

S/L 85
27.07.2023
Court. No. 29
Sourav

WPA 8255 of 2022

**Imtiaz Hussain
Vs.
State of West Bengal & Ors.**

*Mr. Amritam Mondal
Ms. Shipra Naskar
Ms. Ananya Chakraborty*

...for the petitioner.

*Mr. Avik Ghatak
Mr. Fahad Imam*

...for the respondent nos. 2, 3 and 4.

1. By filing the instant writ petition, the writ petitioner has prayed for issuance of writ of mandamus directing the respondent nos. 2, 3 and 4 authority not to create any obstruction to the petitioner in joining his duty as Registrar of the respondent no. 2/Council with a further direction to the said respondents to pay his full salary from the month of February, 2022 till date as well as in future.
2. It is submitted on behalf of the petitioner that in the year 1985, the present petitioner was appointed as Accountant-cum-Cashier in the office of the respondent no. 2/Council and subsequently by way of promotion in the year 2010, he became the Registrar of the said Council and he continued his duty till he was illegally terminated on 06.01.2021 by the respondent no. 2/Council. At this stage, learned advocate for the writ petitioner draws attention of this Court to Page 79 of the instant writ petition being Annexure P-2 wherefrom it reveals that by an order dated 22.04.2021 as passed in WPA 6400 of 2021, a co-ordinate Bench of this Hon'ble Court set aside the said termination letter dated

06.01.2021 with a liberty to the respondent no. 2/Council in the following manner:

“The State Council of Unani Medicine, West Bengal and/or the State shall be entitled to institute any appropriate proceedings against the writ petitioner in accordance with the aforesaid Regulations and take steps in accordance with law. The aforesaid proceedings may be concluded within a period of three months from date, if not earlier. The petitioner shall cooperate with the respondents in conduct of the enquiry.

The writ petitioner shall be prevented from joining or in any way going near the office of the State Council of Unani Medicine, West Bengal except as indicated hereinbelow and for the proceedings mentioned hereinabove, and also shall not leave station for a period of three months from date.

The criminal proceedings already instituted against the petitioner may be continued and be concluded expeditiously.

The State shall furnish a copy of the vigilance enquiry report to the petitioner as well as the State Council of Unani Medicine, West Bengal.

The petitioner shall hand over to the State Council of Unani Medicine, West Bengal any documents of the Council that are in his custody and any keys for access to any part of the Council against accountable receipt after joint inventory by the parties and/or

representatives. The petitioner shall however, be paid his full salary and allowances until any formal proceedings are communicated to the petitioner in this regard. Upon initiation of proceedings if any the petitioner shall be paid as per applicable rules.”

3. It is further contended on behalf of the writ petitioner that even after obtaining such leave, the respondent no. 2/Council for the reason best known to them has started no departmental proceeding as against the present petitioner and after waiting for a considerable length of time, the writ petitioner under cover of its letter dated 25.10.2021 made a representation before the members of the respondent no. 2/Council to allow him to resume his duty as Registrar of the respondent no. 2/Council.
4. Attention of this Court is also drawn to the Annexure P-6 at Page 113 of the instant writ petition which is the photocopy of the resolution dated 24.11.2021 of the General Body of respondent no. 2/Council. Drawing attention of this Court to the Clause 11 of the resolution dated 24.11.2021 as taken by the general body of the respondent no. 2/Council whereby and whereunder the general body found the previous termination of the present petitioner was illegal and the same was recalled and, thereafter, in an emergency meeting of the Executive Committee of the respondent no. 2/Council held on 02.12.2021 the present petitioner was again appointed as Registrar of the respondent no.

2/Council till further notice on the basis of the previous order of the Hon'ble High Court.

5. Drawing attention of Annexure P-8 at Page 117, it is contended further on behalf of the petitioner that the respondent no. 2/Council, thereafter, issued a letter dated 03.12.2021 in favour of the writ petitioner and thus, allowed him to rejoin in the post of Registrar with effect from 03.12.2021.
6. At this stage, learned advocate for the writ petitioner has handed over a photocopy of writing/resolution containing seal and signature of the office bearers of the respondent no. 2/Council. The genuineness of the photocopy of the said writing/resolution has not been disputed by Mr. Avik Ghatak, learned advocate for the respondent no. 2, 3 and 4. In view of such admission on the part of the respondent nos. 2, 3 and 4, this Court finds no predicament in taking cognizance of the contents of the said writing/resolution which is hereby taken on record. From the photocopy of the said writing/resolution as handed over to this Court by the learned advocate for the writ petitioner and as referred to above, it reveals that the writing of the said paper are as under:

“ 1. In the General Body Meeting held on 24.11.21, all members were present. In this meeting rejected termination of Imtiyaz Hussain by the Body.

2. On the basis of 24.11.21 meeting Mr. Imtiyaz Hussain allow to join as temporary as Acting Registrar to see the daily works of State Council of Unani Medicine, W.B.

3. Today on 10.02.2022 meeting held after discussions with the OSD Ex-Officio Director of Health Services, W.B. The seven Member Committee took decision as per High Court order Mr. Imtiyaz Hussain, is temporarily removed from the post of temporary acting Registrar of Unani Council, W.B. from today onward till further decision.

**Dr. M.A. Kasem (Ex. M.L.A.)
State Council of Unani Medicine
West Bengal**

Recd. on 17.02.2022

**Sd/-
(illegible)
17.02.2022 at 5.15 pm**

**Sd/-
10.02.2021
Chairman (Executive Committee)
SD/-
(illegible)
10.02.2021
Sd/-
i) signature (illegible)
10.02.2021
Sd/-
ii) signature (illegible)
10.02.2021
”**

7. It is contended on behalf of the writ petitioner that such writing was handed over to the writ petitioner by the respondent no. 2/Council without any formal communication on 17.02.2022 and from the very next date i.e., on 18.02.2022 when the writ petitioner went to the office of the respondent no. 2/Council, he was forcefully prevented from attending his office and, thereafter, he was not allowed to enter in his office and even his salary was, thereafter, stopped.
8. Finding no other alternative, the writ petitioner has approached this Hon'ble Court for appropriate relief/reliefs

as mentioned in the prayer portion of the instant writ petition.

9. It is pertinent to mention herein that in spite of liberty given to the respondent nos. 2, 3 and 4, the respondent nos. 2, 3 and 4 have not filed any affidavit-in-opposition in the instant writ petition.
10. In Course of hearing and while opposing the prayer of the writ petitioner, learned advocate for the respondent nos. 2, 3 and 4 also draws attention of this Court to the order dated 22.04.2021 as passed in WPA 6400 of 2021. It is argued on behalf of the respondent no. 2/Council that the present writ petitioner was prevented from joining in his office by virtue of the aforesaid order of this Hon'ble Court and there is no illegality and/or irregularity on the part of the respondent no. 2/Council and its officials in handing over the aforementioned writing/resolution since the same is in conformity with the order dated 22.04.2021 as passed in WPA 6400 of 2021.
11. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties and after giving an overall consideration over the matters placed before this Court, it appears to this Court that a co-ordinate Bench of this Hon'ble Court while disposing WPA 6400 of 2021 passed a restraint order as against the writ petitioner from joining in his office with the respondent no. 2/Council in contemplation that the respondent no. 2/Council would start and/or initiate any appropriate proceeding/disciplinary proceeding against the writ petitioner, so that the present writ petitioner may not

interfere and/or influence in any way in the conduct of the said proposed disciplinary proceeding.

12. Admittedly, as on this date no materials have been placed before this Court that after passing of the order dated 22.04.2021 in WPA 6400 of 2021 any disciplinary proceeding has been started against the writ petitioner and sufficient materials have been placed before this Court that the present writ petitioner, being a regular employee of the respondent no. 2/Council, has been prevented from entering into his office for no reason whatsoever.
13. Such being the position, the respondent no. 2/Council cannot be permitted to prevent the present writ petitioner from entering into his office any further on the strength of order dated 22.04.2021 as passed in WPA 6400 of 2021 especially when the respondent no. 2/Council has got no allegation and/or grievance as against the present writ petitioner at least on record.
14. Such being the position, the instant writ petition succeeds. The respondent nos. 2, 3 and 4 are hereby directed to allow the present writ petitioner to resume his duty in his office as Registrar of the respondent no. 2/Council positively within a week from the date of communication of this order with a further direction to the respondent nos. 2, 3 and 4 to ask the present Registrar-in-Charge of the respondent no. 2/Council to hand over the charge of the office of Registrar of State Council of Unani Medicine, West Bengal also within the time limit as fixed by this Court.
15. Accordingly, the instant writ petition being **WPA 8255 of 2022** is disposed of.

16. All parties to act on the server copy of this order duly downloaded from the official website of this Court.
17. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)