

(2007) 03 CAL CK 0003
Calcutta High Court
Case No: MAT No. 4200 of 2006

Rabin Barman

APPELLANT

Vs

National Institute of
Homoeopathy and
Others

RESPONDENT

Date of Decision: March 21, 2007

Acts Referred:

- Central Civil Services (Conduct) Rules, 1964 - Rule 3(1)

Citation: (2007) 4 CHN 926

Hon'ble Judges: Pinaki Chandra Ghose, J; Biswanath Somadder, J

Bench: Division Bench

Advocate: Kalyan Kumar Bandopadhyay and Debashish Saha, for the Appellant; S.K. Kapoor, Achinta Banerjee, Probal Kumar Mukherjee and D.P. Chakraborty, for the Respondent

Final Decision: Dismissed

Judgement

Pinaki Chandra Ghose, J.

This appeal has been filed challenging the judgment and order dated 25th September, 2006 passed by the Hon"ble Single Judge whereby His Lordship was pleased to dismiss the writ application.

2. The writ petitioner/appellant herein challenged the legality and validity of the chargesheet issued on 4th June, 2003 to the writ petitioner. This Hon"ble First Court at the time of moving the said writ petition on 9th September, 2005 gave liberty to the respondent authorities to proceed with enquiry proceedings and further to pass a final order, but that order should not be given effect to without the leave of the Hon"ble Court.

3. After conclusion of such enquiry proceedings, a leave was prayed in the said writ petition to give effect to the final order dated 30th January, 2006 passed by the

authorities in the disciplinary proceedings against the writ petitioner/appellant herein. The said application was heard out before the Hon"ble Single Judge on 18th September, 2006 and His Lordship by a judgment/ order dated 25th September, 2006 dismissed the said writ petition and granted leave to the respondents to give effect to the final order so passed by the respondent authorities on 30th January, 2006.

Hence, the appeal was filed by the appellant/writ petitioner.

4. It appears from the facts of the case that an interview letter was issued to the writ petitioner/appellant by the concerned authorities, that is, National Institute of Homoeopathy (hereinafter referred to as the said Institute) for the post of Assistant Professor.

5. Thereafter, on 9th February, 1993, an appointment letter was issued in favour of writ petitioner to join in the post of Assistant Professor in the said institute. On 11th February, 1993, the writ petitioner joined the said institute. On 25th August, 1995, the writ petitioner received the suspension letter issued by the Director of the said institute.

6. The facts as it has been made out in the writ petition that on 15th June, 1991, the said institute published an advertisement in the newspaper for filling up of the nine posts of assistant Professors in the said institute. The essential qualification was specifically mentioned in the said advertisement. It was mentioned that a candidate must possess a recognized degree or equivalent qualification in Homoeopathy obtained after undergoing regular course in the regular institution of at least 4 years duration and further the applicant should have three years teaching experience in the concerned subject as Lecturer/ Tutor/Demonstrator in a recognized Homoeopathic Medical College.

7. Pursuant to the said advertisement the writ petitioner/appellant duly applied for the post and thereafter by a memorandum dated 4/9.2.1993 an offer of appointment was made to the writ petitioner/appellant for filling up of the post of Assistant Professor on ad hoc basis in the pay scale of Rs. 2200/---- 4000/-. The writ petitioner/appellant joined the said post on 11th February, 1993 and after a period of two and half years, he received an order dated 25th August, 1995 whereby and whereunder he was declared to be under suspension.

8. It further appears from the facts that the order of suspension was revoked by an order dated 25th April, 2001 with a remark that the same was being revoked pending disciplinary proceedings as would be decided later by the disciplinary authority. Two years thereafter, i.e., on 4th June, 2002 the respondent authorities further issued the memorandum bearing No. A-32016/ 2/NIH/RB/98/401 dated 4th June, 2003, being the impugned chargesheet. It is evident from the facts that the respondent authorities proceeded to hold the disciplinary proceedings on the following charges:

(a) In the attestation forms submitted by the writ petitioner/appellant while joining the said post, he did not mention about his previous employment which prompted an enquiry about the actual experience as claimed by the writ petitioner/appellant. It further appears that on the basis of such enquiry the Birbhum Vivekananda Homoeopathic Medical College and Hospital, Birbhum, West Bengal replied on verification of their records, Dr. Rabin Barman (the writ petitioner/appellant herein) was neither a Lecturer nor attached to their institution by any means since inception of that college.

(b) Kharagpur Homoeopathic Medical College and Hospital, Kharagpur, West Bengal replied that the records of their institution do not permit such verification. Consequently, the respondents were of the opinion that these amounts to suppression of material facts and information and also by submission of false information of his initial appointment, he had shown lack of absolute integrity and acted in a manner unbecoming of a Government servant in gross violation of the provisions of Rule 3(1)(i) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964 as applicable to the said institute, Kolkata.

(c) It further appears from Annexure 2 of the said memorandum, so far the colleges are concerned and so far the certificates have also been furnished by the writ petitioner/appellant, on verification of some colleges, have specifically stated that the writ petitioner/appellant was found to be neither a Lecturer, nor attached to their Institution and some of the colleges either did not respond or even if they did they stated that their institution did not permit such verifications.

9. Mr. Kalyan Kumar Bandopadhyay, learned Senior Advocate appearing in support of the writ petitioner submitted that the respondent although received the reply from Birbhum Vivekananda Homoeopathic Medical College and Hospital, Birbhum, West Bengal on 23rd July, 1994, they did not take any steps in the matter and after nine years the charges were issued only on 4th June, 2003.

10. According to Mr. Bandopadhyay such gross delay without any explanation would vitiate the entire proceedings. He further contended that no reasons have been given in the chargesheet also and he relied upon a decision reported in [State of Andhra Pradesh Vs. N. Radhakishan](#), and submitted that the disciplinary proceedings should be terminated after a long delay. He also relied upon other decisions reported in [P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board](#), ; [M.V. Bijlani Vs. Union of India \(UOI\) and Others](#), and [Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others](#), and submitted that the Enquiry Officer is not permitted to collect any material from outside source.

11. On the contrary, Mr. S.K. Kapoor, learned Senior Advocate appearing on behalf of the respondent authorities pointed out that it is the duty of the writ petitioner/appellant to post with the facts at the time of his appointment in the said institute.

12. Mr. Kapoor drew our attention to the affidavit-in-opposition mentioning paragraph 4(XII). He also drew our attention to the affidavit-in-opposition, paragraph 4(XXVIII) where it has been specifically stated that whenever it is found that a Government servant was not qualified or eligible for initial recruitment in service or had furnished false certificate in order to secure appointment, he should not be retained in service any more.

In the instant case, the writ petitioner/appellant suppressed the material facts from the institute and further from this Hon"ble Court.

13. Mr. Kapoor further drew our attention to the reply to the chargesheet which is appearing at page 75 of the paper book and after perusing the same, it appears to us that the writ petitioner/appellant has already been admitted that he was never appointed as Lecturer in the Dr. N. K. M. B. Homoeopathic Medical College & Hospital since he has specifically stated that he was only called to deliver lecture in that college and so far B.V. Homoeopathic Medical College is concerned, he admitted that at the request of Dr. A. Bose, he used to deliver lectures to the students of the said college. So far the appointment of the Lecturer at the Kharagpur Homoeopathic Medical College is concerned, he admitted that he used to serve as a voluntary lecturer for three years in the said college.

Therefore, Mr. Kapoor further submitted before us that nowhere Dr. Barman has served as a Lecturer or he could produce any such appointment letter as such a Lecturer in the said colleges. Therefore, from the said reply it would reveal that at no point of time he has ever served as such Lecturer.

14. Mr. Kapoor further drew our attention to the attestation form signed by the writ petitioner/appellant on which it appears that furnishing of any false information or suppression of any factual information in the attestation form would be a disqualification and is legally to render the candidate unfit for employment under the Government.

Mr. Kapoor further drew our attention to the fact that the writ petitioner/ appellant tried to evade service of the letter issued by the authorities which would be evident from the envelope where it has been specifically stated as "not claimed" which is posted on 13th January presented on 15th and then on 22nd January, 2005 where it has been specifically stated not claimed.

15. Hence, on the ground of delay, Mr. Kapoor relied upon in an unreported decision of this High Court in the case of MAT No. 938 of 2005 (National Institute of Homoeopathy v. A K. Das) and submitted that there is no pleading regarding the prejudice suffered by the delinquent/the writ petitioner. The writ petitioner/appellant cannot be prejudiced for the delay, neither the prejudice was pleaded nor it is argued before the Hon"ble First Court. Hence, he submitted that Mr. Bandopadhyay's submission the delay vitiates the chargesheet cannot be accepted.

16. Mr. Kapoor further drew our attention to paragraph 29 of the said decision where the Hon"ble Division Bench held that mere delay in initiating proceedings would not vitiate the enquiry unless the delay results in everyday's delay to the delinquent officer. He drew our attention to paragraph 30 of the said decision and contended that the delay was not a ground to quash the proceedings and submitted that the suspension having been revoked only on 25th April, 2001 with a clear indication that the revocation was being made during the pendency of the disciplinary proceedings which could be decided later on by the disciplinary authority read with the order of suspension informing that the disciplinary proceedings were pending against the petitioner and the chargesheet having been issued on 4th June, 2003, it cannot be said that this is one of those cases where the delay is unexplained. Hence, he submitted that the delay, if there is any, has already been explained.

17. We have heard the learned Senior Advocates for the parties, after analyzing the facts of the case it appears to us that the appellant did not even fulfill the criteria for appointment in the said post.

18. The point which has been taken by Mr. Bandopadhyay assailing the decision of the Hon"ble First Court that the delay vitiates the chargesheet and/ or proceedings, we are unable to hold the same and we are in agreement with the Hon"ble First Court that in the facts and circumstances of this case it cannot be said that the delay has not been explained by the respondent authorities and, in our opinion, delay has properly been explained in this matter.

19. Mr. Bandopadhyay further submitted that the enquiry report is irregular and in violation of principles of natural justice and the same is illegal and arbitrary. The said enquiry report was placed by way of supplementary affidavit. The plea that the enquiry was not conducted properly and without any evidence also cannot be accepted since he himself admitted the charges in his reply. Therefore, it should be set aside.

20. It would be evident from the reply that the writ petitioner/appellant has admitted the fact that he did not have the requisite teaching experience of three years as Lecturer/Tutor/Demonstrator in any recognized Homoeopathic College and he admitted that he was only called to deliver lectures in those colleges and it is sure that calling upon him to deliver lectures cannot make him a Lecturer of a college or can fulfill the criteria of essential qualification as required for such appointment.

21. We have also considered all the material facts as placed before us and after perusing those in this case it appears to us that the Hon"ble First Court correctly held that the writ petitioner/appellant cannot be stated to be an eligible candidate for the post as advertised by the said institute and after perusing the judgment and order delivered by the Hon"ble First Court and the decisions cited before us at the Bar and after analyzing all those, we do not find any infirmity or irregularity with the

decision of the Hon"ble First Court. Accordingly, we affirm the said decision of the Hon"ble First Court.

22. For the reasons stated hereinabove, we dismiss this appeal and the stay petition. Hence, the appeal is dismissed however, without any costs.

Biswanath Somadder, J.

23. I agree.