

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

Present:

The Hon'ble Justice Jay Sengupta

**WPA 26374 of 2023
Soma Mukhopadhyay
Vs
State of West Bengal & Ors.**

With

**WPA 26362 of 2023
Anup Kumar Basu
Vs
State of West Bengal & Ors.**

For the petitioners : Mr. J. Sarkar
.....Advocate

**For the State in
WPA 26374 of 2023** : Mr. Amitava Chawdhuri,
Mr. Samrat Pal
.....Advocates

For the University of Calcutta : Mr. Nilotpal Chatterjee,
Mr. Satyaki Banerjee
.....Advocates

For respondent nos. 5 to 7 : Mr. Saptansu Basu, Sr. Adv.
Mr. Debjani Sengupta
Ms. Paulomi Ghosh
.....Advocates

For respondent nos. 8 & 9 : Mr. A.K. Routh
 Mr. Subhayan Barik
 Ms. Ananya Mondal
 Ms. Manishka Dhar
Advocates

Heard lastly on : 12.05.2026

Judgment on : 10.08.2026

Jay Sengupta, J:

1. These are applications, inter alia, challenging the notices issued by the Chairman of the purported Enquiry Committee and the statements of allegations purportedly issued by the Principal of the College to the petitioners requiring them to appear before a Preliminary Enquiry Committee to explain the charges. As there are certain common points of law and facts involved in the applications and the College is the same, the applications were taken up for hearing together.

2. Learned counsel appearing on behalf of the petitioners in WPA 26374 of 2023 and WPA 26362 of 2023 has submitted and has relied on the written notes as follows. The writ petitioners filed the instant writ petitions on or about 22.11.2023, in as much as the writ petitioners, at the fag end of their respective service careers, have been subjected to untold harassment and jeopardy at the instance of the Principal and other concerned respondent authorities. The crux of the matter is stated in a nutshell hereinbelow. The petitioners are professors/teachers in Bagnan College. The

petitioner Soma Mukhopadhyay also acted as a Teacher-in-Charge of the said college from July, 2012 till 09th May, 2015, that is, until the joining of the present Principal being the respondent no. 8 and 9 herein, Dr. Badal Kumar Maity. That the said principal soon after joining the said college, with an ulterior motive, filed a writ petition being WPA No. 7038 (W) of 2018, against the various authorities including the present petitioners and some other staff members. Be it mentioned that the writ petition was filed by the Principal in his personal capacity and without any permission of the college. A disciplinary proceeding was initiated against the said Principal of the college by way of issuing a chargesheet on 08.06.2020, containing total 15 numbers of charges therein. He was also suspended on and from 16.06.2020, from the said college. That the principal did not succeed or did not get any favourable result by way of filing the writ petition, being WPA No. 7038 (W) of 2018. On the other hand, he was suspended by the college authorities and/or the Governing body wherein the petitioners were also members. So, the said Principal in order to satisfy his grudge against the petitioners and some other teacher/staff members of the college also, purported to lodge a complaint before the Bagnan Police Station, being FIR Case No. 216 of 2020 dated 12.07.2020, under Sections 406, 408, 419, 425, 463, 464, 465, 468, 473, 202, 120B, 34 of the IPC. The said case was subsequently registered as GR Caser No. 1176 of 2022. The said Principal even went ahead by filing a writ petition alleging police in action pertaining to his said purported police complaint against the petitioners and some other staff members, being WPA No. 5757 of 2020. However, the concerned

police authorities investigated and submitted final report by discharging the petitioners from the said case due to lack of evidence. The said Principal again went ahead and filed “Naa-Raji petition” before the learned Trial Court where the police authority submitted their final report. On the other hand, the respondent no. 7 herein being the President of the Governing Body and who is a political person, exercised his influence and made the college authority to withdraw the suspension order as well as the charge sheet which was issued against the said Principal herein, as such the said Principal re-joined the said college as Principal on 23.12.2021. Be it mentioned that the petitioners, who were officiating as the Teacher-in-Charge, in the meantime were again elected as the member of the Governing Body of the college in the year 2019. That after re-joining the said Principal again started acting with a vindictive mindset against the petitioners and some other staff members whom he considered as his arched rivals or rather he considered them as instrumentals for initiating the said disciplinary proceeding against him. At the same time, the said Principal also had the grudge that his purported police complaint did not yield any favourable and or desirous results for him. It so happened that, on 25.10.2022, the petitioners separately received a letter and/or a notice whereby they were hurriedly suspended by the Government body. The said notice was issued by the principal under his hand and seal and the said decision of suspension was also taken by the principal without the knowledge of the Governing Body vis-à-vis behind the back of the petitioners. That the vindictive action of the principal not only ended here, but along with the

said arbitrary order of the suspension, the principal issued another notice wherein it was stated that, an election of three teachers representatives to the Governing Body of the college will be held on 03.11.2022, due to the retirement of one teacher and the said alleged suspension of the petitioners. However, challenging the said illegal and vindictive mind-set of the said Principal, the present petitioners had to file another writ petition before this Court, being WPA No. 23404 of 2022, on 31.10.2022. The said writ petition came up for hearing on 03.11.2022 and this Court was pleased to stay the said arbitrary order of suspension as well as the said purported notice declaring election for three seats in the Governing Body. So, again the said Principal, Dr. Badal Kumar Maity, suffered a defeat and got prevented from carrying out his malicious and vindictive acts against the petitioners herein. As a result of such sufferance the said Principal orchestrated to form one so-called Preliminary Enquiry Committee, supposedly under the Chairmanship of one Dr. Mani Shankar Maity. The said Dr. Mani Shankar Maity on 02.05.2023, purported to issue one so called notice, wherein it was stated inter alia that, a Preliminary Enquiry Committee has been instituted against four teaching staffs of the said college including the petitioners "for alleged several violations of rules and regulations, irregular/illegal activities and disputes etc". The said notice was served by the personal bearer of the said Principal to the petitioners. Be that as it may, the contents of the said letter were totally vague apart from being a product of the vindictive mindset. However, the petitioners duly objected to the same by their letter dated 10.05.2023, the said so-called committee again asked the petitioners to

remain present for personal hearing, by way of letter dated 01.06.2023. The petitioners having no other alternatives challenged the same by filing another writ petition, being WPA No. 13201 of 2023. The said writ petition came for hearing on 09.06.2023. Upon hearing the parties this Court was pleased to hold inter alia that: "Upon reading the show-cause notice dated 02.05.2023, it is evident that no specific allegations are made against the petitioners. The notice is too vague, and no enquiry, even of preliminary nature, should have been initiated based on such a notice. I am of the opinion that regardless of the subject matter of the discussions in the governing body meetings, the notice dated 02.05.2023, should have specified the allegations against the petitioners for which preliminary enquiry was being conducted. It was also highly illegal and inappropriate to ask the petitioners to produce their original academic and service-related documents against themselves. Consequently, the notice dated 02.05.2023, and the subsequent notice dated 01.06.2023, are set aside." The said Principal, Dr. Maity was personally present in the Court room when the said order was passed. Upon hearing such order the Learned Counsel appearing on behalf of the said Principal undertook before the Court to withdraw the said notices dated 02.05.2023 and 01.05.2023, with a liberty to act in accordance with law. The facts portraying biased doses does not end here, rather truth, does have an ugly habit of raising its head in the arena of the judicial forums, even if the wrong doers attempt to throttle its voice. It so happened that on 16.10.2023, a letter was issued under the hand and seal of the said Dr. Mani Shankar Maity, wherein the heading of the said so-

called notice was that “Personal Hearing at Bagnan College”. By way of the said notice the petitioners were asked to attend for personal hearing on 03.11.2023. In the said notice it was stated inter alia that: “The members of such committee considered the statements of allegations including the documents submitted by the College authority about the said four teaching staffs including you. After considering the various aspects of the matter of statements of allegations, the members of the said committee felt necessary to request to remain present for your personal hearing before the Preliminary Enquiry Committee.” That on 09.06.2023, when the Court while hearing the said WPA No. 13201 of 2023, inferred inter alia that, in the said show-cause notice dated 02.05.2023, there were no specific allegations against the petitioners and thus no enquiry can be proceeded on the basis of the vague notice. In view of such solemn observation of the Court, the college authority and/or the principal undertook to withdraw the said notices and thus tacitly admitted that there was no specific allegations against the petitioners till that date, i.e., at least till 09.06.2023. But it is quite surprising to note that in the said notice dated 16.10.2023, a long list of about 93 charges was alleged against the petitioner namely Soma Mukhopadhyay in WPA 26374 of 2023, whereas about 70 charges were alleged against the petitioner, Anup Kumar Basu in WPA 26362 of 2023, and the same charges were supposedly issued under the hand and seal of the very principal Dr. Badal Maity, supposedly on 01.03.2023. So, it is very clear that Dr. Badal Maity issued the said antedated notice with a view to satisfy his personal vendetta against the petitioners, in as much as the said

so-called statement of allegations dated 01.03.2023, which is hedged with the said so-called notice dated 16.10.2023, smacks of malafide and vindictive mindset of Dr. Badal Maity, the Principal of the said college. The petitioners having had no other alternatives challenged the said notices and/or the statement of allegations before the Hon'ble Court by way of filing the instant writ petitions. The instant writ petitions were filed on 22.11.2023, soon after the reopening the Hon'ble Court. The instant writ petitions firstly came up before this Court on 01.12.2023. At the time of hearing it was submitted on behalf of the principal, Dr. Badal Kumar Maity that the preliminary enquiry, initiated against the petitioners, already concluded on 25.11.2023. It is mentioned worthy that that the said writ petitions were filed on 22.11.2023 and the copy of said writ petitions were served on the said Principal and college authority before 25.11.2023, but again with vindictive mindset and in undue haste, the said enquiry was made to be concluded on 25.11.2023. However, this Court on 01.12.2023 after considering all aspects was pleased to direct the respondent, not to proceed further without the leave of the court. The instant writ petitions again appeared before this Court on 08.01.2024. This Court was pleased to observe inter alia that: "This Court, prima facie, is not satisfied that a disciplinary proceeding could be initiated against the petitioners based on the allegations as surfaced in the report of the Preliminary Enquiry Committee. It appears that the gravest allegation against the petitioners is of submitting forged documents in support of their educational testimonials. The petitioners suggest that a police investigation has already found the

allegations to be baseless. I also, prima facie, do not find anything in the report that demonstrates financial irregularities committed by the petitioners. There is no dispute with regard to the aforesaid proposition of law, but at the same time, it must be borne in mind that if the report of the Preliminary Enquiry Committee on its face just does not disclose any misconduct justifying initiation of a disciplinary proceeding, the Court should restrain the hand of the authority from proceeding with the disciplinary action.” The respondents have tried to argue that Preliminary Enquiry Committee is a fact finding body and it has been constituted to see whether there are enough materials available to proceed against the petitioners in full fledged disciplinary proceeding. In the light of such submission it was contended by the answering respondents that “finding of a Preliminary Enquiry Committee cannot prejudice the petitioners in any manner, since the Preliminary Enquiry Committee has only allegedly concluded that there are enough materials to substantiate the said long list of 93 charges against the petitioner, Soma Mukhopadhyay, and 70 charges against the petitioner, Anup Kumar Basu. So, consequentially a charge sheet will be framed on the basis of the long list of 93 and 70 charges respectively, as framed by the Principal supposedly on 01.03.2023, for the purpose of conducting a disciplinary proceeding wherein the petitioners will have the liberty to participate and also to exercise their rights which would be available under the relevant law”. This very submission of the answering respondent goes to show that the answering respondents are bent upon to push the petitioners in the arena of disciplinary proceedings which the

answering respondents are bent down to commence on the basis of the said purported, ante dated long list of 93 and 70 charges, with regard to which this Court had already observed that this Court was prima facie not satisfied that a disciplinary proceeding could be initiated against the petitioners based on the allegations as surfaced in the preliminary enquiry. After such solemn observation of this Court the answering respondents, save and except submitting that Preliminary Enquiry Committee is not prejudicial, could not produce any material before this Court to satisfy this Court that a disciplinary proceeding could be initiated against the petitioners, based on the allegations which is surfacing in the report of the said Preliminary Enquiry Committee. Be that as it may, if the submission of the answering respondent is assumed to be just and proper, in that case it is an admitted position that if this Court in any case permits the answering respondents to go ahead with the disciplinary proceedings against the petitioners. In that event undoubtably the same set of allegations framed by the said Principal, supposedly on 01.03.2023, would get translated into the contemplated charge sheet of the answering respondents. It is humbly submitted that, since the answering respondent was not been able to satisfy this Court that a disciplinary proceeding could be initiated against the petitioners based on the allegations as surfaced on the report of the Preliminary Enquiry Committee, the answering respondent may not be permitted to proceed with any such disciplinary proceeding on the basis of the statement of allegations framed by the said Principal, supposedly on 01.03.2023, as such the said notice dated 16.10.2023, along with the said

statement of allegations, framed by the principal, dated 01.03.2023, are required to be set aside for the interest of justice. That if the submissions and the acts of the answering respondents are considered to be sacrosanct, including the said so-called report of the Preliminary Enquiry Committee dated 25.11.2023, in that event it would appear that the answering respondents are saying that on the basis of the said same set of allegations, disciplinary actions would be taken against the petitioners. It is humbly submitted that all the charges so made in the statement of allegations are totally vague and some are also very old, more than ten years. It is well settled that no disciplinary proceedings, even a Preliminary Enquiry Committee can proceed with vague charges under any circumstances. In this regard, following decisions of the Hon'ble Supreme Court may be cited:

i. (1982) 2 Supreme Court Cases 376, State of Uttar Pradesh vs. Mohd. Sharif ; ii. 1973 (3) Supreme Court Cases 548, Surath Chandra Chakrabarty vs. State of West Bengal; iii. (1986) 3 Supreme Court Cases 454, Sawai Singh vs. State of Rajasthan. That the charges are not only vague, but most of the charges are old and stale. The petitioners cannot be victimised at this fag end of their respective service careers with such vague, unfounded, untrue and old charges. The whole ordeal so initiated by the respondent authorities is very much prejudicial for the interest of the petitioners and very much are the reasons for causing mental agony and harassment. The petitioners who are dignified teachers and professors of the college, may not be maligned at this fag end of their respective services. Some decisions with regard to the legal point that if the charges are old, it may cause prejudice to

the incumbent, are given below: i. (2006) 5 Supreme Court Cases 88, M.V. Bijlani vs. Union of India and Others; ii. (2005) 6 Supreme Court Cases 636, P. V. Mahadevan vs. Md. T. N. Housing Board; iii. 1990 (Supp) Supreme Court Cases 738, State of Madhya Pradesh vs. Bani Singh and Another; iv. (2013) 6 Supreme Court Cases 515, Anant R. Kulkarni vs. Y.P. Education Society and Others. That the constitution of the preliminary committee is not at all proper, in as much as the same has no approval of governing body. That the framing of the said statement of allegations by the principal supposedly on 01.03.2023, is totally unauthorised in as much as the governing body has not at all entrusted the said Principal to frame such statement of allegations, in as much as the said statement of allegations are void apart from being perfunctory, vague, untrue and a product of vindictive mindset. That it was repeatedly submitted before this Court that unless the interim orders are vacated, the college authority will not be in a position to prepare the service books of the petitioners who are supposed to retire in the near future. The said submission is totally misconceived and erroneous on the face of it, in as much as there is no interim order, passed in these instant writ petitions which may have the effect of stopping the respondent authorities from the preparation of the service books of the petitioners before their respective retirement dates. In fact, such submissions have been cleverly made by the respondents who are not in a position to ruin the service careers of the petitioners with a vindictive mind-set, since the interim order restraining them from taking any further actions in its subsistence, as such the said submission again speaks of the vindictive

mindset of the respondent authorities. It is also mentioned worthy that the petitioners very recently submitted the testimonials which are required for the purpose of preparation of service books before their retirement. In the name of preliminary enquiry, the answering respondent at the instance of the said Principal Dr. Badal Kumar Maity are and is bent upon to jeopardise the service careers of the petitioners, with a vindictive and heinous mindset. The preliminary enquiry is not a simpliciter preliminary enquiry. Rather the principal and its allies are purporting to use this so called Preliminary Enquiry as a tool not only to harass the petitioners, but also to jeopardise the careers of the petitioners and that too at this fag end of their service careers. No authority can be permitted to use disciplinary proceeding for satisfaction of personal vendetta. That from the chains of events and facts demonstrated in the writ petitions and which are also not in dispute, it would clearly appear that the principal has orchestrated the impugned actions after suffering repeated failures in his repeated unholy missions. That the said statement of allegations framed by the said Principal and the said notice dated 16.10.2023, may be set aside in limine with an observation that the same are not tenable in the eye of law and thus the concerned authorities may also be directed not to act on the basis of the contents of the said statements of allegations, even in the future and thus the instant writ petitions may be allowed on the basis of such solemn observation, subject to the sanction of this Court.

3. Learned counsel appearing on behalf of the respondent nos. 8 and 9 in WPA 26374 of 2023 and WPA 26362 of 2023 has submitted and has

relied on the written notes as follows. There are certain allegations levelled against the petitioner in WPA 26374 of 2023 for violations of rules, regulations, provisions of Act; irregularities in promotions and increments; illegal activities including tampering and/or forging of official documents; misuse/misappropriation/defalcation of public funds; breach of trust (being Teacher-in-Charge & Ex-Officio Secretary & member of Governing Body & Chairman of Statutory Finance Committee); engaged in immoral activities those were prejudicial to the academic and financial interest of the College; anomalies in service documents; negligence in duties and violation of attendance rules; insubordination, derogatory attitude and unbecoming behaviour with the higher authority etc. There are also certain allegations levelled against the petitioner in WPA 26362 of 2023 for violations of rules, regulations, provisions of Act; irregularities/illegalities in appointment, promotions and increments; illegal activities including tampering and/or forging of official and service documents; misuse/misappropriation/defalcation of public funds; breach of trust (being a member of the Governing Body & Secretary/Convener of Statutory Finance Committee); serious anomalies in academic and service documents; gross negligence in duties, violation of attendance rules etc. By a meeting dated 01.12.2022 the Governing Body of the concerned Bagnan College constituted the Preliminary Enquiry Committee (herein after "the PEC") by appointing three external members including the Chairman and two others members to conduct the Preliminary Enquiry against the petitioners including three other teaching staff of the College. On 22.12.2022 the

president of the Governing Body of the College appointed the members of the PEC including the Chairman. The PEC held several meetings after obtaining the statements of allegation against the petitioners from the College authority. The PEC by a letter dated 02.05.2023 requested the petitioners to submit the necessary documents in original relating to their service and for personal hearing before the PEC. By a letter dated 10.05.2023, the petitioners replied to the said letters dated 02.05.2023 but they did not appear before the PEC on the scheduled date of enquiry. On 01.06.2023 the Chairman of the PEC by a letter further requested the petitioners to appear before the PEC. But they did not appear before the PEC on the scheduled date of enquiry. The petitioners challenged the said letters dated 02.05.2023 issued by the PEC and moved a writ petition on 09.06.2023 when this Court was pleased to pass an order inter alia setting aside the said letter dated 02.05.2023 and subsequent letter dated 01.06.2023. Later, on submissions on behalf of the Governing Body of the College both the said letters were treated as withdrawn by the PEC, granting the College authority the liberty to act in accordance with the law. On 24.08.2023 a meeting of the Governing Body of the College was held for re-constitution of the PEC as one of the members had resigned. Accordingly, reconstitution of the PEC was made as per rules. The President of the Governing Body of the College by a letter dated 03.10.2023 informed the petitioners about such reconstruction and the names of the members of the reconstituted PEC. By a letter dated 12.10.2023 addressed to the President of the Governing Body, the petitioners replied to the said letter dated 03.10.2023 raising some baseless

points. The Chairman of the newly constituted PEC by a letter dated 16.10.2023 requested the petitioners for a personal hearing on 03.11.2023 as regards the allegations made against them. By a letter dated 30.10.2023 addressed to the President of the Governing Body, copy to the Principal and the Chairman of PEC of the College, the petitioners submitted their contentions regarding the formation of the newly reconstituted PEC. The Chairman of the newly constituted PEC by a letter dated 07.11.2023 again requested the petitioners for a personal hearing as regards the allegations made against them. Challenging the said letters dated 16.10.2023, 07.11.2023 and 01.03.2023 the petitioners filed / affirmed the instant writ petitions on 22.11.2023 inter alia praying for quashing of the same. The petitioners, even after receipts of several notices, did not participate in the proceeding of the PEC. The PEC conducted the ex parte enquiry. The newly constituted PEC conducted the ex parte Preliminary Enquiry and submitted their report on 10.12.2023 to the President of the Governing Body of the College against the 4 (Four) teaching staff of the College including the petitioners. One of the said four teaching staff namely, Mr. Champak Kumar Chakraborty filed a writ petition challenging the said report of the PEC dated 10.12.2023 and the Show Cause notice dated 28.03.2025 made against him and moved the same on 22.05.2025 when this Court was pleased to pass an order setting aside the said Report and Show Cause notice. However, liberty was granted to the Governing Body of the College to initiate a disciplinary proceeding against the said Mr. Chakraborty in accordance with the West Bengal College Teachers (Security of Service) Act,

1975 and the West Bengal College Teachers (Security of Service) Rules, 1977. The disciplinary proceeding was initiated by the Governing Body of the College against said Mr. Chakraborty. The said disciplinary proceeding was conducted and ended. The Enquiring Authority submitted the Report. The Governing Body in its meeting dated 26.01.2026 imposed the punishment of dismissal from service on said Mr. Chakraborty and issued the order of dismissal on 28.01.2026. The newly constituted PEC had concluded their Preliminary Enquiry proceeding and submitted the report to the Governing Body of the College in the case of the petitioners and the Office of the said PEC has now become Functus Officio. The notices challenged in the instant writ petitions have already been acted upon and there is no scope to set aside and/or quash the same. There is substance in the allegations leveled against the petitioners and as such, the Governing Body of the College intends to initiate the disciplinary proceeding against the petitioner in accordance with the provisions of the West Bengal College Teachers (Security of Service) Act, 1975 and the West Bengal College Teachers (Security of Service) Rules, 1977. The petitioner in WPA 26374 of 2023 is about to retire on 31st January, 2027 and the petitioner in WPA 26362 of 2023 is about to retire on 31.05.2026. The instant writ petitions become infructuous by the passage or efflux of time. The petitioners in spite of receipt of the several notices, did choose not to appear for their personal hearing along with necessary original academic and service related documents before the PEC. The petitioners have deliberately avoided to face the PEC as regards series of allegations leveled against them. The order of

quashing and/or setting aside of the said notices have now become in executable. The petitioners, on the one hand, issued the letters to the Principal of the College threatening the respondents to submit the necessary papers and documents for their superannuation /retirement benefits within the statutory period, but on the other hand, had tried their level best to keep the instant writ petitions pending with interim orders and had tried their level best not to appear before the PEC and/or before the Principal with their all original necessary service related documents to prepare their papers and documents for their retirement benefits. The petitioners had not challenged the enquiry report of the PEC dated 10.12.2023 in the instant writ petitions. The PEC explicitly reported the malpractices, breach of trust, negligences and violations of rules/orders/provisions of misuse/misappropriation/defalcation of Acts; public funds; commission of offences involving moral turpitude; tampering and forging of academic and service records etc. on the part of Mrs. Mukhopadhyay/the petitioner in WPA 26362 of 2023 and Mr. Basu/the petitioner in WPA 26374 of 2023 respectively. The PEC strongly recommended for further investigation against said Mrs. Mukhopadhyay and Mr. Basu respectively in terms of the Calcutta University First Statutes, 1979, the West Bengal College Teachers (Security of Service) Act, 1975 and the West Bengal College Teachers (Security of Service) Rules, 1977. The Governing Body of the College has the statutory powers and rights conferred under Statute 97(1) of The Calcutta University First Statutes, 1979 to constitute such Fact Finding or Preliminary Enquiry Committee (PEC) and may exercise all such powers and

functions as may be necessary for the proper management of the affairs of the College. The criminal proceeding initiated against the petitioners is also still pending before the Learned Magistrate Court of Uluberia, Howrah for adjudication. The petitioners have deliberately avoided the hearing and have adopted the delaying tactics. In view of the interim orders passed in the matter and in view of the pendency of the instant writ petitions, the Governing Body of the College as well as the Principal are not in a position to proceed further in the matter of the processing of pension and/or retirement documents of the petitioners. In addition to the aforesaid, it is also settled principles of law that for the purpose of fact findings, the Fact Finding Committee can be appointed before initiation of the disciplinary proceedings against the incumbent as has been reported in AIR 1964 SC Page-1854, Para 13 of Champaklal Chimanlal Shah vs- The Union of India, In AIR 1968 SC Page-266, Para 6 of Central bank Of India Ltd -vs- Karunamoy Banerjee, 2000(5) SCC Page 467, Para 6 of Air India Ltd -vs- M. Yogeshwar Raj, 1995(Supp.) (1) SCC, Page-180, Para-4 of Bhupinder Singh Bedi S/o Sh. Inder Dev Singh Bedi -vs- Ashok Kacker. The instant writ petitions are liable to be dismissed and be dismissed and the interim orders are also liable to be vacated and be vacated without any further delay.

4. Learned counsel appearing on behalf of the respondent nos. 5, 6 and 7/Governing Body of Bagnan College in WPA 26374 of 2023 and WPA 26362 of 2023 has submitted and has relied on the written notes as follows. The petitioners, namely, Soma Mukhopadhyay in WPA 26362 of 2023 and Anup Kumar Basu in WPA 26374 of 2023, have challenged the notices dated

07.11.2023 and 16.10.2023, vide which the petitioners were called upon to appear before the Preliminary Enquiry Committee on the statements of allegations which was already served upon the petitioners. A Preliminary Enquiry Committee was set up by the Respondents concerned against the petitioners on several grounds and statements of allegations were handed over. The petitioners were also called for a personal hearing before the final reports of the committee were passed. The petitioners, for no good reason, refused to appear before the Preliminary Enquiry Committee and have challenged the notices of hearing in the present writ petitions. The main allegation of the petitioners is that the allegations against them are vague and stale and that the entire premise of setting up a Preliminary Enquiry Committee was allegedly misconceived. It is submitted before this Hon'ble Court that nature and scope of a Preliminary Enquiry Committee is on a different footing than that of Disciplinary Proceedings. The preliminary enquiry is usually held to determine whether prima facie case for a formal departmental enquiry is made out. A preliminary enquiry does not automatically mean that steps will be taken against the misconduct of the employee. Such preliminary enquiry can even be held ex-parte since it is for the satisfaction of the employer. Thus, the petitioners do not even have a right of being heard and it is only for the satisfaction of the employer. The above described scope, nature and intent of a preliminary enquiry has been held by the Hon'ble Supreme Court in Champaklal Chimanlal Shah versus Union of India, reported at AIR 1964 SC 1854. Therefore, there is no scope for the petitioners to challenge the preliminary enquiry, its constitution or

its report as it do not cause any prejudice to them. That a preliminary enquiry does not cause any prejudice or disadvantage to the employee and ought not to be interfered with has been held by the Hon'ble Supreme Court in the matter of Employers of Firestone Tyre and Rubber Co. Private Limited versus Workmen reported at AIR 1968 SC 236 at paragraph 6. In the present case, the enquiry committee has given an opportunity to the petitioners to answer on the allegations raised by the committee. A decision on factual issues raised is to be decided by the committee, to its satisfaction. Such decision-making process of the committee ought not to be pre-empted nor should the proceeding be stayed or interfered with. The Hon'ble Apex Court has affirmed such legal proposition and minimized interference with the decision-making process in Air India Limited versus M. Yogeshwar Raj reported at (2000) 5 SCC 467, more specifically at paragraph 8 of the report. It is also now the settled law that when the employee is called for to appear and respond to allegations against him in a preliminary enquiry, higher fora ought not to interfere, with such notice that grants an opportunity of hearing and to examine points raised. Such ratio has been decided with respect to a disciplinary proceeding in the case of Union of India versus Ashok Kacker reported at 1995 Supp (1) Supreme Court Cases 180, at paragraph no. 4 of the said report. It is submitted that the writ petitions are frivolous, misconceived and vexatious one with no justiciable right. The preliminary enquiry does not cause any prejudice to the petitioners nor does it put the employees in a disadvantage. The preliminary enquiry is only to come to a conclusion if a formal departmental proceeding is required. The

allegations against the petitioners are extreme grave inasmuch as the petitioners do not have an appointment letter in their name, amongst other grave allegations and the committee rightly exercised its duty to look into such grave allegations to take appropriate steps. The petitioners do not want to face the allegations which cannot stall the proceedings of the committee and there is no reason or embargo that prevents the committee from holding preliminary inquiries.

5. I heard the learned counsels for the parties, perused the writ petitions, the affidavits and the written notes of submissions.

6. First, it is a settled position of law that notices asking employees to attend and be heard during preliminary enquiry proceedings are ordinarily not to be interfered with. However, there are certain underlying assumptions behind this proposition. Among others, the notices and / or the allegations have to be fair, proper, not harassive and issued bona fide. Therefore, these issues need to be taken into consideration in view of the allegations of bias and mala fide raised by the present petitioners. In fact, in the present case, this Court earlier had to intervene and set aside notices purportedly issued earlier for such purpose.

7. In this context, certain facts pertaining to the Principal of the college vis-a-vis the present petitioners need to be taken note of. It is claimed by the petitioners that the Principal, soon after the joining the college in 2015, acted with ill motive against the petitioners and some others. First, he filed a writ petitioner being WPA 7038 (W) of 2018, that too in his personal capacity and without any permission from the college. Finally, a disciplinary

proceeding had to be initiated against the Principal by issuing a charge sheet on 08.06.2020 containing a total of 15 charges. He was suspended on and from 16.06.2020 from the college. In fact, the Principal could not make any headway in the writ petition filed by him. So, purportedly in order to satisfy his personal grudge against some teachers and staff members of the college, he filed a police case being Bagnan Police Station 216 of 2020 dated 12.07.2020. He also filed a writ petition alleging police inaction. However, the concerned police authorities investigated and submitted a final report discharging the petitioners from the said case due to lack of evidence. The Principal then filed a protest petition. It is further alleged by the petitioners that the President of the Governing Body, who was a political person, exercised his influence and coaxed the college authority to withdraw the suspension order as well as the charge sheet which was issued against the said Principal and the said Principal re-joined the said college in 2021. After such rejoining, the Principal allegedly started taking vindictive actions against the petitioners and others. Soon thereafter, the petitioners were sent letters of suspension. The petitioners had to file writ petition before this Court. First, the order was stayed by this Court. In order to salvage the situation, the Principal allegedly foisted the so-called Preliminary Enquiry Committee. A notice was issued against some staff for alleged violation of rules and regulations and for other irregular activities. The petitioners challenged the same before this Court by way of writ petition. On 9th June, 2023, a Co-ordinate Bench of this Court was pleased to hold that upon reading the show-cause notice dated May 2, 2023, it was evident that no

specific allegations were made against the petitioners. The notice was too vague, and no enquiry, even of preliminary nature, should have been initiated based on that notice. Consequently, the notice dated 02.05.2023 and the subsequent notice dated 01.06.2023 were set aside. Upon hearing such order, the Principal who was present in the Court purportedly undertook before the Court to withdraw the said notices with a liberty to act in accordance with law. It is in these above referred preceding facts and circumstances that one has to test the veracity of the subsequent notices issued and the allegations leveled. It is further alleged by the petitioners that during hearing, it was submitted on behalf of the Principal that the preliminary enquiry had been concluded on 25.11.2023. Incidentally, the writ petition was filed on 22.11.2023 and a copy was served upon the Principal and the college before 25.11.2023. In undue haste and with an alleged vindictive mindset, the enquiry was made to conclude on 25.11.2023.

8. It appears that soon after the first notices were set aside by this Court, the Principal again went after the petitioners and had notices issued against them. The one against the petitioner, Soma Mukhopadhyay framed by the Principal supposedly on 01.03.2023 contained a list of 93 charges and the one against the other petitioner, Anup Kumar Basu contained a list of 70 charges. Some of them are as stale as of decades back.

9. In this regard, it has further been submitted by the petitioners that in view of the earlier order, as the answering respondent was not able to satisfy this Court that a disciplinary proceeding could be initiated on the petitioners

based on the allegations as surfaced in the report of the preliminary enquiry, the answering respondents ought not to proceed with such a disciplinary proceeding on the basis of the statements of allegations framed by the Principal, supposedly on 01.03.2023 and as such, the said notice dated 16.10.2023 along with the statement of allegations were required to be set aside.

10 In such circumstances, it may not be out of place to also briefly look into the allegations leveled and the contents of the notices to find out whether, the notices and the allegations, *prima facie*, conform to the requirement of a fair and proper notice or whether there is a *prima facie* case of vindictiveness and *mala fide* made out as alleged by the petitioners.

11. If one takes the allegations made against the petitioner Soma Mukhopadhyay, which contained 93, for instance, clause 9 alleges that the petitioner had left the college early on different dates at different times. Several years and times were given starting from the year 2001 and ending in 2015. But, the dates were not given. It would be absolutely ludicrous to seek an answer now about whether the petitioner actually left early two unspecified days in the year 2001 at 1.50 pm and at 2.40 pm. Clause 12 alleged that the teacher did not sign the attendance of arrival and departure as per rules. But, from 1992 to 1997 where she recorded her attendance was not found. The petitioner would hardly be in a position to respond to all these at this stage. In any event, the register was to be maintained by the concerned authorities. At clause 13, it was alleged that when she was a part-time lecturer in the morning shift for several months in 1999, 2000 and

2001, she concurrently served with day shift as permanent lecturer without approval from appropriate authorities. It goes on to say that she did not put her signature on the arrival and departure and class allotted and classes taken. The first part of the allegations are not quite commensurate with the second set. In any event, the allegations do not refer to any source from where it was supposedly found that the appropriate authority had given no approval. In clause 24, the allegations refer to the teacher receiving major promotions under CAS without verification of academic and service documents and opening of her service book as per rules. One wonders how the petitioner could be responsible for the same. There are also allegations of granting permission under CAS to some teachers in league with some others for periods long ago. Clause 88 stated that the petitioner during COVID-19 period attended the college with malicious intention. She did not maintain statutory notice book and several official records of the college. It would indeed be impossible for any teacher to counter such allegations that she had attended college during COVID-19 period with malicious intention.

12. Now, if one takes the allegations made against the petitioner Anup Kumar Basu, which contained 70 heads, they too were full of stale, vague and frivolous charges. Again, the teacher has been blamed for receiving major promotions under CAS. In the first clause it is alleged that although he was at the verge of retirement, he did not sign the service book as per rules. In clauses 8 and 9, times, but not dates, have been given from 2001 to 2017 alleging that he had attended the college at late hours and left the college at early hours. At this stage, it would not be possible for anyone to

deal with such substantially stale allegations, that too when the dates were not specified. There are allegations of unauthorised absence for unspecified dates for the years 1991, 1992, 1993, 1994, 1995, 1996, 1997, 2001, 2002 as contained in clause 11. In clause 26, it was baldly alleged that the teacher had exercised personal influence and got a particular UGC scale. Again, at paragraph 35, it was alleged that the teacher exercised personal influence and got a suspected pay fixation memo dated 19.03.1998 after 9 years. These allegations are as vague and speculative as can be. There are other allegations leveled against the petitioner that when he was serving as a member of the Governing Body and some of these apparently relate to the disputes between two sides.

13. If one looks at these so called charges / allegations contained in the statements pertaining to the second sets of notices issued against the present petitioners, one would find allegations of alleged unauthorised absence dating back to more than decades. Even the alleged dates were not mentioned. These are patently stale charges and cannot possibly be answered by any person after passage of such long period of time. Even some of the more recent charges are either vague or of frivolous nature and no staff working for so long for a college should unnecessarily be made to answer these vague and trivial questions at the fag end of their careers. Some are as speculative as imputing undue influence to the petitioners for the authorities granting them promotions under CAS. It prima facie appears that the allegations are exceedingly harrassive, some vague, some frivolous and some absolutely stale and in view of the earlier litigations including the

writ petitions and criminal case that had existed between the parties, the entire exercise smacks of mala fide and vindictiveness.

14. When an individual assumes an office dealing with public duties, certain responsibilities come along with the powers that he exercises. If such person chooses to abuse such power in order to settle personal scores which impinges upon the fundamental rights of citizens of this country, this Court would be at liberty to intervene *ex debito justitiae*.

15. The nature and the content of the allegations leveled in the statements that purportedly form the substratum of the impugned notices, especially when read in the context of the earlier animus and the litigations between the parties and the timeline of events, make it abundantly clear that these do not conform to the standards of a fair and proper notice for answering charges at a preliminary enquiry.

16. The patently harrassive, some vague, some frivolous and some stale charges / allegations need not be answered by the petitioners, that too at the fag end of their careers.

17. In view of the above discussions and in the interest of justice, the impugned notices and the statements of allegations are hereby quashed and / or set aside.

18. With these observations and directions, the writ petitions are disposed of.

19. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)