

13.11.2024
Item No.29
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IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

WPA/2367/2024

DR. SIDDHARTHA SARKAR
VS
THE STATE OF WEST BENGAL & ORS.

Mr. Partha Sarathi Bhattacharyya, Sr. Adv. (VC),
Mr. Nabankur Paul,
Ms. Sutapa Sen Paul,
Mr. Bodhisatya Ghosh,
. . . for the petitioner.

Mr. Bikramaditya Ghosh,
Ms. Supriya Singh,
Mr. Swarup Das,
Mr. Ved Rai,
. . . . for respondent nos. 3 & 4.
Mr. Navin Barik,
Ms. Esha Acharya,
..for respondent no. 2.
Mr. Momenur Rahman,
Mr. Pretom Das,
. . for the State.

The petitioner while serving as the Principal of Ananda Chandra College of Commerce, Jalpaiguri was served with a show cause notice dated 27th August, 2024. By referring to such show cause notice which is annexed at page 106 of the writ petition being Annexure 'P/8' thereof it is submitted on behalf of the petitioner that the petitioner by virtue of being the Principal of the college is a part of the governing body of the said college. In order to hold any meeting of the governing body the petitioner is to be put on notice. No notice of the meeting of the

governing body said to have been held on 24th August, 2024 was served on the petitioner. It appears from the said show cause notice that in the meeting of the governing body of the college a purported finding of an enquiry committee was discussed. The petitioner also says that no minutes of the meeting of the governing body said to have been held on 24th August, 2024 has been served on the petitioner. No copy of the purported findings of the enquiry committee discussed in the meeting of the governing body said to have been held on 24th August, 2024 has also been served upon the petitioner. The petitioner says that he only came to know about such purported meeting of the governing body on receiving the show cause notice dated 27th August, 2024. The petitioner also says that there is no discussion about the decision taken in the meeting of the governing body said to have been held on 24th August, 2024 as reflected in the show cause notice for ratification in the subsequent meeting of the governing body held on 26th September, 2024. The petitioner says that he has replied to the show cause notice by a letter dated 6th September, 2024. Subsequent to such reply, the petitioner has been served with a “charge sheet cum forced leave letter” dated 3rd October, 2024. The petitioner says that the nomenclature of a charge sheet cum forced leave

letter is unknown to law. The normal procedure in case of a disciplinary proceedings that may be conducted against an officer, staff or employee of an organization is in terms of the applicable service rules. The general procedure which is followed is to issue a suspension letter suspending the employee concerned on and from a particular date by briefly stating the reasons and that the same is in contemplation of a disciplinary proceedings. This is followed by a show cause. On considering the reply to the show cause, if the employer is not satisfied then the charge sheet is issued with supporting statement of facts which may be separate or may be an integrated one. With the issuance of the charge sheet the disciplinary proceedings is initiated which is to be brought to a logical conclusion. The Courts are loathe in interfering with the charge sheet unless the same is palpably illegal or ex facie perverse.

In the instant case, the petitioner has been sent to forced leave by the governing body as will appear from the charge sheet cum forced leave letter dated 3rd October, 2024 as an alternative to suspension. This is not permissible as an employee under suspension is required to be paid subsistence allowance while under forced leave once the available leave to the employee is exhausted, the said employee will be without the salary or the

subsistence allowance. An employee cannot also be sent to a forced leave by the governing body. He can at the highest be suspended. Without adhering to such procedure, the charge sheet cum forced leave letter issued to the petitioner cannot be sustained in law.

On behalf of the respondents it is submitted that only after detecting defalcation of fund and other fiscal irregularities the petitioner has been served with a show cause, the answer to which was unsatisfactory leading to issuance of charge sheet. As the petitioner was holding on to all documents, the petitioner was sent to forced leave. The charge sheet, therefore, cannot be set aside or quashed at this stage.

In the aforesaid facts and circumstances, the charge sheet cum forced leave letter which is an integrated one cannot be set aside in piecemeal. The entire letter dated 3rd October, 2024 termed as 'charge sheet cum forced leave letter' is set aside and/or quashed.

This will, however, not prevent the respondents from issuing a fresh charge sheet incorporating the charges imputed against the petitioner as in the letter dated 3rd October, 2024, if the respondents are not satisfied with the reply to the show cause given by the petitioner on 6th

September, 2024. It is expected that the respondents shall deal with the petitioner in accordance with the settled provisions of law by adhering to the principles of natural justice and supply all materials and documents sought for in connection with such proceedings, if any.

The petitioner will be entitled to defend himself on the basis of the reply given to the show cause notice and any other defence that may be available to the petitioner.

I make it clear that I have not gone into the merits of the matter but the charge sheet cum forced leave letter is set aside and/or quashed as the same cannot be sustained in law in such form.

Nothing further remains to be adjudicated in this writ petition.

The writ petition is, accordingly, disposed of.

Since I have not called for any affidavit, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

(ARINDAM MUKHERJEE, J.)