

(2018) 04 P&H CK 0366

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2027 Of 2018 Civil Writ Petition No. 2027 Of 2018 (O&M) Civil Writ Petition No. 2027, 3662 Of 2018 (O&M)

Dr. Priya Sareen

APPELLANT

Vs

Chandigarh Administration and others

RESPONDENT

Date of Decision : 17-04-2018

Acts Referred:

Citation : (2018) 04 P&H CK 0366

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Amar Vivek, Puneet Gupta, Balpreet Sidhu

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.

This order shall dispose of two petitions bearing CWP No.2027 of 2018 titled as "Dr. Priya Sareen Vs. Chandigarh Administration and others" [hereinafter referred to as 'the 1st petition] and CWP No.3662 of 2018 titled as "Homoeopathic Medical College and Hospital Association and another Vs. Panjab University and others" [hereinafter referred to as 'the 2nd petition] as the issue involved in both the petitions is pertaining to the suspension order passed against the petitioner in the 1st petition on 17.1.2018 and the proceedings initiated in terms of the chargesheet dated 23.1.2018.

However, for the sake of brevity, the facts are being extracted from the 1st petition.

Shorn of unnecessary details, the learned counsel for the petitioner has submitted that after the suspension order was passed on 17.1.2018 it was reviewed by the Panjab University and the order of suspension was stayed on 07.02.2018 but before that the petitioner had already filed the 1st petition. However, respondents No.7 & 8 in the 1st petition, who are the petitioners in the 2nd petition, have challenged the validity of the order dated 7.2.2018.

Learned counsel for the petitioner has submitted that the petitioner was suspended, on account of certain misconduct, by the governing Body of the Homeopathic Medical College and Hospital in its meeting held on 21.2.2017 in the College itself and had delegated its power to Dr. P.K. Mittal to give show cause notice, if necessary, issue chargesheet, hold inquiry and to take further necessary steps i.e. to appoint inquiry officer to sign the notices, applications, affidavits, petitions and to appear before any office/officer or Court etc. and to have all such powers etc. necessary for the said purpose under his own signatures.

Learned counsel for the petitioner has submitted that the power of suspension though vests with the Governing Body but it cannot be exercised without referring to the provisions of the Constitution of the Governing Body and in this regard he has referred to the 'Functions' of which Clause V read as under: -

"To suspend, terminate, dismiss or take any other disciplinary action against any member of Teaching and Non-teaching staff of the College and Hospital provided that no such action shall be taken without an enquiry by a sub-committee appointed by the Executive Committee of the Association for that purpose."

He has also referred to the 'Functions of the Office Bearers' of which Clause III read as under: -

"To issue orders of appointment, suspension, termination dismissal or any other disciplinary action against any member of Teaching & Non-teaching staff of the College and Hospital as authorized by the Governing Body."

The grievance of the petitioner is that Dr. P.K. Mittal, who has the dual charge, being Secretary of the Executive Committee and Vice President of the Governing Body, passed the impugned order of suspension on 17.1.2018 which has been stayed by the Committee constituted by the Panjab University to which the College is affiliated and the order of stay was conveyed to the College on 7.2.2018.

Although learned counsel for the petitioner has argued that the Secretary of the Executive Committee can only issue the orders in terms of Clause III of the 'Functions of the Office Bearers' mentioned hereinabove and has no inherent power in this regard because he has to be duly authorized by the Governing Body but at this stage, it is submitted that he would not go into this issue as to whether the powers delegated to Dr. P.K. Mittal, Secretary of the Executive Committee was delegation of powers or an authority given to him by the Governing Body for the purpose of passing the order on suspension. He has basically relied upon Clause V of the 'Functions' to contend that the order of suspension, passed against a member of teaching staff to which the petitioner belongs to could be only after an enquiry. It is submitted that the said enquiry is conspicuous by its absence in this case which is otherwise sine qua non for taking action for suspension of the petitioner.

Mr. Puneet Gupta, Advocate, appearing on behalf of the Homeopathic Medical College & Hospital, who is on caveat, has argued that the true interpretation of Clause V of the 'Functions', mentioned hereinabove, would be that the disciplinary action cannot be taken against any member of teaching and non-teaching staff of the college and hospital without there being any enquiry by sub committee appointed by the Executive Committee of the Association for that purpose and the order of suspension would not fall in it. He has prayed for filing reply and has further submitted that the petitioner had to go to Educational Tribunal as the present petition is not maintainable.

I have heard learned counsel for the parties and after taking into consideration the facts and circumstances of the present case, am of the considered opinion that there is merit in the argument of the counsel for the petitioner while contending that the order of suspension also fall within the definition of disciplinary action. Insofar as the prayer of counsel for the caveators for filing reply to the petition is concerned, I am of the view that since he is on caveat and the issue involved is in regard to the interpretation of Clause V of the 'Functions', therefore, there is hardly any reason to file reply in this case because the case is not being decided on facts. Insofar as the question of maintainability, raised by counsel for the caveator is concerned, that petitioner had to go to Educational Tribunal, I am of the view that since the action is taken by the respondents without jurisdiction much less in clear violation of the provisions of the constitution, the writ petition can be entertained. Since there is no denial by Mr.Puneet Gupta, Advocate to the fact that no enquiry was held through sub-committee appointed by the Executive Committee of the Association for the purposes i.e. to suspend, termination or dismiss or to take any other disciplinary action against any member of teaching staff i.e. the petitioner, therefore, straightway action taken by the Secretary of the Executive Committee on the strength of the minutes of the meeting dated 21.12.2017 is per se illegal. Therefore, finding the 1st petition meritorious in this regard, the same is hereby allowed and the 2nd petition, at the instance of the College, for quashing the order of suspension and chargesheet is hereby dismissed.

A photocopy of this order be placed on the file of 2nd petition i.e. CWP No.3662 of 2018 titled as "Homoeopathic Medical College and Hospital Association and another Vs. Panjab University Administration and others".