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**(2001) 11 JH CK 0036**  
**In the Jharkhand High Court**  
**Case No : CWJC No. 20 of 2000**

Kailash Vihari

APPELLANT

Vs

Birla Institute of Technology and Others

RESPONDENT

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**Date of Decision :** 29-11-2001

**Acts Referred:**

**Citation :** (2002) 93 FLR 452

**Hon'ble Judges :** S.J. Mukhopadhaya, J

**Bench :** Single Bench

**Advocate :** M.S. Anwar, R. Kumar and R. Parween, for the Appellant; M.M. Banerjee, A.G., for the Respondent

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## Judgement

S.J. Mukhopadhaya, J.—The petitioner has challenged the order of suspension-cum-chargesheet dated 16th September, 1999 issued by the order of Vice Chancellor, Birla Institute of Technology, Mesra, Ranchi -"B.I.T." for short. The petitioner has also challenged the letter dated 8th October, 1999, whereby and whereunder, the 5th Respondent: Satish Bakshi, Advocate, Ranchi has been engaged as one man enquiry committee to conduct the enquiry.

2. The ground taken by the petitioner to assail the order of suspension-cum-chargesheet is that the order is without jurisdiction and has been issued because of bias on the part of the Respondents.

3. The case of the petitioner is that he was appointed as an Assistant Professor on 16th September, 1971 with seven advance increments in the B.I.T., Mesra. It was declared as a deemed University by the Central Government on 28th August, 1986. He has unblemished career and clean service record throughout his service period, but for the reasons best known to the Respondents he was not granted any promotion to higher post.

4. A writ petition CWJC No. 781/96 (R) was filed by the petitioner for promotion wherein he highlighted the illegalities and high-handedness of the Respondents as also the other arbitrary action. In the meantime, the petitioner had to suffer

as his son and daughter were harassed in the matter of admission in B.E. Course In B.I.T., Mesra, Ranchi. The son being harassed had also to move before the Court in CWJC No. 2826/94 (R), whereinafter a contempt petition was filed, thereafter the son of the petitioner was admitted.

5. The petitioner's daughter also qualified for admission in B.E. Course but she was denied admission, although candidates below her in the merit list were admitted. She had filed a writ petition, CWJC No. 2625/97 (R), which was allowed and the Institute was directed to take her admission after interview. It was affirmed in LPA No. 319/98 (R).

6. During the pendency of the LPA, the Respondents. Vice Chancellor, B.I.T., Mesra issued a letter on 16th August, 1999 asking explanation from petitioner regarding a complaint made by some persons to the Chancellor. The petitioner also filed a complaint petition before the Chancellor on 18th August, 1999. Three days before final hearing of the aforesaid LPA, a show cause letter was also issued to the petitioner on 24th August, 1999 for taking disciplinary action with regard to certain alleged acts of omission and commission. The petitioner replied on 8th September, 1999, denied the allegations and requested the authority to forward him the complete copy of the complaint on the basis of which charges were levelled. He further pleaded that the action on the part of the Respondent No, 3 was to harass the petitioner and amounts to contempt of Court.

7. It is only after receipt of such reply the Vice Chancellor Issued order of suspension-cum-chargesheet on 16th September, 1999 at the fag end of the service career of the petitioner, who is to retire from service on 30th November, 2001.

8. An Advocate, Sri Satish Bakshi has been appointed as the Enquiry Officer by letter dated 8th October, 1999, who fixed the date of enquiry on 15th October, 1999. The Vice Chancellor engaged two lawyers on behalf of B.I.T., Mesra on 20th November, 1999 to represent the Institute in the enquiry. The petitioner while challenged the appointment of an Advocate as the Enquiry Officer by his representation dated 27th November, 1999, requested him to adjourn the proceeding. However, no action having taken by the Respondents, the writ petition was preferred.

9. Counsel for the petitioner submitted that the Vice Chancellor of the University has no jurisdiction to suspend the petitioner; such power is vested with the Board of Governors of B.I.T., Mesra. It was further submitted that the action of the Respondent No. 3, Vice Chancellor, B.I.T., Mesra is mala fide for the reasons and facts as narrated in the preceding paragraphs. The counsel placed reliance on the relevant Rules and Regulations of B.I.T.. Mesra, Ranchi commonly known as "Rules of the Institute B.I.T.. Mesra. Ranchi" and "Regulation" of B.I.T., Mesra, Ranchi.

10. Mr. M.M. Banerjee, learned counsel for the B.I.T., Mesra, while opposed the prayer submitted that the power having delegated to the Vice Chancellor by the

Board of Governors, he has Jurisdiction to suspend the petitioner in contemplation of, or during the pendency of a departmental proceeding; mere fact that the petitioner or his ward(s) filed one or other writ petition does not automatically constitute any ground to allege mala fide against the Vice Chancellor. B.I.T., Mesra.

11. To appreciate the case, it is necessary to take into consideration the relevant provisions as laid down under "Rules and Regulations" of B.I.T., Mesra. Under Rule 19 powers and functions of the Board of Governors have been stipulated of which Rule 19 (3)(vi) and (xxvi), are relevant, as quoted hereunder :--

Rule 19.--Powers and Functions of the Board of Governors.

(3) With prejudice to the generality of the foregoing, the Board of Governors shall have the following powers :

(vi) to regulate and enforce discipline amongst employees, and to impose penalty on the members of staff in accordance with the Rules and Regulations;

(xxvi) to delegate its powers to the Chairman, Director or other officers of the Institute;

12. At this stage, it is relevant to mention that the post of Director has been re-designated as Vice Chancellor of B.I.T., Mesra.

13. The power of appointment of the staff of the Institute is vested with the Board of Governors including the academic staff like Lecturer or above under Rule 34 (a) of the Rules. Under Rule 38 (4), the power relating to proper maintenance and discipline in the Institute is vested with the Vice Chancellor. While Rule 43 empowers the Board of Governors to frame regulations with the previous approval of the Chancellor (read with Rule 43), the Board of Governors which may make new or additional regulations or any amendment or may repeal and the regulation as per Rule 46.

14. In addition to the powers and functions conferred on the Vice Chancellor under Rule 38 certain powers have been delegated to the Vice Chancellor under Regulation 12. The said Regulation 12 is quoted hereunder :

"12. Terms and Conditions of Service of Permanent Employees:

Permanent employees of the Institute shall be governed by the following terms and conditions :

(11) The Director may place a member of a staff appointed at the Institute under suspension :

(a) Where a disciplinary proceeding against him is contemplated or is pending, or

(b) Where a case against him in respect of any criminal offence is under investigation or trial."

15. In view of aforesaid Rules and Regulations, it cannot be alleged that the Vice Chancellor has no Jurisdiction to place a member of academic staff, like Assistant Professor/ teacher under suspension. Thus the order of suspension cannot be held to be illegal.

16. So far as mala fide is concerned, the submission made by Mr. M.M. Banerjee, learned counsel for the Respondents to be accepted. The petitioner or his wards (son and daughter) riled one or other writ petition for promotion or admission, wherein the Respondents contested the cases. This fact alone does not constitute any mala fide in law much less mala fide in fact. The ground of mala fide taken by the petitioner is thus, rejected.

17. One of the grievance raised on behalf of the petitioner is that Board of Governors being the disciplinary authority, the departmental proceeding should have been initiated by the said authority, the Vice Chancellor had no jurisdiction to frame charge or initiate departmental proceeding. However, such submission cannot" be accepted in the light of Supreme Court decision in the "case of Government of Tamil Nadu and others Vs. S. Vel Raj,

18. The last ground taken by the petitioner is that the Respondents cannot appoint an Advocate as an Enquiry Officer, as made vide letter dated 8th October, 1999. The counsel for the petitioner placed reliance on a Patna High Court decision in Bidyapati Prasad Singh v. State of Bihar, reported in 1996 (1) PLJR 435. The aforesaid Dr. Bidyapati Prasad Singh was a teacher in Baba Saheb Bhimrao Ambedkar, Bihar University, Muzaffarpur and was placed under suspension. A departmental enquiry was initiated and a retired District Judge was appointed by the University to act as the Enquiry Officer. The Court set aside the appointment of an outsider as the Enquiry Officer, more so of a legally trained person being riot permissible.

20. In the present case, one Mr. Satish Bakshi, Advocate, a legally trained person and an outsider has been appointed as an Enquiry Officer in the departmental proceeding though there is no such power vested to any of the authority under the rules/regulations. It will render the petitioner handicapped to defend himself of his own. For the said reason, the letter dated 8th October, 1990 by which an Advocate has been appointed as an Enquiry Officer cannot be upheld, the said letter dated 8th October, 1999 is accordingly, set aside.

21. Further, taking into consideration the facts and circumstances, as the Respondents have liberty to proceed further in the departmental enquiry by appointing a departmental person as an Enquiry Officer and the petitioner is under suspension for more than two years and is to superannuate from service after few days on 30th November, 2001, in the interest of justice, the order of suspension is revoked from today. The Respondents may proceed and continue with the departmental proceeding, if permissible to continue after retirement under the law.

22. The writ petition stands disposed of with the aforesaid observations.

23. Petition disposed of accordingly.