
(2014) 10 GAU CK 0020
In the Gauhati High Court
Case No : WP(C) No. 3899/2014

Mridupaban Dutta

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Citation : (2015) 2 GLD 436

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : P.K. Tiwari and H.K. Das, Advocate for the Appellant; A. Verma, Standing Counsel, Advocate for the Respondent

Judgement

Biplab Kumar Sharma, J.—Heard Mr. H.K. Das, learned counsel for the petitioners and Ms. A. Verma, learned Standing Counsel, Health Department.

2. The two petitioners involved in this writ petition have completed Homeopathy Degree Course i.e. BHMS. Presently they are undergoing internship duty, duration of which is one year. As submitted, the internship started from 2nd July, 2014. They are aggrieved by Annexure-10, 14 and 15 orders dated 01.07.2014, 04.08.2014 and 05.08.2014, by which they have been debarred/suspended from the internship for a period of three months w.e.f. 02.07.2014 to 01.10.2014. Annexure-10 is the minutes of the meeting of the respondent College Council held on 01.07.2014, in which a resolution was adopted demanding written apology from the petitioners to the office of the Principal in charge i.e. the respondent No. 3 for the purported misconduct on their part. Annexure-14 is the minutes of the meeting of the College Council held on 04.08.2014 adopting the resolution to debar the petitioners from the internship for a period of three months commencing from 02.07.2014 to 01.10.2014. Annexure-15 is the consequential order issued by the respondent No. 3 notifying suspension of the petitioners from joining the internship duty for the aforesaid period.

3. The aforesaid action on the part of the respondents more particularly the

respondent No. 3 emanated because of the action on the part of the petitioners, who at that relevant point of time were the student's representative under the capacity of General Secretary and Treasurer of the Assam Homeopathy Medical College Students Union. When the respondent No. 3 was appointed as in charge Principal of the college, the said student's body made a grievance that even in case of appointment of in charge Principal, the regulations holding the field requiring Post Graduate Degree for Principal should be adhered to. In this connection, the student's body represented by the petitioners made representation to the Health Minister, Government of Assam. This act on the part of the petitioner coupled with the allegation that they were also responsible to get the news item published in Print Media attracted the wrath of the respondent No. 3, who was appointed as Principal in charge of the respondent college. Consequently, he issued the Annexure-6 show cause notice dated 19.06.2014 requiring the petitioners to respond to the same by submitting reply. In response to the said show cause notice, the petitioners submitted their replies stating therein that they were not responsible for publication of the news item in Print Media and that raising of the grievance was in reference to the particular regulation regarding the appointment of Principal in Homeopathy Medical College.

4. Being not satisfied with the reply, the respondent No. 3 convened the College Council Meeting in his capacity as the Chairman and in the said meeting adopted the impugned resolution requiring the petitioners to submit written apology and that too to the respondent No. 3. As will be evident from the minutes of the meeting of the College Council, no reason was assigned as to why the reply submitted by the petitioners was not satisfactory. After the aforesaid resolution, the respondent No. 3 issued the Annexure-11 warning notice to the petitioner on 02.07.2014 alleging misconduct on their part and requiring them to submit their response to the aforesaid resolution under threat that upon failure to do so, they would not be allowed to join the internship duty. In response to the said warning notice, the petitioners submitted their reply stating therein that whatever they had done was in reference to the particular regulation and not otherwise. Their plea was that, as the representatives of the student's body, they had to raise their voice for the better interest of the college.

5. After the aforesaid development, the respondent No. 3 once again convened the College Council Meeting in his capacity as the Chairman on 04.08.2014. In the meeting the impugned resolution was adopted suspending the petitioners from the internship for a period of three months w.e.f. 02.07.2014 to 01.10.2014. The said resolution was notified by the respondent No. 3 vide the Annexure-15 impugned order dated 05.08.2014. It is in such circumstances, the petitioners had to approach this Court by filing the instant writ petition.

6. While entertaining the writ petition, by order dated 13.08.2014, the impugned Annexure-15 order was suspended and consequently the petitioners could continue with their internship. It will be pertinent to mention here that by the time the impugned resolution and the orders were passed, the petitioners had

already joined the internship, but their internship was sought to be suspended with retrospective effect i.e. from 02.07.2014, although they were already undergoing the internship duty. Because of the said interim order, the petitioners are still continuing their internship duty which is for a period of one year and thus the internship having commencing w.e.f. 02.07.2014, it is expected that the same will come to an end on 01.07.2015.

7. The respondent No. 3 has filed counter affidavit justifying his action in the matter. According to him, the petitioners had indulged in illegal activities detrimental to the interest of the college and accordingly action had to be taken against them. In reply to the said counter affidavit, the petitioners have stated that whatever they had done, the same was in the capacity of representative of the student's body and not in their individual capacity. They have also stated that they had no hand in getting the news item published in Print Media. As regards the representations made to the Health Minister, it is their stand that the same was in conformity with the relevant regulations. In a nutshell, what the petitioners have contended is that their action was for the better interest of the institution and not to malign anybody.

8. Mr. H.K. Das, learned counsel for the petitioners has submitted that the respondent No. 3 who was appointed as the Principal in charge could not have issued the show cause notice espousing his own cause. He also submits that if a particular action is required to be done in a particular manner, the authority ought to have done the same in the said manner and not otherwise. According to him, the agitation of the student's body was founded on the particular regulations requiring appointment of Principal with the qualification of Post Graduate Degree. He submits that even if there was any wrong appreciation regarding requiring of the particular educational qualification, the authority and more particularly the respondent No. 3 ought not to have drawn a grudge against the petitioners jeopardizing their career. He placed reliance on the decision of this Court reported in Pratima Kumari Devi Vs. State of Assam and Others, to buttress the argument.

9. Per-contra, Ms. A. Verma, learned Standing Counsel, Health Department submits that even if the student's body had felt that there is something wrong in the matter of appointment of the Principal in charge, the petitioners ought not have indulged any activities detrimental to the interest of the institution. She submits that the petitioners could have taken recourse to normal channel of agitation instead of going to the Print Media bringing indiscipline to the college.

10. I have given my anxious consideration to the submissions made by the learned counsels for the parties and have also considered the entire materials on record.

11. As noted above, the petitioners had agitated their grievance not in their individual capacity, but as the student's representative. But, it is only the petitioners who have been picked up for the impugned action leaving aside the

other students. In the representation made the petitioners, they had only highlighted that as per the requirement of the particular regulation, the Principal to be appointed in the Homeopathy College must be a Post Graduate Degree holder. That attracted the wrath of the respondent No. 3, who was appointed as Principal In charge and eventually he himself issued the show cause notice to the petitioners requiring them to submit their reply. When he felt that the reply submitted by the petitioners was not satisfactory, he convened the College Council meeting in his capacity as the Chairman. In the meeting, the impugned resolution was adopted requiring the petitioner to tender unconditional apology. While doing so and as noted above, no reason was assigned as to why the explanations furnished by the petitioners were not acceptable. When the petitioners submitted their reply about which mention has been made above, the respondent No. 3 again convened another meeting of the College Council in his capacity as Chairman, in which the impugned resolution was adopted to suspend the petitioners from the internship duty for a period of three months and that too with retrospective effect from 02.07.2014 to 01.10.2014. By the time, the impugned resolution dated 04.08.2014 followed by the impugned order dated 05.08.2014 had been passed, the petitioners had already undergone internship duty for more than a month. Thus the impugned resolution and the orders have the effect of suspending even that period during which the petitioners had undergone the internship.

12. In *Pratima Kumari Devi (Supra)*, this Court having found that the Principal involved in the case had issued show cause notice to the petitioner accusing her of falsely assassinating the character of the Principal, it was held that the Principal himself could not have become a judge of his own cause and issued the order of rustication of the petitioner. It was held that the role of the Principal was that of an accuser, prosecutor and judge. In such circumstances, the disciplinary proceeding initiated against the petitioner was held vitiated and consequently, the order of rustication was quashed.

13. The instant case is somewhat similar to the fact involved in the said case. When the student's body made the allegations against the Principal in charge on the ground of lacking the required qualification, the same attracted his wrath and consequential action followed about which discussions have been made above. Leaving aside that aspect of the matter, even otherwise also it cannot be said to be a case of indulging in indiscipline inasmuch as the student's body had felt that appointment of Principal should be made strictly in accordance with the rules and it was on that count they agitated their grievance before the appropriate authority. Instead of taking the things in its true spirits, the authority picked up the petitioners for the aforesaid actions.

14. The period of suspension is already over and presently the petitioners are undergoing their internship duty. Taking into consideration all these aspects of the matter, the writ petition is allowed setting aside and quashing the impugned resolutions and orders referred to above. Consequence upon setting aside and

quashing of the impugned resolutions and the orders, the period of suspension from 02.07.2014 to 01.10.2014 shall stand regularized as the period spent by the petitioners on internship duty.

15. Writ petition succeeds. There shall be no order as to costs.