
(1998) 07 CAL CK 0030

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 8184 (W) of 1998

Sudip Kumar Sinha

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-07-1998

Acts Referred:

Vidyasagar University Statute, 1985 — Status 170, Status 170(3)

Citation : (1999) 1 CALLT 30

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Mr. Jayanta Kr. Biswas and Mr. Biswajit De, for the Appellant; Mr. Sunit Kr. Panja, for the Respondent

Judgement

G.R. Bhattacharjee, J.—The petitioner in this writ petition has challenged the order of suspension dated 1.4.97 Issued by the then Lecturer-in-charge and Acting Secretary, Bhattar College, Dantan, Midnapore, which is annexure-G to the writ petition. It is the petitioner's case that while serving as a Library Clerk in the concerned College he was permitted by the governing body of that College to pursue the Master of Library & Information Science course at the Vidyasagar University, Midnapore, and also his duty hours in the College was re-allocated so that he could attend the University classes and also simultaneously render service to the College in the morning and afternoon. It is further submitted that in due course he completed his Master of Library & Information Science course in 1993. Subsequently, it is submitted, for political reasons the then Lecturer-in-charge of the College by his Impugned order dated 1.4.97 placed the petitioner under suspension from the service with effect from 1.4.97 on the ground that an enquiry and a case against him were pending in respect of a criminal offence. It is also submitted that the said criminal case was started on the basis of a letter written by the then lecturer-in-charge to the Police regarding his pursuing the said Master of Library & Information Science course and also drawing salary for the said period etc. It is submitted that the petitioner did not do anything illegal as he obtained the necessary permission of the Governing Body of the College.

Be that as it may, the petitioner was arrested in connection with the said criminal investigation and was of course released on bail on the very next day. While granting bail the learned Sub-Divisional Judicial Magistrate, it appears, observed that he could not rule out very lightly the contention of the learned defence Advocate that his client had been made victim of College politics. The petitioner, after his suspension, earlier moved a writ petition, as stated in paragraph 14 of this writ petition, and the College authorities assured the petitioner at that stage that the suspension would be withdrawn and also requested the petitioner to withdraw that writ petition. It is also stated in paragraph 15 of the writ petition that in spite of assurance given by the College authorities the impugned order of suspension was not withdrawn by them, the petitioner again mentioned the matter before the learned Judge and ultimately the said matter was taken up on 26.9.97 as "To be mentioned" and on the said date the learned Judge was pleased to give opportunity to the petitioner to move afresh on the self-same cause of action and accordingly the petitioner has filed the present writ petition. It is to be noted here that in spite of service of notice with copy of the writ petition upon the respondents/College authorities they are not appearing to controvert the averments made by the writ petitioner in this writ petition. However, even apart from the factual aspects of the matter it is evident that the suspension order which was issued by the then Lecturer-in-charge of the College is not tenable in law. Statute 170(3) of the Vidyasagar University First Statutes, 1985 provides that the Governing Body of a College may place an employee under suspension where an enquiry against him under paragraph (2) is contemplated by the Governing Body or any such enquiry is pending, or where a case against him in respect of a criminal offence is under investigation or trial. Evidently the Principal or the Lecturer-in-charge is, therefore, not entitled to place an employee under suspension and it is the Governing Body which can do it. The letter of suspension of the then Lecturer-in-charge dated 1.4.97 which is annexure-G to the writ petition does not show that any such decision of placing the petitioner under suspension under the said statute 170(3) was taken at all by the Governing Body of the College. On the contrary, annexure-J to the writ petition is a letter of the President of the Governing Body dated 18.4.97 addressed to the petitioner wherein it is stated that the suspension order was whimsical and such action was in contravention of statute 170 and the Lecturer-in-charge did not consult the Governing Body in this matter. The subsequent Lecturer-in-charge, Mr. A.K. Pramanick, also writes a letter to the Director of Public Instruction, Government of West Bengal which is dated 22nd May, 1997 (annexure-I to the writ petition) wherein also he states inter alia that the earlier Lecturer-in-charge suspended Sri Sudip Kumar Singha, the present writ petitioner, the Library Clerk, on illegal grounds.

2. Since the matter was not at all placed before the Governing Body and since the Governing Body did not take any decision to place the writ petitioner under suspension by the then Lecturer-in-charge, Sri Hrishikesh Jana, is in contravention of the said statute 170(3) and the same cannot be sustained and

the same is liable to be quashed. In the circumstances, I do hereby quash the Impugned order of suspension of the petitioner dated 1.4.97 which is annexure-G to the writ petition and dispose of this writ petition by directing the respondents/College Authorities to forthwith reinstate the petitioner in service with retrospective effect from the date of the order of suspension within one week from the date of communication of this order and also give him all arrear salaries and allowances as may be admissible under law for the period for which he was placed under Illegal suspension, treating him to be in service all through. Such payment shall be made to the petitioner within one month from the date of Joining of the petitioner in the College. The writ petition stands disposed of accordingly. Affidavit-of-service filed to-day be kept with the record.

Liberty is given to the learned Advocate for the petitioner to take the gist of this order for the purpose of communication to the respondents concerned.

Urgent xerox certified copy of this order, if applied for, may be supplied to the parties by the department on priority basis.

3. Petition disposed of