

Calcutta High Court

HON'BLE JUDGE(S): SAUGATA BHATTACHARYYA , J

MANAS MAITY V. VISVA-BHARATI

W.P.A. - 16662 of 2022, decided on 13/12/2022

Visva-Bharati Act (29 of 1951) , S.38A— Suspension - Validity - Post of Adhyapaka - Vice- chancellor suspended petitioner without waiting for decision of Executive Council and without intimating any formal disciplinary proceedings intimated Dept. that petitioner was involved in activities vitiating academic environment of University - It corroborates mala fide on part of Vice-Chancellor - Order of suspension, set aside.

(Para 11, 12)

Name of Advocates

Samim Ahammed, Arka Maiti, Gulsanwara Pervin, Ambiya Khatun for Petitioner;
Pranit Bag, Anuj Kr. Mishra for Respondent.

1. **ORDER:-**Affidavit-in-reply filed by the petitioner is taken on record.
2. This writ petition has been presented, inter alia, questioning the communication dated 4th May, 2022, annexure P6 to this writ petition, whereby the petitioner has been placed under suspension by the Vice- Chancellor of Visva-Bharati which was communicated by the Registrar (Acting) of the said University. The issue of suspension order against the petitioner was considered in details at the motion stage of this writ petition and this Court by passing order dated 30th August, 2022 stayed such communication dated 4th May, 2022 whereby petitioner was placed under suspension till 23rd December, 2022. This Court by passing interim order dated 30th August, 2022 also directed the parties to exchange affidavits within certain time. Today, writ petition has come up for final consideration on exchange of pleadings.
3. Shorn off unnecessary details it appears that after placing the petitioner on suspension vide communication dated 4th May, 2022 the Vice-Chancellor by letter dated 17th May, 2022 communicated to the Department of Science and Technology (DST) that the petitioner was placed under suspension since he was found involved in activities vitiating the academic environment of the University. Subsequently, in the meeting of the Executive Council dated 31st May, 2022 the decision to suspend the petitioner was ratified by the Executive Council as it is required in terms of Section 38A of The Visva-Bharati Act of 1951.

4. On behalf of the petitioner it has been urged that such communication of the Vice-Chancellor dated 17th May, 2022 addressed to DST smacks of mala fide since on 17th May, 2022 the decision to place the petitioner under suspension was not ratified by the Executive Council and in the said communication it was intimated that petitioner was found involved in activities vitiating academic environment of the University. It has also been submitted that such intimation on involvement of the petitioner in vitiating academic atmosphere of the University could not have been made by the Vice-Chancellor without initiating and concluding disciplinary proceeding against the petitioner. On aforesaid ground the decision to place the petitioner under suspension has been questioned in the writ petition.

5. On behalf of Visva-Bharati a preliminary point was taken at the motion stage that if the petitioner was aggrieved by the decision of Visva-Bharati in placing him under suspension in terms of Section 38A (4) of the said Act of 1951 appropriate course was left open to the petitioner is to prefer appeal before the Executive Council and writ petition was not maintainable.

6. This Court finally decided this preliminary issue of maintainability of the writ petition in view of appeal provision as contained in Section 38A (4) in favour of the petitioner and has already held that in view of decision of the Executive Council ratifying the decision of the Vice-Chancellor to place the petitioner under suspension; Executive Council specially, in the present case, ought not function as appellate authority.

7. Today, it has been submitted there is no major alteration of position relating to the issue involved in this writ petition save and except issuance of charge-sheet by the concerned authority of Visva-Bharati dated 2nd September, 2022 against the petitioner and it has been submitted by the learned advocate representing the respondent that there has been formal initiation of disciplinary proceeding against the petitioner.

8. In this writ petition the scrutiny of the Court is confined to the validity and legality of the decision of the Vice-Chancellor to place the petitioner under suspension not the disciplinary proceeding which has been initiated against the petitioner on issuance of charge-sheet dated 2nd September, 2022.

9. As it has already been decided in the order dated 30th August, 2022 passed by this Court that there has been departure on the part of the Vice-Chancellor

while forwarding communication dated 17th May, 2022 to DST stating the petitioner was found involved in vitiating academic atmosphere of the University, it appears to this Court that such communication ought not to have been made by the Vice-Chancellor without initiating and concluding disciplinary proceeding against the petitioner that too prior to the decision taken by the Executive Council in terms of Section 38A of the said Act of 1951.

10. It has been apprised by the learned advocate representing the Visva-Bharati that such communication dated 17th May, 2022 of the Vice-Chancellor has already been set aside vide order dated 13th July, 2022 passed by a coordinate Bench on the writ petition being WPA 11522 of 2021. It has also been urged that since the said communication dated 17th May, 2022 has already been interfered with by the coordinate Bench the same communication may not be relied upon while deciding the issue involved in this writ petition.

11. This Court has perused the order dated 13th July, 2022 passed by the coordinate Bench and relevant part of the said order runs infra:-

"W.P.A. 11522 of 2021 and CAN 2 of 2022 are accordingly allowed and disposed of by restraining the Department of Science and Technology from taking any prejudicial steps against the petitioner in terms of letter of 7th July, 2022 or the letter written by the Vice-Chancellor of Visva-Bharati on 17th May, 2022."

In consideration of the order of the coordinate Bench dated 13th July, 2022 it can safely be concluded that the communication of the Vice-Chancellor dated 17th May, 2022 was not set aside but the Department of Science and Technology (DST) was directed not to take any prejudicial steps against the petitioner based on such communication. However, the contents of the said communication dated 17th May, 2022 remains wherefrom it can be inferred that the Vice-Chancellor without waiting for the decision to be taken by the Executive Council in terms of Section 38A (4) and without initiating any formal disciplinary proceeding intimated the DST that the petitioner was involved in activities vitiating the academic environment of the University which corroborates mala fide on the part of the Vice-Chancellor as submitted on behalf of the petitioner.

12. Accordingly, the decision to place the petitioner under suspension vide communication dated 4th May, 2022 of the Registrar (Acting) Visva-Bharati stands set aside. Petitioner shall be allowed by the concerned authority of Visva-

Bharati to function as the Professor of Physics without any hindrance.

13. However, it is made clear that this Court has not examined disciplinary proceeding which has been initiated against the petitioner by Visva-Bharati based on issuance of charge sheet dated 2nd September, 2022.

14. Other prayers couched in the writ petition are not delved into by this Court while deciding the issue of suspension of the petitioner.

15. Accordingly, the writ petition stands allowed and disposed of. However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

Petition Allowed