

27.03.2023

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WPA 14609 of 2018

Tarakeswar Mondal

Vs.

State of West Bengal & Ors.

Mr. Indranil Roy

Mr. Sunit Kumar Roy

... For the petitioner.

Mr. Partha Sarathi Bhattacharya,

Senior Advocate

... For the College Authority.

Mr. Rajarshi Basu

... For respondent no. 6.

Ms. Tapati Samanta

... For the State.

The petitioner is an Associate Professor of Commerce at Burdwan Raj College, Burdwan.

A charge sheet dated 17th May, 2018 was issued against the petitioner alleging certain financial irregularities and some other charges.

Consequently, the petitioner was suspended by the College. He challenged the charge sheet as well as the suspension order by filing this writ petition.

When the writ petition was moved on 15th November, 2018, an undertaking was given on behalf of the College not to proceed with the charge sheet till the disposal of the writ petition.

The matter is taken up for final hearing.

Mr. Indranil Roy, learned advocate appearing for the petitioner submits that the charge sheet was issued by the Principal of the College while the disciplinary authority of the petitioner is the Governing Body of the College. Therefore, the relevant charge sheet is without jurisdiction and is liable to be set aside. He submits that though the charge sheet refers to a resolution of the Governing Body dated 21st September, 2017, in the said resolution nothing was resolved on that day with regard to the disciplinary proceeding against the petitioner. The charge sheet is liable to be set aside on that ground alone.

Mr. Rajarshi Basu, learned advocate holding the brief on behalf of the Principal of the College submits that before the issuance of the charge sheet, Governing Body in its meeting dated 4th January, 2018 had taken a resolution in which it resolved as follows:

“Resolution No. 8: After going through the reply given by Prof. Tarakeswar Mondal, the Governing Body found it to be totally unsatisfactory and hence the Governing Body resolved to suspend him from his service as an Associate Prof. in Commerce in the Evening Shift. The Principal was advised by the President to follow all the legal steps including issuing charge sheet, formation of

an Advisory Committee constituted of the Principal, the Ex-officio Secretary, Governing Body, Sridhar Banerjee, Government representative to the Governing Body and the Joint Registrar of the University of Burdwan, Dr Debi Das Mondal, Prof. Tarakeswar Mondal would be suspended on & from 05.01.2018. His absence from July 2017 upto 04.01.2018 was resolved to be treated an unauthorized leave.”

It is the submission of Mr. Basu that since the Governing Body of the College had authorised the Principal to take all necessary steps in connection with the proposed disciplinary proceeding, the Principal was within his right and competence to issue the charge sheet against the petitioner. Therefore, the charge sheet in question should be allowed to be proceeded with.

Mr. P.S. Bhattacharya, learned Senior advocate appearing for the College, in fact, supported the stand of the petitioner. Mr. Bhattacharyya submits that the charge sheet was issued without the approval of the Governing Body. The charge sheet should have been approved by the Governing Body of the College and

thereafter, the Principal of the College should have communicated the same to the petitioner.

I am of the view that the charge sheet in question cannot be sustained.

The petitioner has rightly placed reliance upon the Notification dated November 24, 1977, issued by the State in exercise of power conferred by Section 20 of West Bengal Teachers (Security of service) Act, 1975. The pertinent provisions of the Notification are quoted below: -

‘2.(1) (c) “disciplinary authority” means the Governing Body as defined in the Act and includes also the Administrator or any Ad-hoc Body set up by the Government or the affiliating University to discharge the function of the Governing Body.’

.....

‘7. (2) The disciplinary authority shall deliver or cause to be delivered to such a teacher a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour prepared as above and shall require the teacher to submit to the enquiring authority within such time as may be specified a written statement of his defence and to state whether he desires to be heard in person.’

I am of the view that a Principal of a College can act on behalf of the Governing Body of the College in the matter of disciplinary proceeding against a teacher. He, however, cannot usurp the function or authority of the Governing Body, nor the Governing Body can delegate its function as embodied in the Rule 7 (2) as quoted above.

I am of the view that the charge sheet issued against the petitioner is without any jurisdiction and accordingly the same is set aside.

However, having regard to the nature of the allegations and the enquiry report filed prior to the issuance of charge sheet against the petitioner, I am of the view that Governing Body should at liberty to consider issuing of a *de novo* charge sheet against the petitioner.

The Governing Body will convene a meeting at the earliest and decide on the issuance of a *de novo* charge sheet and continuation of the suspension order against the petitioner in accordance with law.

The suspension of the petitioner shall continue for a period of further three months or until the decision of the Governing Body of the College whichever is earlier.

With the above observations **WPA 14609 of 2018** is disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)