

**HIGH COURT OF TRIPURA  
AGARTALA**

**W.A. No.194/2019**

1. The Tripura University, represented by its Registrar, Tripura University, Suryamani Nagar, P.O. – Suryamani Nagar, District – West Tripura, Pin – 799002.
2. The Vice-Chancellor cum the Chairman, Discipline Committee, Tripura University, Suryamani Nagar, P.O. – Suryamani Nagar, District – West Tripura, Pin – 799002.
3. The Pro-Vice-Chancellor cum the Member, Discipline Committee, Tripura University, Suryamani Nagar, P.O. – Suryamani Nagar, District – West Tripura, Pin – 799002.
4. The Dean of Arts & Commerce cum the Member, Discipline Committee, Tripura University, Suryamani Nagar, P.O. – Suryamani Nagar, District – West Tripura, Pin – 799002.
5. The Dean of Science cum the Member, Discipline Committee, Tripura University, Suryamani Nagar, P.O. – Suryamani Nagar, District – West Tripura, Pin – 799002.
6. The Controller of Examination cum the Member, Discipline Committee, Tripura University, Suryamani Nagar, P.O. – Suryamani Nagar, District – West Tripura, Pin – 799002.
7. The Member Secretary & Director, CDC, Tripura University, Suryamani Nagar, P.O. – Suryamani Nagar, District – West Tripura, Pin – 799002.

.....Appellant(s)

Versus

1. Shri Prakash Chandra Biswas,  
S/o. Sri Binod Behari Biswas, resident of Quarters No.102,  
(Udaipur District Jail Complex), P.O. & P.S. – Radhakishorepur,  
District – Gomati, Pin – 799120.
2. Prof, Satyadeo Podder, Coordinator of Ph.D Course Work  
Examination, 2014 for Social Science Subject,  
Tripura University, Suryamani Nagar,  
P.O. – Suryamani Nagar, District – West Tripura,  
Pin – 799002.
3. Dr. Manishankar Mishra, Asst. Professor,  
Department of History, Tripura University,  
Suryamani Nagar, P.O. – Suryamani Nagar,  
District – West Tripura, Pin – 799002.

.....Respondent(s)

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For Appellant(s) : Mr. Raju Datta, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharjee, GA.  
Mr. Prakash Chandra Biswas,  
(Respondent No.1-in-person)

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**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**  
**HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

Date of hearing : 08.12.2020.

Date of delivery of Judgment & order : 5.1.2021.

Whether fit for reporting : No.

**JUDGMENT & ORDER**

**(Akil Kureshi, CJ).**

This Appeal is filed by the Tripura University and its authorities original respondents No.1 to 7 (hereinafter to be referred to as 'the official

respondents’) to challenge the judgment dated 06.09.2018 passed by the learned Single Judge in W.P. (C) No.202 of 2014. The respondent No.1 herein was original petitioner. Respondents No.2 and 3 were original respondents No.8 and 9, who were the Coordinator of Ph. D Course Work Examination and Assistant Professor, Department of History of Tripura University respectively and who were joined as the respondents since the petitioner had made several allegations against them.

2. Brief facts are as under:

The petitioner was a Judicial Officer in the District Judiciary. In the year 2013, with the ‘No objection’ from the High Court, the petitioner joined Ph.D programme in Law with Tripura University as a part-time candidate. As part of the said course, the petitioner had to clear written examinations. On 19.02.2014, the petitioner appeared in Paper-III of Ph.D Course Work Examination, 2014. According to the University authorities, during such examination, the petitioner was caught red handed writing answers from a slip which he was carrying. This happened when Professor Satyadeo Poddar, the Coordinator of Examination, original respondent No.8 during his invigilating rounds, noticed the said malpractice being committed by the petitioner. This incident was followed by a Notice of Expulsion issued by the University on the same day. As a result, the petitioner was not allowed to appear in Paper-IV for which examination

was conducted on 21.02.2014. On account of the issuance of Expulsion Notice, the petitioner was placed under suspension on 20.02.2014.

3. The authorities issued a Notice on 03.04.2014 to the petitioner asking him to appear before the Disciplinary Committee of the Tripura University on 09.04.2014 in connection with the allegation of malpractice. On 03.04.2014, the petitioner was heard in person by the Disciplinary Committee which consisted of 5 members and was headed by Professor Anjan Kumar Ghosh, the Vice Chancellor, as the Chairman. The proceedings of the Disciplinary Committee read as under:

*“At the outset the Chairman of the Discipline Committee welcomed the members present and initiated discussion.*

*Sri Prakesh Chandra Biswas, (bearing Roll No.LA/Ph.D/M/04/14) who was expelled on 19<sup>th</sup> February, 2014 for adopting unfair means in the Ph.D Course Work Examination, 2014 appeared before the Discipline Committee.*

*The sealed Answer Script which was seized from Sri Prakesh Chandra Biswas was opened in front of the members of the Discipline Committee alongwith the Notice of expulsion issued by Prof. Satyadeo Podder, Coordinator. A strip/slip of paper was found attached with the Answer Script. It was reported by the invigilator (on the Answer script) that the candidate was found cheating and adopting unfair means in the Examination Hall by copying from the enclosed slip of paper and he was caught redhanded at about 2.30 pm on 19<sup>th</sup> February, 2014.*

*Then, opportunity was given to Sri Prakesh Chandra Biswas to give justification, if any, in his defence. Sri. Biswas expressed his views that*

- 1. Sri Biswas confessed that the Answer script shown to him was of him but the enclosed slip of paper was not him.*
- 2. The report of the Invigilator is totally false.*
- 3. He is a victim of some personal grudge of some person.*
- 4. Notice of Expulsion is not yet supplied to him.*
- 5. He also pointed out some mistakes in the Question paper.*
- 6. He informed the committee that on 19<sup>th</sup> February, 2014 Prof. Satyadeo Podder came to the Examination centre and started discussion with somebody in a very loud voice just in front of the said Examination Hall. He requested humbly to stop shouting in front of the Examination Hall. After that, Sri Manishankar Mishra, invigilator, came and snatched his Answer script, Question paper and left the hall.*
- 7. As a result of this Expulsion, his academic pursuit is being hampered, his social stands and reputation are also affected. False reports have been published in some daily news papers containing some false imputation against him.*
- 8. He humbly requests the authority to revoke the expulsion notice issued dated 19<sup>th</sup> February, 2014.*

*The Discipline Committee discussed at length and opined that the expulsion Notice issued on 19<sup>th</sup> February, 2014 stands valid and Sri Prakesh Chandra Biswas be debarred from appearing in the Ph. D Course Work Examination in any department of Tripura University for three years from 2014,*

*Meeting ended with a vote of thanks to the chair.”*

4. According to the petitioner, the entire action was baseless. On 19.02.2014, Professor Poddar was annoyed with the petitioner since the

petitioner had first pointed out certain incorrections in the question paper and thereafter, requested Professor Poddar to talk softly since Professor Poddar was talking very loudly which was disturbing the examinees. According to the petitioner, the Expulsion Notice dated 19.02.2014 was never served on him. No material was supplied to the petitioner about the alleged malpractice before or even during his appearance before the Disciplinary Committee. The petitioner, thereafter, had made a representation to the Vice Chancellor about the illegal action taken against him. Since there was no response, the petitioner filed the said petition.

5. The respondents filed a consolidated reply on behalf of official respondents as well as respondents No.8 and 9, who were joined in personal capacity. First objection taken was against entertainment of the petitioner on the ground of availability of alternative remedy. It was pointed out that in terms of Sections 37 and 38 of the Tripura University Act, 2006 ('the said Act', for short) any of its student or a candidate who is aggrieved by the decision of the Discipline Committee can appeal to the Executive Council. The petitioner had filed the Writ Petition without availing of such alternative remedy. The petition was also opposed on merits. It was pointed out that the petitioner was granted full opportunity to represent his case before the Disciplinary Committee. The petitioner was caught red handed copying from a slip he was carrying during the

examination. On account of such malpractice, was decided to debar the petitioner from appearing in Ph.D Course of Examination for a period of three years.

6. Before the learned Single Judge, on behalf of the petitioner, it was argued that the University had not followed the principles of natural justice before handing down the punishment to the petitioner. The Expulsion Notice was not served on the petitioner. No material was provided to enable the petitioner to defend himself before the Disciplinary Committee. It was contended that at the relevant time, Executive Council of the Tripura University was not in existence. It was argued that as per Section 47 of the Tripura University Act, 2006, the constitution of the Executive Council would remain valid for a period of three years. The last Executive Council was constituted on 21.01.2011. Thereafter, there was no reconstitution of the Executive Council. Upon completion of three years period, thus, at the relevant time, there was no validly constituted Executive Council in existence. It was under such circumstances, the petitioner had approached the High Court without appealing to the Executive Council. It was argued that the decision of the Executive Council was an unreasoned order.

7. On behalf of the University, in addition to taking the ground of availability of alternative remedy, the petition was opposed on merits. It

was contended that in the sphere of education, in relation to malpractices, the Court's interference would be minimum. It was pointed out that the Disciplinary Committee in its meeting dated 09.04.2014 had specifically recorded that the sealed answer script which was seized from the petitioner was opened in presence of the members of the Disciplinary Committee which also contained the Expulsion Notice issued by Professor Poddar and a strip/slip of paper which was found attached with the answer script.

8. The learned Single Judge by the impugned judgment allowed the petition and set aside the Resolution of the Discipline Committee dated 09.04.2014 as well as the Expulsion Notice issued by respondent No.8. The learned Judge was of the opinion that there was gross violation of principles of natural justice. It was therefore not necessary to relegate the petitioner to the alternative remedy. The learned Judge recorded that ordinarily correct course would be to remit the matter to the authorities for reconsideration by the Disciplinary Committee, however, in the meantime, the period for which the petitioner was debarred from appearing in the examination had already passed and therefore, if the matter was remitted, the petitioner would suffer gross prejudice. The relevant portion of the judgment of the learned Single Judge reads as under:

“31. This court has further observe that even there is no observation in the resolution dated 09.04.2014 (Annexure-6 to the writ petition) that the slip which was used against the petitioner is

relatable to any answer given by the petitioner. Moreover, there is no mark in the seized slip vouched by the Invigilator. Even though the petitioner has appeared before the Discipline Committee but the act of appearance itself cannot estop the petitioner from challenging the action of the Discipline Committee, which is tainted for non-observance of the Code and for violation of principles of natural justice.

32. So far the objections raised in respect of maintainability of the writ petition is concerned, this court is of the view that when the principles of natural justice are grossly violated in absence of any statutory rules and in view of the law enunciated in this regard this court would not entertain this objection in the circumstances of this case. The respondents even did not respond to the averments of the petitioner in the rejoinder that there was no existence of the Executive Council at the relevant point of time to prefer the appeal before it. Thus, the impugned decision dated 09.04.2014 contained in the resolution of the Disciplinary Committee (Annexure-6 to the writ petition) is set aside along with the order of the expulsion as issued by the respondent No.8. In the ordinary course, this court would have taken recourse of remitting the matter back for reconsideration by the Discipline Committee, but in the meanwhile more than three years, the period for which the petitioner had been debarred from appearing in the Ph.D. Course Work Examination, has elapsed and hence if the matter is remitted, the petitioner would suffer unfathomable prejudice.

33. In terms of what has been observed above, this writ petition stands allowed to the extent as indicated above.”

It is this decision the University has challenged in the present Appeal.

9. Having heard the counsel for the University and the petitioner in-person and having perused the material on record, it emerges that undisputedly, in terms of Sections 37 and 38 of the said Act against the decision of the Disciplinary Committee, the petitioner had a right of appeal which could be filed before the Executive Council. These Sections read as under:

*“37.(1) Any student or candidate for an examination whose name has been removed from the rolls of the University by the orders or resolution of the Vice-Chancellor, Discipline Committee or Examination Committee, as the case may be, and who has been debarred from appearing at the examinations of the University for more than one year, may, within ten days of the date of receipt of such orders or copy of such resolution by him, appeal to the Executive Council and the Executive Council may confirm, modify or reverse the decision of the Vice-Chancellor or the Committee, as the case may be.*

*(2) Any dispute arising out of any disciplinary action taken by the University against a student shall, at the request of such student, be referred to a Tribunal of Arbitration and the provisions of sub- sections (2), (3), (4) and (5) of section 36 shall, as far as may be, apply to a reference made under this sub- section.*

*38. Every employee or student of the University or of a College or Institution maintained by the University or admitted to its privileges shall, notwithstanding anything contained in this Act, have a right to appeal within such time as may be prescribed by the Statutes, to the Executive Council against the decision of any officer or authority of the University or of the Principal or the*

*management of any College or an Institutions, as the case may be, and thereupon the Executive Council may confirm, modify or reverse the decision appealed against.”*

10. Admittedly, the petitioner had not filed any such Appeal. In the petition, there was no explanation for not filing such an Appeal. It is in the rejoinder that the petitioner raised the ground of non-existence of a validly constituted Executive Council. As noted, the contention raised by the petitioner in this respect was that statutorily the validity of the Executive Council would be for a period of three years after its constitution. Since such Executive Council was last constituted in January, 2011 and after three years, no new Executive Council was constituted, there was no valid Executive Council in existence.

11. Firstly, such a contention was raised for the first time in the rejoinder. Secondly, whether upon completion of three years of period if no new Executive Council is constituted, the previous Executive Council would continue or not was the relevant question. Can there be a hiatus or a vacuum on account of non-reconstitution of the Executive Council or whether the period of its validity was directory and not mandatory are some of the questions which would eventually arise. More importantly, even if this ground of the petitioner raised in the rejoinder was to be

probed further, the further question would be whether subsequently, the Executive Council came to be reconstituted or not.

12. It is undoubtedly true that availability of alternative remedy is not a total bar on exercise of discretionary writ jurisdiction by the High Court. However, in matters of specialized fields such as education and when it comes to the question of maintaining discipline and elimination of malpractice, the consideration by the appellate forum at the first instance is always of considerable importance. The Courts normally, therefore, do not permit the aggrieved party to side step such alternative remedy and encourage excess to writ jurisdiction directly.

13. Breach of natural justice is certainly one of the grounds on which the High Court may be persuaded to permit a litigant to bypass the alternative remedy. However, the concept of natural justice is not static, nor can it be placed in a straight jacket. In the field of education and examination malpractices, the courts have recognized much greater latitude on part of the administration. The terms of requirements of natural justice therefore have to be viewed from the angle of the examination malpractice and cannot be put on the same pedestal as if the authorities were holding a disciplinary proceeding against the employee. These issues, therefore, had to be left to be judged by the appellate forum.

14. The learned Single Judge made a curious observation that in the Resolution dated 09.04.2014, it has not been recorded that “the slip which was used against the petitioner is rlatable to any answer given by the petitioner.” Even if an examinee is not caught copying from a slip containing answers to certain possible questions unauthorizedly carried by him in the examination hall, he cannot escape the allegation of malpractice. Malpractice related to examination cannot be stated to have been committed only when the examinee actually copies from the material he carried to the examination hall. Mere carrying of any material which contains answers to possible questions and which is impermissible, would itself be part of malpractice.

15. There is yet another important aspect of the matter. As correctly observed by the learned Single Judge and as is well settled through series of judgments of the Supreme Court, when an executive decision is set aside on the ground of breach of natural justice or any such technical ground, correct course would be to place back the entire issue at the stage where the defect is detected and allow the authority to proceed further from that stage onwards instead of permanently terminating the proceedings by setting aside the defective order. The learned Judge, however, did not adopt this course on the ground that the period of three years for which the petitioner was debarred from appearing in the

examination was already over. In the opinion of the learned Judge remanding the matter back to the Executive Committee would result into gross prejudice to the petitioner. In our opinion, the period of debarment was not the only point of consideration. Once such period was over, the direct effect of such debarment was already suffered by the petitioner. Despite which the petitioner pursued the cause and for good measure since the action taken by the University against the petitioner had another important angle of carrying the stigma. The petitioner as a doctoral student would carry a stigma of having been punished for examination malpractice. This would have other possible ramifications. By terminating the proceedings permanently the learned Single Judge gave clean cheat to the petitioner without following the full gamut. Even for this reason, we must interfere with the impugned decision.

16. In facts of the present case and in view of the discussion above, we are of the opinion that the petitioner must approach the appellate authority i.e. the Executive Council against the decision of the Disciplinary Committee. If the petitioner files such Appeal within a period of 30 days from today, such Appeal shall be decided on merits without reference to limitation. We are conscious that under sub-Section (1) of the Section 37 of the said Act, time permitted for filing such Appeal is 10 (ten) days from the date of the receipt of the resolution under challenge, nevertheless due

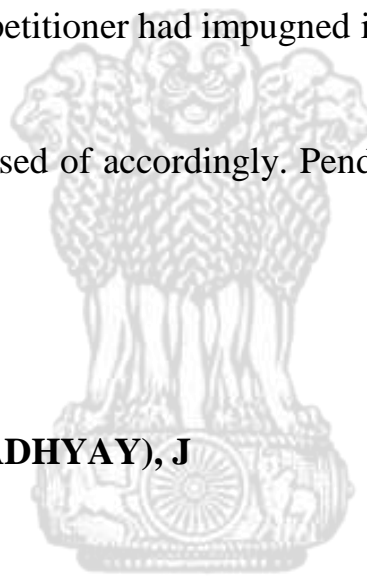
to long time gap in between, the petitioner may require additional time to collect full material for presenting the same before the appellate authority. Hence, this modification.

17. Before closing, we may observe that the Executive Council shall decide such Appeal without being influenced by any of the observations made by the learned Single Judge in the impugned judgment as well as by us in this Appeal since we have not made any final observations on merits in relation to the petitioner's challenge to the decision of the Executive Council which the petitioner had impugned in the petition.

18. Appeal disposed of accordingly. Pending application(s), if any, also stands disposed of.

**(S.G. CHATTOPADHYAY), J**

**(AKIL KURESHI), CJ**



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