

**HIGH COURT OF TRIPURA
AGARTALA**

WA No. 17 of 2024

Rajesh Das,

..... Appellant(s)

V E R S U S

1. Society for Tripura Medical College
& Dr. B.R. Ambedkar Memorial Teaching Hospital,
2. The Chairman (Appellate Authority),
Society for Tripura Medical College
& Dr. B.R. Ambedkar Memorial Teaching
3. The Chief Executive Officer (Disciplinary Authority),
Society for Tripura Medical College & Dr. B.R.
Ambedkar Memorial Teaching Hospital, Hapania,
4. Sri Narayan Debbarma (Inquiring Authority),
General Manager (H/R), Society for Tripura
Medical College & Dr. B.R/ Ambedkar Memorial

..... Respondent(s)

For Appellant(s) : Mr. P Roy Barman, Sr. Advocate.
Mr. K Nath, Adv.

For Respondent(s) : Mr. SS Dey, Sr. Advocate.
Mr. D Bhattacharjee, Sr. Advocate.
Mr. A Saha, Advocate.
Ms. A Chakraborty, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

JUDGMENT & ORDER (ORAL)

19/03/2024

Heard Mr. P Roy Baman, learned senior counsel assisted by Mr. K Nath, learned counsel appearing for the petitioner-appellant as well as Mr. SS Dey, learned Sr. Counsel assisted by Ms A Chakraborty, learned counsel and

Mr. D Bhattacharjee, learned Sr. Counsel assisted by Mr. A Saha, learned counsel appearing for the respondents No. 1, 2 & 3.

2. The learned writ court by the impugned order dated 12th February, 2024 set aside the order of dismissal of the petitioner dated 28th April, 2023 and directed the respondent employer to start the proceeding from the stage of evidence, as it was of the view that the petitioner had been dismissed from the service on the basis of the statements he made in his written statement.

3. Before us the appellant is aggrieved as there is no direction for reinstatement pending fresh departmental enquiry from the stage of evidence.

4. On the part of the appellant, learned senior counsel, Mr. P Roy Barman, submits that as per Articles of Charges No. I, II & III as per Memorandum dated 30th December, 2020, the petitioner was charged with criticizing the respondent-Society through his social media accounts i.e. Twitter handle relentlessly and had also indulged in indiscipline to disturb normal functioning of the Society. He was alleged to be involved in activities which were detrimental to the interest of the Society by posting offensive posts on his social media account criticizing the functioning the society though being an employee of the Society. He was also alleged to have left his work place during working hours without permission of his Controlling Authority and as such, was liable for indisciplined behaviour.

5. Earlier, writ petitioner had approached this court in WP(C) No.700/2021, being aggrieved by the issuance of the memorandum of the charges. The learned writ court vide order dated 10th January, 2022 directed the Disciplinary Authority to take a fresh look in the objections raised by the

petitioner by way of his representation dated 26th August, 2021. If it was found that the FaceBook post, which is the source of Disciplinary Proceeding, has in any way, directly or indirectly criticized the appointment of the respondent No.3, the principle of fairness would warrant removal of respondent No.3. Else he should be allowed to continue as the Inquiry Officer. Pursuant thereto, the Inquiry Officer was changed vide Order dated 21st January, 2022.

6. Learned counsel for the petitioner submits that though the petitioner denied having any Twitter handle ID to post such comments and refuted the charges under Article 'I' as baseless but without properly adducing the offending posts as evidence in the Disciplinary Proceeding, the Inquiry Officer proceeded to hold him guilty. His written statement of defence is at Annexure-12 at page 88. He has also referred to the rebuttal of his defence statement reflected in the inquiry report as contained in the second show cause notice vide memorandum dated 21st March, 2023 (Annexure-13) wherein the inquiry officer has categorically stated that the AO was denying uploading of any FB or Twitter postings concerning the internal affairs of TMC as charged by the Disciplinary Authority.

7. It is submitted that the petitioner had also taken a plea of Right to Freedom of Speech and Expression under Article 19(1)(a) of the Constitution of India to criticize the follies of the management. As such, the learned Writ Court found that the impugned order of dismissal was passed only on the basis of his defence statement. However, the learned Writ Court while setting aside the order of dismissal did not issue any direction for consequential relief, i.e. reinstatement in service pending departmental inquiry.

8. Learned senior counsel for the petitioner has placed reliance on para 31 of the Constitution Bench judgment rendered by the Apex court in the case of *Managing Director, ECIL, Hyderabad & Ors. vs. B. Karunakar & Ors.* reported in (1993) 4 SCC 727. He submits that in such a case when the dismissal has been set aside on account of violation of principles of natural justice in conduct of Disciplinary Inquiry the proper course for any court or tribunal is to direct restatement of the delinquent during the period of departmental enquiry though the question of back wages etc. would arise only on conclusion of the fresh inquiry. As such, the impugned order may be interfered to that extent.

9. Learned senior counsel for the respondents, Mr. SS Dey submits that the inquiry proceedings have been conducted in a proper manner after due opportunity to the petitioner to submit his defence statement and after service of the inquiry report along with the second show cause notice whereby the punishment of termination from service was proposed. As such, the learned Writ Court was not right in setting aside the penalty of dismissal from service and directing fresh inquiry to restart the proceedings from the stage of evidence.

10. He has also countenanced the plea of reinstatement pending Departmental inquiry raised by the appellant. He has also referred to the same decision of the Apex court in the case of *B Karunakar (supra)*. He submits that para 31 of the report which contains the opinion of the three judges comprising the majority do not specifically convey that reinstatement is automatic. If the observations of the Apex court at para 31 are looked into in detail, the order of punishment in this case has not been set aside on non-

service of inquiry report, as was the case therein. The order of termination had been set aside to restart the disciplinary inquiry from the stage of evidence, as according to the learned Writ Court, the punishment was based only on the defence statement of the delinquent, which finding is not correct.

11. We have considered the submissions of the learned counsel for the parties and taken note of the relevant materials placed on record as referred to hereinabove. We have also taken note of the decisions cited by both the parties in the case of *Managing Director, ECIL, Hyderabad & Ors. vs. B. Karunakar & Ors.* reported in (1993) 4 SCC 72, para 31 thereof.

12. In the present case, the order of termination has been set aside by the learned Writ Court being persuaded by the plea that the findings of the inquiry officer suffered from violation of principles of natural justice as the Presenting Officer had not established the charges by adducing evidence of such offending social media posts alleged to have been posted by the delinquent employee. Instead, though the delinquent employee had denied that he had no Twitter handle ID and that the posts were not from his mobile either but the Inquiry Officer proceeded to hold the charges established. As such, the penalty imposed upon the petitioner was only on the basis of his defence statement.

13. The petitioner, however, is aggrieved by the impugned order only to the extent that despite setting aside of the order of dismissal the learned Writ Court did not direct reinstatement pending departmental inquiry. Though reliance had been placed on para 31 of the Constitution Bench judgment of the Apex Court on such plea but on a reading of the said judgment and as has been considered and interpreted in subsequent decisions of the Apex Court, we are

of the view that the plea of the petitioner for automatic reinstatement upon setting aside of the dismissal order is not tenable. This view finds further support from the subsequent decisions rendered by the Apex Court such as *Union of India Vs. YS Sadhu, Ex-Inspector* reported in (2008) 12 SCC 30 (para 3&7), *Chairman, Life Insurance Corporation of India and Ors. Vs. A. Masilamani* reported in (2013) 6 SCC 530 (Para 16 & 17) and *State of Uttar Pradesh & Ors. Vs. Rajit Singh*, reported in (2022) 15 SCC 254 (para 12-14) wherein the Apex Court after noticing the Constitution Bench decision in the case of *B Karunakar* (supra) had occasion to hold that once the court sets aside an order of punishment, on the ground that the inquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the Disciplinary Authority for it to conduct inquiry from the point that it stood vitiated and conclude the same. As such, we are unable to accept the plea raised by the writ petitioner/appellant that the learned Writ Court ought to have directed his reinstatement after setting aside the order of dismissal.

14. However, we find that while directing the respondent-Disciplinary Authority to restart the proceedings from the stage of evidence, the learned Writ Court has not stipulated that it should be concluded in a time bound manner. In such circumstances, we direct that the Disciplinary Proceedings be concluded within a reasonable time, preferably within three months from the date of receipt of copy of this order, also for the reason that the petitioner is out of service. However, it is also indicated that in case the petitioner does not cooperate in the proceedings, the Disciplinary Authority would be free to conclude it, in accordance with law, within the time frame.

15. The instant appeal is disposed of with the aforesaid modification(s) in the impugned order. Pending application(s), if any, also stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

HIGH COURT OF TRIPURA



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