

20 27.9.2022
Sc Ct. no.22

WPA 22444 OF 2022

Rakhi Roy Halder

Vs.

Loreto College & Ors.

Mr. Abhrotosh Majumder
Mr. Amitabrata Roy
Mr. Arkadipta Sengupta
Ms. Deboleena Ghosh.

....For the Petitioner

Mr. Soumya Majumder
Mr. Saptarshi Banerjee
Ms. Shruti Agarwal
Mr. Kuntal Banerjee.

....For the Respondent
Nos. 1, 2 and 3

Mr. Nilotpal Chatterjee
Mr. Raja Saha
Mr. Satyaki Banerjee.

....For the Respondents
Calcutta University

Affidavit-of-service filed in Court, is taken on record.

The petitioner as a senior teacher of the respondent College has suffered a disciplinary proceeding. Two “**Show Cause**” notices have been served upon the petitioner. The petitioner submitted her reply to both the said “**Show Cause**” notices. From the “**Show Cause**” notices it will appear that the ***petitioner has been suspended for the time being and not allowed to enter into the College premises.***

The petitioner contended that, the ***Calcutta University, First Statute, 1979*** (for short, ‘the said

1979 Statute) is the governing law in respect of the issue involved in this writ petition.

Mr. Abhrotosh Majumder, learned senior counsel submitted that the decision of suspension taken by the College authority is in gross violation of the statutory provisions as laid down in the said 1979 Statute and as such, the legal right of the petitioner has been infringed, hence this writ petition.

Mr. Soumya Majumder, learned counsel appearing for the respondent nos. 1, 2 and 3 at the outset, raised the question of maintainability of this writ petition and contended that, the College authority is not an authority within the meaning of Article 12 of the Constitution of India. The contract between an employer and an employee as in this case, where the employer is a private body, no writ petition is maintainable. In support, Mr. Soumya Majumder had relied upon a decision of the Hon'ble Supreme Court in the matter of ***St. Mary's Education Society and Another –vs.- Rajendra Prasad Bhargava and Others*** reported in ***2022 SCC OnLine SC 1091***.

Mr. Soumya Majumder further submitted that this suspension under which the petitioner had undergone pursuant to the decision of the College authority and is not by way of a penalty but in contemplation of a disciplinary proceeding to be initiated by the College authority. To issue such a decision of suspension and to

implement the same is the sole discretion of the employer in contemplation of a disciplinary proceeding which is, and the same is permissible in law.

After hearing the rival contentions raised before this Court and on perusal of records, it appears to this Court that the maintainability point has to be decided at the threshold. If ultimately, the writ petition is held to be maintainable in the facts stated therein then only the question of adjudication in respect of imposition of suspension in contemplation of a disciplinary proceeding and its validity shall be decided.

It is settled law that inasmuch as in case of a suspension, unless there is any specific provision mentioned in the relevant law governing the employment of an employee, the employee must receive her full emolument as the employee has received last. There is no provision showed to this Court as of now determining any subsistence allowance payable to the petitioner with a specific provision laid down in the said 1979 Statute.

In such circumstances, the petitioner shall receive and the College authority shall pay the petitioner the amount equivalent to the full salary, last drawn by the petitioner, during the period of such suspension without any delay or default. Such payment will be made subject to the petitioner furnishing a scanned copy of handwritten **“Non-Employment Certificate”** through an e-mail at the official E-mail I.D. of the College and a copy

thereof to be forwarded to the learned counsel for the College.

This order shall not preclude the College authority to proceed with their disciplinary proceeding following the due process of law as expeditiously as possible and shall conclude the same with a reasoned decision strictly in accordance with law after giving an opportunity of hearing to the petitioner positively within a period of six months from today.

The respondent College authority is also directed to furnish the details and particulars of the rules and regulations, if there is any, relevant for the purpose of conducting the said disciplinary proceeding to the petitioner forthwith, preferably, within seven days from date.

It is made clear that there shall not be any unnecessary adjournment in the disciplinary proceeding.

The above observation is wholly without prejudice to the rights and contentions of the parties in this writ petition.

ACO

The writ petition shall appear for further consideration in the Combined Monthly List of January, 2023 under the heading “***Motion***”.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)