

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

RESERVED ON: 14.01.2026

DELIVERED ON: 22.01.2026

PRESENT:

THE HON'BLE MR. JUSTICE REETOBROTO KUMAR MITRA

WPA 18880 OF 2024

SUDIPTA SARKAR

- VERSUS -

THE STATE OF WEST BENGAL AND ORS.

Appearance:

Mr. Samim Ahammed, Ld. Adv.

Mr. Arka Maiti, Ld. Adv.

Ms. Saloni Bhattacharya, Ld. Adv.

Ms. Gulsanwara Pervin, Ld. Adv.

Ms. Ambiya Khatoon, Ld. Adv.

Md. Nasirul Haque, Ld. Adv.

Ms. Reshma Khatun, Ld. Adv.

..... for the Applicant/Petitioner

Mr. Shamim Ul Bari, Ld. Adv.

Ms. Indrani Nandi, Ld. Adv.

... for the State

Mr. Soumya Majumdar, Ld. Sr. Adv.

Ms. Deepti Priya, Ld. Adv.

Ms. Anshumala Bansal, Ld. Adv.

Mr. Shubhayan Chakraborty, Ld. Adv.



Mr. Bhargav Verma, Ld. Adv.

...for the Respondent No. 3

Mr. Yash Singhi, Ld. Adv.

Ms. Anshumala Bansal, Ld. Adv.

Mr. Shubhayan Chakraborty, Ld. Adv.

Mr. Bhargav Verma., Ld. Adv.

... for the Respondent No. 4

Mr. Deepan Kr. Sarkar, Ld. Adv.

Mr. Atreya Chakraborty, Ld. Adv.

Ms. Anshumala Bansal, Ld. Adv.

Mr. Shubhayan Chakraborty, Ld. Adv.

Mr. Bhargav Verma, Ld. Adv.

... for the Respondent No. 5

Reetobroto Kumar Mitra, J.:

1. The petitioner is aggrieved that he has been dismissed from service by the respondent no. 3 without following the due process of law.
2. Facts in a nutshell are that the petitioner, who had initially been appointed to the post of Demonstrator on July 4, 1997, was later upgraded to the post of Lecturer on December 5, 2022.
3. The petitioner had made a requisite application under the Career Advancement Scheme (hereinafter 'the CAS') and had obtained financial benefits thereunder.



4. Subsequently though, the petitioner was found to be ineligible, not having obtained the requisite qualifications, on account whereof he had been requested to refund the entire sum of Rs. 5,15,264/- being the additional amount received by the petitioner as part of the first CAS.
5. The petitioner had not challenged the request, nor had he challenged the refund which was obtained by the authorities from his salary.
6. However, the petitioner had become irregular in taking the lectures allotted to him and over a period of time the irregularity increased to an extent that the authorities had to take immediate steps to redress the acts of commission and/or omission of errant petitioner. The petitioner was asked by a show cause notice dated July 18, 2023 as to why he was reluctant to take the classes allotted to him and as to why he declined to take the class so allotted to him.
7. There was no reply from the petitioner to such show cause notice of July 18, 2023.
8. In view of the aforesaid, the authorities sent a second show cause notice dated January 4, 2024. This notice reminded the petitioner of the earlier show cause notice and stated that drastic action would be taken against him if a reply was not given within seven days. The petitioner's response to this



reminder, issued on the very same day, was not only offensive but also threatening in nature.

9. The reply of the petitioner was discussed by the Governing Body and it was unanimously decided by the Governing Body to terminate the employment of the petitioner on May 3, 2024 with immediate effect and to finally settle the outstanding dues of the petitioner. It is in this factual matrix that the petitioner had approached this Hon'ble Court by way of the writ petition being WPA 18880 of 2024.
10. Mr. Samim Ahammed, learned advocate, appearing for the petitioner has raised three principal issues which may be summarised as under:-
 - i. Violation of the process as specified in Rule 15 of the Service Rules of the respondent no. 3.
 - ii. The person issuing the show cause notice was not eligible as he had no jurisdiction to issue such notice.
 - iii. No opportunity was given to the petitioner to present his case or refute the case made out by the respondents.



11. Counsel for the petitioner has placed reliance on a judgment of the Hon'ble Supreme Court reported in 2001 (2) SCC 330 and AIR Online 2023 CAL 167.
12. Mr. Soumya Majumdar, learned senior advocate appearing for the respondent no. 3, Mr. Yash Singhi, learned advocate appearing for the respondent no. 4 and Mr. Deepan Kr. Sarkar, learned advocate appearing for the respondent no. 5 have raised issues which may be summarised as under:-
 - i. Though no chargesheet had been issued, the purpose of the chargesheet had been fulfilled in the show cause notice itself.
 - ii. There is no question of any administrative malice nor bias on the part of any authority alleged, far less demonstrated by the petitioner.
 - iii. The person issuing the show cause notice was the officer-in-charge, who had been duly empowered with all administrative authority as is usually delegated to the post of principal of a government sponsored polytechnic in addition to his duty as an honorary lecturer. Thus, the said person issuing the show cause notice was empowered to do so as the officiating principal.



- iv. There is an alternative and efficacious remedy available to the petitioner by way of an appeal before the Director of Public Institutions, West Bengal.
13. Counsel for the respondents have relied on a decision of the Hon'ble Supreme Court of India reported in 1996 (3) SCC 364 and a decision of this Hon'ble High Court, 2006 3 CHN 535.
14. I have heard learned counsel for all the parties and the decisions relied upon by them as well as gone through the records.
15. Dealing with the last point of the respondent first, since it questions the maintainability of the writ petition, this is a case where the self-imposed restriction of alternative and efficacious remedy ought to be relaxed. This, as the petitioner has argued that there is a gross violation of the principles of natural justice in not permitting the petitioner an opportunity of hearing and also violation of the established procedure in matters pertaining to disciplinary proceeding in which the punishment meted out can be classified as a major punishment, since the petitioner has been terminated and dismissed from service. Thus, the availability of an alternative remedy in the instant case ought not act as a fetter for the writ court to exercise its jurisdiction of judicial review.



16. The chain of events leading to the termination of the petitioner can be traced to the representation of the petitioner that he was qualified for the CAS, which was subsequently found to be incorrect by the authorities. This stand of the petitioner is also evasive and points to the authorities' stand being correct. Paragraph 4 of the petition reads as under:-

“In reality, the petitioner had actually completed equivalent refresher programs approved by the AICTE as well as the Government of West Bengal and was eligible to receive such benefit.”

17. Thus, the petitioner himself admits that he had completed an equivalent refresher program approved by the AICTE.
18. On this finding, the authority requested a refund of the money paid to the petitioner, in excess of Rs. 5.15 lakhs. This amount was duly deducted from his salary to the extent of almost 98 percent, as Mr. Ahammed pointed out. According to Mr. Majumdar, under Rule 3 C (V) of the West Bengal Treasury Rules, 2005, the entire sum was liable to be deducted from the employee's salary. Since it exceeded the petitioner's total monthly salary, the deduction was made in tranches. The deduction of salary appears to have infuriated the petitioner who, in a reticent tone, refused to take classes and declined further classes allotted to him. The net result of this rather offensive approach was that the students continued to suffer.



19. It was this refusal to take classes by the petitioner that resulted in misconduct, leading to the initiation of disciplinary proceedings as stipulated under the Service Rules of the Engineering Institution for Diploma Courses (hereinafter the Rules) as stipulated in Rule 15 thereof. Rule 15 stipulates four different punishments/penalties that may be imposed for good and sufficient reasons upon a member of the staff, which are as under:-

- i. *Withholding of increments or promotion, including stoppage at an efficiency bar.*
- ii. *Recovery from pay of the whole or part of any pecuniary loss caused to the institution by negligence or breach of orders.*
- iii. *Removal from the service.*
- iv. *Dismissal from the service.*

20. It was the petitioner's refusal to take the classes allotted to him that resulted in the disciplinary proceeding against him which resulted in dismissal of the petitioner from service.

21. For terminal punishments such as removal and dismissal from service, a procedure has been laid down in Rule 15 of the Rules, which has to be



followed. The procedure as laid down can be broken into three limbs.

The first limb is as under:-

- i. *Definite charges should be framed against him and these should be communicated to him in writing.*
- ii. *The accused person should be given reasonable time to submit his explanation.*
- iii. *The explanation submitted by him should be considered by a special committee appointed by the Governing Body for the purpose of enquiry and report in the matter."*

22. The second limb of the procedure stipulates as under:-

"The accused person shall be examined by the special committee and he shall be permitted to produce witnesses in his defence and shall have the right to cross-examine the witnesses, if any, produced in support of the charges brought against him and to examine the records produced, if any.

(iv) The report of the special committee shall then be placed before the Governing Body for final decision. Before taking any final



decision in the matter, the Governing Body must afford the accused person an opportunity to explain the charges brought against him."

23. The third limb of the procedure under Rule 15 is set forth as under:-

"(v) Before passing orders of removal or dismissal the accused person should be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(vi) The final orders of the Governing Body shall thereafter be communicated to the accused person. If he prefers an appeal within six weeks from the date of receipt of the order, the appeal with the connected papers should be forwarded to the Director of Public Instruction, West Bengal, for orders. The appeal should however be submitted through the Head of the Institution.

(Note—Dismissal ordinarily disqualifies from future employment.)"

24. The process under Rule 15 can thus be broken into three distinct and separate limbs. The first limb relates to the chargesheet by the authorities and the reply thereto by the accused person. In fact, the first limb in clause 3 is a connecting door to the second limb in as much as the explanation submitted by the accused person has to be considered by a special committee appointed by the Governing Body for the purpose of enquiry and report in the matter.



25. The second limb is when the accused person is to be examined by the special committee and is to be permitted to produce witnesses and cross-examine witnesses that may be produced by the authorities. It is only thereafter that the special committee files a report on the basis of its enquiry and the evidence led before it, which is then placed before the Governing Body for taking a final decision in the matter. Again, clause IV, which is a part of the second limb, connects to the third limb in as much as the Governing Body may allow the accused person to appear before it to explain the charges brought against him after consideration of the report of the special committee.
26. The third limb is when the Governing Body has taken a decision for removal and dismissal of the accused person he has to be given a reasonable opportunity of showing cause against the action proposed to be taken against him.
27. In the present case, even if the contention of the respondents were to be accepted that the petitioner had not responded to the show cause notice and that the show cause notice and the reminder thereof were sufficient in setting forth the charges against the petitioner, there was nothing on record to show that a special committee had been constituted to consider the reply given by the petitioner to the reminder of the show cause on January 4, 2024. Thus, the second limb of the procedure had been completely overlooked by the authorities.



28. The third limb, which stipulates that the Governing Body had to give a reasonable opportunity of showing cause to the petitioner against the action proposed to be taken against him, has also been completely bypassed.
29. Thus, clearly the second and the third limb of Rule 15, which is almost a code in itself insofar as disciplinary proceedings are concerned, have been grossly violated.
30. The Governing Body, which adopted a resolution unanimously as appears from the letter of termination dated May 3, 2024, merely recorded that the Governing Body had itself considered the reply of the petitioner and on that basis alone had terminated the petitioner's service and dismissed him from such service.
31. This is a clear violation of the procedure stipulated in Rule 15. The violation is so fundamental that it completely derails the process under Rule 15, which is a provision intended to give the accused person, the petitioner herein an opportunity to present his case before any final decision is made. Moreover, a penalty of such magnitude, namely dismissal from service, is not only stigmatic but would also disqualify the petitioner from any future employment, as specified in a note to Rule 15.



32. It would only be in the fitness of affairs and particularly in compliance with the procedure laid down in Rule 15 that the petitioner ought to be given an opportunity to present his case and refute the charge of not taking the classes allotted to him. There is a clear violation of the principles of natural justice which cannot in any manner be condoned.
33. In so far as the second contention of the petitioner is concerned, that the authority issuing the show cause notice was not empowered to do so, I find from the letter of appointment dated November 12, 2014 that he had been appointed as the officer in-charge with "all administrative and limited financial authority to the post of principal of Government Sponsored Polytechnic in addition to his duty as honorary lecturer". Clearly with all administrative authority, the person concerned was empowered to issue the show cause notice as the officer in-charge discharging the duty of the principal of such institution. Thus I hold against the petitioner in so far as this point is concerned.
34. In addition to the aforesaid violation of principles of natural justice, I cannot help but note that in the show cause notice as well as the reminder thereto of January 4, 2024, the authorities had already come to a finding that the petitioner's act was nothing but an act of misconduct which required appropriate disciplinary action. At the stage of show cause, it appears that the authorities had already decided that the person was guilty of misconduct and to remove the petitioner from service in view of his



delinquency. Without getting into the justifiability of the charges levelled against the petitioner, it is clear that the authorities had already decided that it would remove the petitioner from service. This clearly shows that the enquiry, if any and not by the special committee was a mere farce, and the conclusion had already been reached by the authority, as would appear from a bare reading of the show cause notice and the reminder thereto.

35. It is not a process of shielding the acts of commission and/or omission of the petitioner, but the fact that the due process of law as enshrined in Rule 15 has been completely violated. The effect of such violation leads to the inevitable conclusion that the process undertaken by the authority is vitiated. There is clearly a complete lack of fairness and reasonableness on the part of the authorities in dismissing the petitioner from service. This case thus falls squarely within the parameters set forth by the Hon'ble Supreme Court of India in (2001) 2 SCC 330 and AIR Online 2023 Cal 167.
36. The decision of the Hon'ble Supreme Court of India, relied upon by both parties, is clear and unequivocal, the authorities must apply their minds to a reply whether to a show cause notice or a chargesheet to decide if an enquiry is required. No evidence has been brought on record to show that the special committee, which had to be formed to reach this decision, was ever constituted. There is also no record of any such deliberation by the special committee. The Governing Body that deliberated on the reply was



not empowered to do so under the rules. It could only consider the report after a special committee had been formed and had rendered its opinion in the matter.

37. The ratio of 2006 (3) CHN 535 relied upon by the respondents that denial must be specific and without such specific denial there is an admission of the charge is a well accepted proposition. In the instant case, on a strict construction, as it must be applied since the petitioner has been imposed a major punishment of dismissal from service, there has been no charge framed or communicated to the petitioner. Even if the charges made in the show cause notice were construed to be charges, Rule 15 enshrined a particular procedure which has to be adopted even for looking into the reply to such charges. This particular procedure envisages the appointment of a special committee who would look into the reply. Thus without the constitution of a special committee, no other body could have come to the finding that the reply was specific or evasive or was not a reply at all as sought to be urged by the respondent.

38. Dismissal from service, in service jurisprudence, has been consistently considered as a major penalty, which requires more extensive deliberation and strict adherence to the rules, if any laid down, of procedure for such dismissal. In the instant case, it cannot be denied that the reply by the petitioner was indeed insufficient and inadequate and there was no overt or specific denial of the charges against him. However, as held in the case



of *State Bank Of Patiala & Ors vs S.K.Sharma* reported in 1996 (3) SCC 364, the principles of natural justice cannot be reduced to any hard and fast formulae.

39. In the instant case, the rule has been violated on numerous counts commencing from the fact that no chargesheet had been given, no special committee had been formed, the petitioner was thus unable to present any evidence, and most importantly, before passing orders of removal or dismissal, the petitioner was not given a reasonable opportunity (in this case no opportunity) of showing any cause against the action proposed to be taken against him. This is clearly a case where the order of dismissal falls in the category of being invalid.
40. Clearly, this case falls into the category of violation of natural justice on account of 'no notice', 'no opportunity', 'no hearing'.
41. It cannot be said that the petitioner waived any of his rights, particularly since the committee had never been formed and the petitioner was never given an opportunity of a fair hearing either before the committee or even before the order of dismissal was made as is mandated under the rules.
42. The order of dismissal dated May 3, 2024 is set aside with liberty to the respondent authorities to keep the petitioner on suspension, if thought fit



under Rule 16(1) in the given facts and circumstances, until a final decision is reached by that authority.

43. Having held as aforesaid, the petitioner's action cannot be condoned in any manner whatsoever. If indeed the petitioner declined to take the classes allotted to him, the petitioner's acts of commission or omissions are grossly unbecoming of a lecturer imparting education at such a high level and of a complex character.

44. Insofar as the refusal of the authorities to refund the amount which has been appropriated from the petitioner's salary is concerned, I find no reason to allow such refund as the petitioner had never objected to the same when the said sums were deducted nor has the petitioner taken any steps to challenge such appropriation.

45. Thus, the writ petition is allowed in part.

46. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Reetobroto Kumar Mitra, J.)