

S/L 29  
30.11.2023  
Court. No. 29  
*Suwayan*

**WPA 10724 of 2019**

**Dr. Anita Chakraborty  
Vs.  
State of West Bengal & Ors.**

*Mr. Pinaki Dhole  
Mr. Somasish Chatterjee*

*...for the petitioner.*

*Ms. Sima Adhikari*

*...for the State.*

*Dr. Madhusudan Saha Ray*

*...for the respondent nos. 3 & 4.*

*Mr. Somasish Chattopadhyay*

*...for the respondent No. 5.*

*Mr. Gangadhar Das*

*Mr. Tanmoy Chattopadhyay*

*...for respondent no. 6.*

1. The writ petitioner, Respondent Nos. 3 and 4/University of Gour Banga and its Vice-Chancellor, respondent No. 5/Governing Body, Chanchal College and respondent No. 6/Teacher-in-Charge, Chanchal College, Malda are represented by their respective learned Advocates.

2. This Court has heard the learned Advocate for the writ petitioner and learned Advocates for the contesting respondents.

3. The instant writ petition has been filed by the writ petitioner praying for a direction upon the respondent Nos. 5 and 6 for refund of some amount which according to the writ petitioner has been withheld illegally by the respondent Nos. 5 and 6.

4. Mr. Dhole, learned Advocate for the writ petitioner in course of his submission draws attention of this Court

to the list of dates which has been filed with the writ petition. The dispute between the writ petitioner and the respondent Nos. 5 and 6 have a checkered history. It reveals from the list of dates that on 01.03.2009 the writ petitioner was appointed as Teacher-in-Charge of Chanchal College, Malda. Subsequently on 14.11.2011 she was removed from such post and in her place a junior most teaching staff (according to the writ petitioner) was appointed as Teacher-in-Charge.

5. By filing WP 19360 (W) of 2011 the writ petitioner challenged such removal before a co-ordinate Bench of this Court and by an order dated 25.01.2012 the said notice of removal was set aside by the said co-ordinate Bench. Thereafter the College authority preferred a writ appeal being MAT 202 of 2012 which was subsequently dismissed. It is submitted by Mr. Dhole that though an application for restoration of MAT 202 of 2012 has been filed but to the best of his knowledge the said restoration application has not yet been disposed of.

6. From the materials as placed before this Court it reveals further that on 07.09.2016 the writ petitioner made a prayer before the College authority praying for an enquiry into the charges framed against her since on the basis of some allegation some amount has been deducted from her salary as provisional recovery which she challenged by filing WP 7574 (W) of 2015 but subsequently withdrew the same.

7. In course of his submission, Mr. Dhole at the very outset draws attention of this Court to the Annexure – X1

that is page No. 5 of the supplementary affidavit filed by the writ petitioner which is the report of the enquiry committee constituted by the then Administrator of Chanchal College. Mr. Dhole submits that the said enquiry committee made discreet enquiry with regard to three charges as leveled against the writ petitioner and on conclusion of such discreet enquiry, the said enquiry committee completely exonerated the writ petitioner from all the three charges as leveled against the writ petitioner.

8. In course of his submission, Mr. Dhole further submits before this Court that though in page No. 6 of the affidavit-in-opposition as filed by the respondent No. 6 that is the Teacher-in-Charge of the Chanchal College has claimed that no such enquiry report has been submitted as claimed by the writ petitioner but the college authorities have neither disputed the correctness and the genuineness of the said reports, the copy of which has been annexed with the mark Annexure – X1 to the supplementary affidavit filed by the writ petitioner. It is further submitted by Mr. Dhole that in their affidavit-in-opposition no other enquiry report has been annexed by the College authority.

9. In course of their submission, learned Advocate for the respondent Nos. 5 and 6 places their reliance upon the affidavit-in-opposition of the respondent No. 6. Learned Advocate for the respondent No. 5 in course of his argument submitted that the fact finding and enquiry committee regarding prayer of the writ petitioner was not constituted by his client and, therefore, the enquiry

report, if there by any, cannot be claimed to have been accepted by the respondent No. 5 that is the present Governing Body of Chanchal College.

10. Learned Advocate for the respondent No. 6 that is the Teacher-in-Charge of the Chanchal College, however, submitted that the instant writ petition was barred by *res judicata* since the subject matter of the instant writ petition is similar to the WP 7574 (W) of 2015 which has been withdrawn by the writ petitioner without seeking any leave from the co-ordinate Bench to file afresh on the self-same cause of action.

11. Learned Advocate for the respondent Nos. 3 and 4, i.e., the University of Gour Banga and its vice-chancellor in course of his submission conveyed that the University authorities have been kept in dark in respect of the subject matter of litigation.

12. Learned Advocate for the State submits that the prayer of the writ petition is not justifiable in the eye of law.

13. On perusal of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties this Court at the very outset proposes to answer as to whether the instant writ petition is barred by the principle of *res judicata* or not as, such point has been raised on behalf of the respondent No. 6 and duly supported by respondent No. 5.

14. From the list of dates as well as from the materials as placed before this Court it reveals that though WP 7574 (W) of 2015 was filed by the writ petitioner challenging

the provisional deduction of Rs. 36,550/- but subsequently she has withdrawn the said writ petition since in the meantime as per her prayer the then college authority has formed an enquiry committee to look into the three charges as leveled against her. From the supplementary affidavit it reveals that enquiry report has been submitted which is in favour of the writ petitioner. The grievance of the writ petitioner before this Court is that in spite of such finding and recommendation of the enquiry authority no action has been taken by the college authorities for releasing the outstanding dues of her. In view of such the subject matter of the instant writ petition completely differs from the subject matter of the earlier writ petition, i.e., WP 7574 (W) of 2015 which was not based upon the finding of any enquiry authority. Therefore this Court holds that the instant writ petition is not barred under the principle of *res judicata*.

15. This Court now proposes to go into the merit of the instant writ petition. From the supplementary affidavit as filed by the writ petitioner it reveals to this Court that an enquiry committee has been constituted which gets due support from the annexures to the affidavit-in-opposition as submitted by the respondent No. 6.

16. Though learned Advocate for the respondent No. 5 in respect of the affidavit-in-opposition filed by the respondent No. 6 categorically claimed that such committee never submitted any report but in his affidavit-in-opposition respondent No. 6 could not submit any contrary report and/or specifically stated that the report

as has been annexed by the writ petitioner by way of supplementary affidavit is a forged and fake document. On being asked by this Court learned Advocate for the Respondent Nos. 5 and 6 has submitted before this Court that a communication has been made with the members of the said committee for submission of the report but no report has been submitted by such committee as yet.

17. In considered view of this Court the stand taken by the respondent Nos. 5 and 6 with regard to the non-submission of any report and/or non-receipt of any report even during the pendency of the writ petition from the enquiry committee is not tenable in the eye of law. This Court further finds that since in his affidavit-in-opposition the respondent No. 6 has not specifically denied the genuineness and correctness of the Annexure – X1 being the photocopy of the enquiry report as submitted by the enquiry authority, it can be easily presumed that such fact has practically been admitted being not specifically denied.

18. This Court further finds that the present Governing Body, Chanchal College, i.e., respondent No. 5 is bound by the acts and omissions of its predecessor in office that is the ‘Administrator’ of the Chanchal College since the present respondent No. 5 stepped into the shoes of the said ‘Administrator’ and, therefore, it cannot deny and/or disown the action and/or inaction done by its predecessor-in-office.

19. This Court, thus, finds that there cannot be any justification either on the part of the respondent Nos. 5

and 6 to withhold any dues of the writ petitioner especially when the enquiry committee after completion of a discreet enquiry exonerated the writ petitioner from all the three charges as levelled against him.

20. This Court, thus, finds sufficient merit in the instant writ petition. Accordingly, the instant writ petition is hereby allowed on contest but considering the facts and circumstances without any order as to costs.

21. The respondent Nos. 5 and 6 as well as the respondent Nos. 3 and 4 are directed not to commit any hindrance with regard to the release of the dues of the writ petitioner.

22. It is, thus, directed that the respondent Nos. 5 and 6 as well as the respondent Nos. 3 and 4 shall release the entire dues of the writ petitioner that is amounting to Rs. 1,82,750/- in favour of the writ petitioner within a period of one month from the date of passing of this order along with interest at the rate of 6% per annum.

23. With the aforementioned observation the instant writ petition being WPA 10724 of 2019 is disposed of.

24. Parties to act on the server copies of this order.

25. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

**(Partha Sarathi Sen, J.)**