

10.10.2023
Court No. 238
Item No. 104
AP

**WPA 9097 of 2020
With
CAN 1 of 2023**

**Dr. Sangita Sanyal
Vs.
The University of Burdwan and Ors.**

Mr. Ayan Banerjee
Mr. Arindom Chatterjee

... For the Petitioner.

Mr. Probal Kr. Mukherjee, Senior Advocate
Mr. N.C. Bihano
Mr. Suhrid Sur

... For the Burdwan University.

Mr. Monish Sen
Ms. Oisani Mukherjee

... For the Respondent Nos.8 to 10.

Re.: CAN 1 of 2023

This is an application for restoration.

Having regard to the averment made in paragraphs 5 to 7 of the CAN 1 of 2023, I am of the view that the petitioner has sufficiently explained the reason for her non-appearance before this Court on May 02, 2023.

Accordingly, the order dated May 02, 2023 is recalled and the writ petition is restored to its original file and number.

Accordingly, CAN 1 of 2023 is allowed.

Re.: WPA 9097 of 2020

At the relevant juncture, the petitioner held the position of Head of the Bengali Department at Burdwan University. The petitioner was removed from the said

position by an order dated 19th March, 2019 by the university. In this writ petition the said order dated March 19, 2019 has been challenged.

It appears that the removal of the petitioner was based on the allegation of some printing errors in the question paper for the Bengali, M.A. Semester-I Examinations of 2018.

Mr. Ayan Banerjee, learned advocate appearing for the petitioner has argued that removal of the petitioner from the position of Head of the Department did not adhere to the principle of natural justice.

He submits that in terms of Statute 7 of the Burdwan University First Statutes, the petitioner was entitled to an opportunity of hearing before her removal. Though the petitioner was given a post decisional hearing, the opportunity of hearing should have been afforded to the petitioner before the order of removal was passed.

I am unable to accept the submission advanced by Mr. Banerjee.

It appears that after the said decision was taken, at the request of the petitioner, a three member committee was convened to enquire into the allegations against the petitioner. The petitioner duly deposed before the committee and the committee found the petitioner guilty of the allegations levelled against her. The petitioner, under this circumstances, cannot raise the issue of denial of opportunity of hearing.

The enquiry committee detected that the questions of one unit of Course 102, the date of examination of which was scheduled to be held on March 14, 2019, were inadvertently printed on the reverse side of the question paper for Course 101.

The relevant part of the enquiry report is as follows:-

“3. The proof of the said questions was checked before final printing at the ‘confidential section’ of the Controller of Examinations, BU, by Sri Syamal Chandra Das, Assistant Professor of Bengali Dept., BU, who, as per his submission, checked mainly the spelling of the proof as per verbal instruction of Dr. Sangeeta Sanyal, the Head, Department of Bengali.

4. There are contradiction in deposition of Dr. Sangeeta Sanyal and Sri Symal Chandra Das. Dr. Sanyal in her deposition stated that she had no knowledge about who performed the important job of proof reading. She also questioned in her deposition (point 5) as to whether the Controller of Examinations could show any document regarding the advice of the Post Graduate Board of Studies (Bengali) or the Departmental Committee (Bengali Dept, BU) about the name of the proof reader for performing the said job of proof reading or any written instruction of the HoD, Bengali Department., BU. In this regard, however the usual practice of the University is that those who were present in the moderation of different question papers, can only remain present during the proof checking of those question papers to maintain the confidentiality. The Confidential

section of the Controller of Examinations contact the Head of any concerned Department over phone to tell that the proof of certain question papers has reached the Controllers' of Examinations (CE) Department and the proof checking should be done within a specific (normally two or three days) time limit. Then it is the duty of the concerned Department to complete the confidential job under his/her supervision. The Confidential Section of the CE do not inform any other teacher other than the concerned Head of the Department. In this case, a very junior teacher of the department was insisted/instructed over telephone by the concerned HOD for performing the proof-checking of certain question papers, as per written deposition of Dr. Shyamal Das."

A bare perusal of the enquiry report makes it clear that no role is attributed to the petitioner for the printing mistakes as indicated above. The only accusation against the petitioner, as it appears from the enquiry report, is that she delegated the duty of proof reading to a junior teaching staff member.

Learned advocate appearing for the University could not demonstrate before this Court how such delegation is relatable to the alleged misprinting of the question paper. The petitioner could not be held responsible for the alleged misprinting of the question paper.

I am of the view that the removal of the petitioner from the post of Head of the Department was not justified

and accordingly, I set aside the said decision dated March 19, 2019 taken by the university.

At the same time, it must be noticed that the appointment to the Head of the Department is made on a rotational basis for two years. At this juncture, there is no scope to reinstate the petitioner as Head of the Department since her tenure has already expired in the meantime.

It is needless to mention that the proceedings in question shall not adversely affect the petitioner's future professional prospects.

I also clarify that when the turn of the petitioner will arise in future for reappointment as Head of the Department, the impugned proceedings or the order dated March 19, 2019 will not be relevant.

Accordingly, WPA 9097 of 2020 is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Kausik Chanda, J.)