be granted no increment for the next three years counted from 01.07.2019 i.e., the current year. Following the conclusion of the Disciplinary Proceedings, his service stands unconfirmed and will continue to remain so till the completion of his waiting period of non-incremental status till 30.06.2022 and a further mandatory probationary period of one year of satisfactory service in the eyes of the College Authority i.e, till 30.06.2023.

Moreover, Mukesh Sharma's absence without prior intimation to the College Authority (due to an FIR lodged against him by the College Authority) from 20.07.2018 to 31.08.2018 was decided to be 'unauthorized' vide agenda No.5 of administrative meeting dt. 11.09.2018. Having accumulated no EL and ML, it was deemed to be a Break of Service. His absence is treated as Leave without Pay. The salary of one month has been adjusted from his salary from August, 2018. The rest twelve days and twenty five days from 01.06.2018 to 25.06.2018 due to another Break of Service (due to a second FIR lodged against Sharma) is to be adjusted from his salary for the month of January 2019 and February 2019. The aforementioned amount will be refunded to the Dept. of Higher Education as per norms.

It is decided that it is the last chance given to Sri Mukesh Sharma to redeem himself, failing which he might be dismissed from service as per the statutory rules and will not be entitled to any further sympathetic consideration.

At the conclusion of the Disciplinary Proceedings and the Hearing held on 28.01.2019, Mukesh Sharma's service status is as follows:

Date of Joining : 27.01.2017

Service continued from date of joining to 31.05.2018

Break of Service : 01.06.2018 to 25.06.2018

Again joined on 26.06.2018 and contd. Till 19.07.2018

Break of Service: 20.07.2018 to 31.08.2018

Further, Mukesh Sharma has started fresh service from 01.09.2018 and contd.

His present scale of pay (i.e. Basic Pay of Rs.6240 and Grade Pay of Rs.2600) is to remain in force as per the original entry Basic Pay of Rs.6240 and will remain such till his confirmation.”

Mr. Manish Sen, learned Advocate representing the College fairly submits that no charge-sheet was filed against the petitioner for the alleged misconduct as indicated in the said letter dated February 5, 2019, and in fact, the punishments in question have been imposed without a disciplinary proceeding.

It has not been demonstrated that punishments as sought to be imposed upon the petitioner are provided in the relevant statute of the Burdwan University namely, The Statutes relating to the Appointment and Terms and Conditions of Service of Librarians and Non-teaching Staff of Colleges, other than Government Colleges affiliated to the University, other than Government Colleges.

Accordingly, the order dated February 5, 2019 is set aside.

The College authority will be at liberty to take appropriate steps in accordance with law.

W.P.A. 5009 of 2019 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be made available to the petitioner upon compliance with all requisite formalities.

(Kausik Chanda, J.)