

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.28870 of 2022

SAMIRAN MONDAL

-VERSUS-

VISVA-BHARATI AND OTHERS

For the petitioner : Mr. Samim Ahammed, Adv.,
Mr. Arka Maiti, Adv.,
Ms. Abmiya Khatun, Adv.

For respondents : Mr. Victor Chatterjee, Adv.

Hearing concluded on : 11.07.2023

Judgment on : 30.11.2023

Kausik Chanda, J.:-

The writ petitioner is a professor in the Department of Physical Education at Visva-Bharati. He was assigned the role of Proctor by the university by an order dated October 6, 2021. Proctor is the officer vested with the duties, inter alia, to maintain discipline among the students and he is the authority closest to the hostel students. On February 28, 2022, some students of the university started agitation on various issues in the university premises.

2. The university alleges that the petitioner was asked to meet some agitating students to address a crisis situation started on February 28, 2022, but the petitioner did not comply with the order and forwarded a letter of resignation from the post of Proctor. He also refused to comply with the order of the Vice-Chancellor.

3. The university perceived the aforesaid alleged conduct of the petitioner as misconduct for avoidance of responsibility, dereliction of duty, and willful defiance of orders. Accordingly, the university issued an article of charge against the petitioner. An enquiry committee was appointed to enquire into the charge leveled against the petitioner and upon conclusion of enquiry the committee submitted its report before the university on August 4, 2022.

4. The Executive Council of the university considered the enquiry report and proposed a major penalty of reduction to a lower stage in the time scale of pay by one stage for a period of three years with cumulative effect and debarment from administrative responsibilities, membership of statutory bodies of the university for three years.

5. The petitioner was provided with the opportunity to make a representation in writing on the penalty proposed. The enquiry report was also served upon him. The petitioner gave his reply by a letter dated October 11, 2022. The Executive Council, however, after considering his reply confirmed the proposed punishment.

6. To assail the impugned disciplinary proceedings, the petitioner by filing a written note of arguments has submitted that the enquiry process lacked fundamental fairness. The petitioner emphasises that despite seeking information on the procedure of the enquiry, nothing was provided. The enquiry itself was conducted hastily within a single day, preventing the petitioner from cross-examining prosecution witnesses, violating the established legal principles. In support of such submission, the petitioner has relied upon the judgment reported at **AIR 1963 SC 1914 (*Sur Enamel and Stamping Works Ltd. v. Workmen*)**.

7. The petitioner further argues that the enquiry report is without any evidentiary support, comprising only the narrative of the alleged facts. Out of the nine pages, only one contains the purported findings, which are not

substantiated by evidence. This lack of correlation between evidence and charges undermines the credibility of the entire report.

8. The petitioner also highlights a failure in the report to address the reasons behind accepting the case presented in the charge sheet over the petitioner's defence. The findings seem to rely solely on the subjective opinion of the enquiry committee without providing a reasoned explanation. To buttress his argument, the petitioner relies upon the judgment reported at **(1985) 3 SCC 378 (*Anil Kumar v. Presiding Officer*)**.

9. The petitioner contends that an essential aspect raised by the petitioner, namely resigning under extreme duress following directions from the Vice Chancellor, has been overlooked by both the enquiry committee and the disciplinary authority. The failure to consider this crucial factor demonstrates a lapse in assessing all relevant factors.

10. The petitioner argues that the resignation, made under extreme stress, cannot be construed as a voluntary act. Additionally, the enquiry report, while acknowledging the petitioner's diligent performance, fails to consider the challenging circumstances, including confidential information about potential harm from agitating students.

11. Furthermore, the petitioner points to the resignation of the Registrar of the university, shortly after issuing the charge sheet, as evidence of the gravity of the situation.

12. The petitioner asserts that the entire proceedings were tainted by bias and pre-determination by placing reliance upon the judgment reported at **(2010) 13 SCC 427 (Oryx Fisheries Private Limited v. Union of India)**.

13. Lastly, the petitioner argues that the imposed penalty of debarment from administrative responsibilities and membership of statutory bodies exceeds the jurisdiction of the disciplinary authority. Reliance has been placed upon the judgment reported at **(2012) 5 SCC 242 (Vijay Singh v. State of Uttar Pradesh)** in this regard.

14. Per contra, the university submits that the petitioner, acknowledging a prolonged history of hypertension spanning over 15 years, resigned from the post of Proctor. This decision was accompanied by an apology for any inconvenience caused to the university administration.

15. The university suggests that Proctor is a statutory post and represents the face of the administration to the students. The presence of the Proctor was most needed to pacify the agitating students and the petitioner as a Proctor was the best possible person to represent the management in the given situation.

16. The incompetence and lack of will to perform the duty of a statutory post stood admitted by the petitioner from the reply to the show-cause notice and the reply to the charge-sheet given by the petitioner.

17. It is argued that the purpose of the enquiry was to establish a connection between the charge and the findings. The petitioner's admission obviated the need for further evidence. The university highlights the petitioner's failure to provide any medical documentation justifying his absence.

18. The university submits that the petitioner could not demonstrate what different outcome or result would have yielded, if a full-fledged enquiry had been conducted given the admission made by the petitioner. The university has placed reliance upon a judgment reported at **AIR 1996 SC 1669 (State Bank of Patiala v. S.K. Sharma)**.

19. The university argues that the second part of the impugned order of punishment does not affect any of the petitioner's rights or conditions of service.

20. After considering the respective arguments of the parties, I am unable to endorse the punitive measures imposed upon the petitioner.

21. The procedure adopted by the enquiry committee was fundamentally flawed. The article of charge framed against the petitioner alleged that the act of the petitioner was regarded as "misconduct in terms of CCS(CCA) Rules and provisions of Visva-Bharati Act, 1951 and Statutes made thereunder."

22. It is crucial to note that the Executive Council of the university in its meeting dated February 18, 2007, resolved, inter alia, as follows:

“Resolution

Resolved that the Executive Council (Karma-Samity), delegates its power to take disciplinary action against any Adhyapakas and other members of the Academic staffs and the officers belonging to the grades above the Deputy Registrars and Equivalent, in terms of the Act and Statutes of the University and an Ordinance to be prepared for the said purpose accordingly.

Resolved further, that pending passing of the Ordinance, the Vice-Chancellor be delegated the power and authority to act as the Disciplinary Authority in respect of Adhyapaka and other Members of the Academic staff and also in respect of officers belonging to the Grades Deputy Registrars and above and be authorized to proceed with the disciplinary process in terms of the Act/Statutes/Ordinance of the University and the Rules of Government of India subject to report to the Karma-Samity (Executive Council) in due course.”

23. The university should have conducted to enquiry in terms of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short, CCS (CCA) Rules) given the absence of provisions in the Visva-Bharati Act, 1951 or the Rules framed thereunder, for conducting a disciplinary proceeding against a teacher of the university. There has been, however, no compliance with the CCS(CCA) Rules in conducting the disciplinary proceedings.

24. There was no prosecution witness before the enquiry committee to prove the charge against the petitioner. There was no examination or cross-

examination of any prosecution witnesses in the course of the enquiry. Only the petitioner was allowed to depose before the committee. The enquiry committee relied upon only some documents and the response of the petitioner against the disciplinary proceedings.

25. It does not appear that the enquiry committee or the disciplinary authority made any attempt to appreciate the justification offered by the petitioner for not meeting the agitating students on March 3, 2022. The university has not disputed that after the students' agitation started on February 28, 2022, the petitioner attended a meeting with all Heads, Principals and Directors of the university, reported in detail about the hostel matters, and provided his suggestions. He was also present in the meeting held on 1st and 2nd March 2022, with the Principal and Directors.

26. Admittedly, on March 3, 2022, the petitioner received a phone call from the Vice-Chancellor and Registrar of the university to meet the agitating students. The petitioner did not comply with such a request citing his health reasons and security concerns.

27. The petitioner in his reply to the show-cause letter dated March 5, 2022, suggested that he had received confidential information that he would be gheraoed by the students for an indefinite period. The petitioner also suggested before the enquiry committee that he resigned from the post of Proctor as asked by the Vice-Chancellor.

28. In my assessment, the situation at the university premises on March 3, 2022, escalated significantly. The decision not to meet the agitating students on that particular day cannot *per se* be termed as an act of dereliction of duty or avoidance of responsibility. The presence of the petitioner at the spot of agitation might have exacerbated the situation leading to an untoward irreversible outcome. It is conspicuous that no attempt was made by the enquiry committee to examine the justification proffered by the petitioner for his refusal to meet the agitating students on that date. The proper course of action for the enquiry committee and the disciplinary authority should have been to delve into the justification of such conduct. Their failure to undertake this endeavour demonstrates a misdirection in the disciplinary proceedings. The petitioner admitted to the alleged act, but it is imperative to note that the said act by itself does not constitute misconduct.

29. In view of the aforesaid discussions, the disciplinary proceedings initiated against the petitioner and the impugned order of punishment dated September 29, 2022, are hereby set aside. The petitioner shall be refunded the amount, if any, deducted from his salary following the impugned punishment together with 8% interest per annum within a period of one month from the date of communication of the judgment.

30. Accordingly, W.P.A. No.28870 of 2022 is allowed.

31. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)