

(1968) 01 CAL CK 0012
In the Calcutta High Court
Case No : Civil Rule No. 709 (W) of 1963

Anil Kumar Banerjee

APPELLANT

Vs

Administrator, Board of Secondary Education

RESPONDENT

Date of Decision : 17-01-1968

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
West Bengal Board of Secondary Education Regulations — Regulation 3, 5, 6A, 7, 7(2)
West Bengal Board of Secondary Education Rules — Rule 25
West Bengal Secondary Education Act, 1950 — Section 30(3), 36(2)

Citation : (1969) 1 ILR (Cal) 495

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : P.K. Sen Gupta and Paritosh Mukherjee, for the Appellant; Smriti Kumar Roy Chowdhury, Murari Mohan Dutta and Ganendra Narayan Roy, for the Respondent

Judgement

D. Basu, J.—This is a trial of strength between the Managing Committee of a Secondary School and the Board of Secretary Education, involving the termination of the services of a teacher of the school, i.e., Respondent No. 4 (Kashinath Das).

2. A preliminary objection was taken by the Respondents, namely, that the Petitioners did not include all the members of the Managing Committee which was not itself a juristic entity and that, accordingly, the petition should be thrown out as non-maintainable. This objection having been rejected by my order of June 28, 1967, on the ground that the remaining members having been brought on the record as Respondents (5-9) all the members have been represented in the petition, we must enter into the merits. It should be mentioned in this context that since no affidavit-in-opposition has been filed on behalf of Respondents Nos. 5-9, their tacit support to the petition has to be presumed.

3. Having been initially appointed on a temporary basis in 1960, Respondent No.

4 was appointed against a permanent vacancy on a term of probation for two years by the resolution of the Managing Committee of the school on March 25, 1961, which is at annEx. A to the petition. Shortly thereafter, on May 23, 1961, the Managing Committee, passed the resolution at annEx. C to the petition by which the services of Respondent No. 4 were terminated with effect from May 24, 1961, on the ground that his services during probation were not satisfactory. He was given one month's pay in lieu of notice. Respondent No. 4 thereupon preferred an appeal before the Appeal Committee (Respondent No. 2) of the Board of Secondary Education and the latter allowed the appeal and this order was communicated to the Secretary of the school by letter at annEx. E dated January 9, 1963. The Appeal Committee ordered that Respondent No. 4

be reinstated, provided he severed his connection with the Girls' School and offered to be a wholetime teacher.

4. The Managing Committee, being aggrieved by the aforesaid order of the Appeal Committee, preferred a review to the Administrator (Respondent No. 1) who was the statutory authority prescribed for that purpose. By his letter of September 5, 1963 (annEx. G), the Secretary of the Board of Secondary Education (hereinafter referred to as "the Board") intimated that the review had been refused by the Administrator and, accordingly, called upon the Secretary of the school to implement the award of the Appeal Committee within 15 days on receipt of the letter "failing which, action...will be taken against the school for non-compliance with the orders of the Board". A request to reconsider was turned down, by the Board on September, 16, 1963, and the threat to take action was reiterated (annEx. H). Thereupon the Petitioners moved this Court on October 3, 1963, and obtained this Rule.

5. The Petitioners challenge the validity of the order of the Appeal Committee (annEx. E) and the order of the Board to implement it (annEx. G), on various grounds.

6. The petition is opposed by the discharged teacher (Respondent No. 4) and the Board (Respondents Nos. 1-3), by separate affidavits.

7. The West Bengal Secondary Education Act of 1963 had not come into force at the time when the impugned order of the Appeal Committee was made. Hence, for the jurisdiction and powers of the Appeal Committee, we are to turn to the West Bengal Secondary Education Act of 1950 (hereinafter referred to as "the Act") and the regulations framed thereunder.

8. Section 30(3) of the Act provided the constitution of the Appeal Committee of the Board and then said:

It shall be the duty of the Committee to hear and determine appeals from decisions in disputes between teachers and Managing Committees of High Schools, ...in accordance with regulations made in that behalf.

9. The power to make regulations as aforesaid was conferred on the Board by

Section 36(2)(q) and the Board made regulations relating to the Appeal Committee, in exercise of that power, which were notified per Notification No. 1016, February 8, 1955.

10. It has been urged on behalf of the Petitioner, firstly, that the Appeal Committee had no power to reinstate a teacher appointed on probation, because such employee had no right to his post until confirmed. It is true that the teacher in question was discharged, by the Managing Committee during the term of his probation. But the statutory provision or the regulations do not show that the Appeal Committee had no jurisdiction in the matter of discharge of a probationer. On the other hand, Regulation 7(2)(a) is wide enough to include it. It says:

The Appeal Committee, may, on a consideration of all the materials before it, in an appeal against an order of discharge or dismissal, allow the appeal and order either that the teachers be reinstated or be paid a gratuity calculated at the rate of one month's salary..., if it is of opinion that the grounds of discharge or dismissal are insufficient and inadequate.

11. The word "discharge" in the foregoing regulation is wide enough to include the case of a probationer teacher and the power of reinstatement also extends to the case of such an employee. Whether the Appeal Committee should exercise the power of reinstatement in respect of a probationer has been left to the judgment of the Appeal Committee and this Court has not been given an appellate jurisdiction over the decisions of the Appeal Committee. Hence, we cannot go into the merits of the decision of the Appeal Committee as the Petitioners would want me to do. It was also contended that the Managing Committee had plenary powers in the matter of discharging a teacher. But all the powers of the Committee, in this matter, are subject to the approval of the Board under Rule 25.

12. The second contention made on behalf of the Petitioners is that since the Appeal Committee did not hear the Managing Committee before making the impugned order, the appeal had not been "heard" at all, within the meaning of Section 30(3) of the Act.

13. It is true that provision referred to requires the Appeal Committee to "hear and determine" the appeal, but the manner of hearing is required by Section 30(3) itself to be in accordance with the regulations made by the Board. The regulations so made do not require that the Managing Committee must be heard personally in an appeal preferred by an aggrieved teacher. On the other hand, it provides (Regulation 3) that the Appeal Committee shall call for the written comments of the Committee for which purpose a copy of the memorandum of appeal has to be forwarded to the Appeal Committee. That was admittedly done in this case and the Managing Committee did submit their written comments. The regulations next prescribe that on receipt of the comments of the Managing Committee, the Appeal Committee shall forward a copy of those comments to the Appellant who will then have an opportunity of submitting his own

explanation to the said comments. Both the comments and the explanation shall then be forwarded to the Director of Public Instructions and his views sought (Regulation 5).

14. On receipt of the view of the Director of Public Instructions, the Appeal Committee will consider "all the materials" as aforesaid and give its decision on the appeal upon a consideration of those materials (Regulation 7).

15. It is evident that if the regulations do not require for a personal hearing of the Managing Committee, nor do they require a personal hearing of the Appellant (i.e. the teacher) either. The whole thing of personal hearing was left to the discretion of the Appeal Committee by Regulation 6A, as pointed out in *Kalidas Mondal v. Board of Secondary Education* (1961) 66 C.W.N. 75 (78). On the other hand, it provides for a decision of the appeal on a perusal of the written memoranda of both the parties to the appeal. In order to obtain a proper decision, however, the regulations require that the Appeal Committee shall have before it the views of an impartial and experienced official, entrusted with the administration of educational affairs in the State. As the Rules stand, there has been no breach thereof in the instant case.

16. This view has already been taken by this Court in the case of *Kalidas Mondal v. Board of Secondary Education* (1961) 66 C.W.N. 75 (78) and I find no reason to differ therefrom.

17. The Petitioners are, however, entitled to succeed on their last contention which raises a question of supreme importance. It is urged that the appellate decision is bad because the impugned order (annEx. E) gives no reasons. There is little doubt that the function of the Appeal Committee is a quasi-judicial function.

18. The law on this point has now been clearly established. Though in its earlier decisions, the Supreme Court rested by merely expressing the desirability of a quasi-judicial Tribunal giving the reasons for its decision, in the latest case on this pointy a unanimous Court, on a review of the previous decisions, firmly laid down the law. This is the unreported decision in *Bhagat Raja v. Union of India* Unreported decision in C.A. 2596/7 of 1966 decided on March 29, 1967, since reported in (1967) 2 S.C.A. 253. In this case, it has been pointed out that the decision of a quasi-judicial order is subject to the supervisory jurisdiction of the High Court under Article 227 and the appellate jurisdiction of the Supreme Court under Article 136 of the Constitution. The jurisdiction of the High Court under Article 226 has also been referred to in the same strain, in the case of *Sardar Govindrao and Others Vs. State of Madhya Pradesh*, . It has been clearly stated in the unreported decision, that these supervisory and appellate powers of the highest Courts of this land would be rendered nugatory unless the inferior quasi-judicial body gives the reasons for its decision, which can be scrutinised by the superior Tribunals of the land which are vested by the Constitution with the power of judicial review. If an order does not give any reasons it "does not fulfil

the elementary requirements of a quasi-judicial process", as the Court said in *Sardar Govindrao and Others Vs. State of Madhya Pradesh*, . In *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, it was contended that the obligation to give reasons might involve delay. Rejecting this contention the Court observed:

The least a Tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons minimises arbitrariness; it gives satisfaction to the party against whom the order is made; and it also, enables an appellate or supervisory Court to keep the Tribunals within bounds.

19. It is on this very ground, namely, that the powers under Article 136 of the Constitution would be rendered infructuous that the Court held that even when the subject-matter was confidential, the Government, while exercising quasi-judicial powers, must give its reasons: *Harinagar Sugar Mills v. Shyam Sundar* (1962) 2 S.C.R. 239.

20. In the unreported decision in *Bhagat Raja's case* Unreported decision in C.A. 2596/7 of 1966 decided on March 29, 1967, since reported in (1967) 2 S.C.A. 253 it has further been held that the absence of any requirement in the relevant statutory provision to state reasons was immaterial and that even when the quasi-judicial Tribunal was confirming the order of an inferior authority, it was bound to give its reasons in short, though it might not be required to write out a judgment as a Court of Law would. The contrary observations in *Nandram Hunatram, Calcutta Vs. Union of India (UOI) and Another*, have also been explained in *Bhagat Raja's case* Unreported decision in C.A. 2596/7 of 1966 decided on March 29, 1967, since reported in (1967) 2 S.C.A. 253. The Court has also approved of the decisions of the various High Courts where it has been held that for the exercise of the jurisdiction of the High Court under Article 226, it was essential that the inferior quasi-judicial Tribunals must give reasons for their decisions.

21. Though the other points taken on behalf of the Petitioners are not sound, I would allow this petition on this last ground. This would also guide the Appeal Committee of the Board properly in the future exercise of its powers. The administrative authorities had little fetters on their powers during the Imperialistic regime and the relics of that regime will require a little time to give way. It is the duty of the superior Courts to remind them that the face of this country has changed since the adoption of a written Constitution introducing judicial review over every Tribunal throughout this land which has to exercise quasi-judicial functions, even though they are not a part of the Judiciary.

22. The Rule is, accordingly, made absolute but without any order as to costs. The impugned order of the Appeal Committee at annEx. E and the consequential order at annEx. G be quashed. Respondent No. 2, the Appeal Committee, shall have the liberty to decide the appeal afresh, in accordance with the law, within a period of two months from this date.