

Item No.39
20.06.2024
Court. No. 2
GB

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION*

WPA 1312 of 2024

Dr. Abdul Kader Safily
VS
Cooch Behar Panchanan Barma University & Ors.

*Mr. Amales Ray,
Mr. Deborshi Dhar,
Ms. Oshmita Mukherjee,
Mr. Nigam Mittal*

...for the Petitioner.

*Mr. Joyjit Choudhury,
Mr. Nabankur Paul,
Ms. Bedashruti Bose*

...for the State.

*Mr. Jagriti Mishra,
Ms. Ananya Bhattacharya,
Ms. Mrinmayee Das,
Mr. Manish Gupta*

...for the University.

1. Affidavit-of-serviced filed in Court today, is taken on record.
2. The writ petition has been filed challenging an order dated May 31, 2024, passed by the Vice-Chancellor, Cooch Behar Panchanan Barma University. The order reads as follows:-

“WHEREAS Dr. Abdul Kader Safily, the Registrar, Cooch Behar Panchanan Barma University was suspended vide ***Suspension Order F.9/CBPBU/VC-24/48 dated 10.05.2024*** in contemplation of disciplinary proceedings against him for dereliction of duty, wilful negligence, insubordination, indiscipline, breach of trust and divulging confidentiality.

NOW, THEREFORE the undersigned in exercise of the power conferred upon by the Sub-section 6 of Section 10 of Chapter II of the Cooch Behar Panchanan Barma University Act of 2012 hereby initiate the Disciplinary Proceedings against Dr. Abdul Kader Safily, the suspended Registrar, Cooch Behar Panchanan Barma University without further delay.

This order shall be followed by the appointment of an inquiry Officer/Inquiring Authority and a Presenting Officer for conducting a detailed inquiry into the charges mentioned in the Article of Charges and Memorandum of Charges which shall be complied by the Competent Authority and the same shall be produced at a later date to the Inquiry Officer/Inquiring Authority and the Presenting Officer and also to Dr. Abdul Kader Safily, the suspended Registrar, Cooch Behar Panchanan Barma University.”

3. Mr. Amales Ray, learned advocate for the petitioner has raised the following points:-

- a) The Vice-Chancellor was not the appropriate authority to initiate the disciplinary proceeding. The Executive Council of the university would be the appropriate authority to take such decision and even if an emergent decision was taken by the Vice-Chancellor, the same was required to be ratified in the next meeting of the Executive Council.
- b) There was no proper and functioning Executive Council and the Vice-Chancellor could not have taken such decision in view of the clear stand of the State respondents in another writ petition, that only limited powers had been bestowed

upon the Vice-Chancellor as per the decision of the Hon'ble Apex Court. The Vice-Chancellor was a nominee of the Governor.

- c) A disciplinary proceeding is initiated with the issuance of the charge-sheet. In this case, a reverse procedure was adopted by the Vice-Chancellor, inasmuch as, direction to initiate a disciplinary proceeding, appointment of an enquiry officer, compilation of the charges by a competent authority and supply of such articles and memorandum of charges simultaneously to the enquiring officer, presenting officer and the petitioner, had been passed. Such procedure was contrary to law.
4. Learned Additional Advocate General submits that the entire procedure is vitiated as the Vice-Chancellor did not have any emergent powers in the facts and circumstances of this case. It is further submitted that the authority of the Vice-Chancellor to suspend the petitioner is also sub judice in another matter. Directions for affidavits have been passed.
5. Mr. Mishra, learned advocate appearing on behalf of the university, submits that whether the Vice-Chancellor had any power to initiate disciplinary proceeding or not or take action under the emergent powers, has already been, prima facie,

decided. The Executive Council's meeting was called, but the meeting could not be held due to mass agitation. It is further submitted that the charge-sheet has not yet been issued and no enquiry officer has been appointed. Thus, the writ petition is premature.

6. Having heard the learned advocates for the respective parties, this Court holds that the authority of the Vice-Chancellor will be decided in the writ petition which is pending, and is an appropriate case. However, the communication dated May 31, 2024 is set aside for the reason that before any decision is taken to initiate a disciplinary proceeding against an employee, the memorandum and articles of charges and the statements of imputation of misconduct, have to be issued to the delinquent. The list of witnesses to be produced, the list of documents to be relied upon are to be disclosed to the officer. The delinquent officer is to file his written statement to the same. Thereafter, the authority must proceed if dissatisfied with the reply, by appointment of an enquiry officer. A presenting officer shall then be appointed, thereafter, the enquiry will proceed. This procedure has to be followed, which has not been done in this case.
7. Accordingly, the writ petition is disposed of.

8. This order shall not preclude the parties from taking steps strictly in accordance with law and all points raised in the earlier writ petition being WPA No.1018 of 2024, namely, jurisdiction of the Vice-Chancellor and the jurisdiction of the Executive Council, are kept open.
9. However, there shall be no order as to costs.
10. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)