

(2011) 02 CAL CK 0009
In the Calcutta High Court
Case No : Writ Petition No. 116 of 2011

Ashok Kumar Singh

APPELLANT

Vs

West Bengal Board of Secondary Education and Others

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 409, 467, 468, 471

Citation : (2012) 1 SLJ 342

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Kamalesh Bhattacharya, Mr. Ashim Ilalder and Mr. Shyamal Sarkar, for the Appellant; P.S. Deb Burman and Mr. Anindya Bose, Advocates for the Respondent Nos. 6 and 7, for the Respondent

Judgement

Bhattacharya, J.—The petitioner herein was appointed as an Assistant Teacher in Shree Balkrishna Vithalnath Vidyalaya. The appointment of the petitioner as Assistant Teacher in the said school was approved by the concerned District Inspector of School on 29th October, 1986, with effect from 21st January, 1986. Subsequently, the petitioner was appointed as Teacher-in-Charge of the said school on temporary basis by the then Administrator of the said school vide his letter dated 2nd April, 2008. He remained the Teacher-in-Charge of the said school till 17th November, 2008. The charge of the Assistant Teacher of the said school was taken over from him by the newly appointed Teacher-in-Charge on 17th November, 2008. Thereafter the petitioner started working as an Assistant Teacher of the said school with effect from 18th November, 2008.

2. Subsequently the petitioner was placed under suspension with effect from 18th December, 2008 pending disposal of the disciplinary proceeding against him. In fact, a charge-sheet was issued on 16th March, 2009 by the Administrator of the said school which was received by the petitioner on 20th March, 2009. An Enquiry officer and a Presenting officer were also appointed for holding inquiry against the petitioner on various charges indicated therein which

are as follows:

(1) From the Cash Book the period from 1.4.2008 to 24.10.2008 it appears that there was no Opening Balance and Closing Balance. Accordingly the petitioner being the T.I.C. should be held guilty of dereliction of duty.--Annexure-I.

(2) From the Cash Book as aforesaid it also appears that some pages of the said Cash Book are left blank. Thus the petitioner being the T.I.C. should be held guilty of dereliction of duty.--Annexure-II.

(3) It reveals from the receipts given to large number of students that during the period while the petitioner was T.I.C., fees were collected from the students but such collection had neither been recorded in the daily collection book nor been recorded in the Ledger or Cash Book. Thus the petitioner should be held guilty of monetary defalcation.--Annexure-III.

(4) Though the petitioner had taken charge on 2.4.2008 but he did not take any step for auditing the accounts of school. Accordingly the petitioner should be held guilty for dereliction of duty.

(5) Though the petitioner spent a lot of money during the period when he worked as T.I.C. and prepared Vouchers in support of such alleged expenditure, but none of such vouchers bears the signature of the petitioner. Thus the petitioner should be held guilty for defalcation of Rs. 2,00,000/- approx.--Annexure-IV.

(6) Although the petitioner handed over the charge of Teacher-in -Charge on 19th November, 2008; but he kept the school fund in Cash with him. The petitioner deposited a sum of Rs. 32,189/- (Rupees thirty two thousand one hundred eighty nine) only in school Bank account through Dinesh Singh on 20th November, 2008. This fact was not disclosed by the petitioner at a time of handing over the charge of T.I.C. to the newly appointed T.I.C.--Annexure-V.

(7) In the report submitted by finance committee of the school, it is found that a sum of Rs. 7,92,869/- (Rupees seven lakhs ninety two thousand eight hundred sixty nine only) was mis-utilized by the petitioner.-- Annexure-VI.

(8) It is very much surprising that the petitioner allowed an unapproved clerk Mr. Brijesh Upadhyaya (now dismissed) to sign over red mark (Dated from 2nd May, 2008 to 14th May, 2008). Thus the petitioner should be held guilty of mis-management, and dereliction of duty.-- Annexure-VII.

(9) There were 120 files (one hundred twenty files) in the school record. The petitioner handed over only a few files to the newly appointed T.I.C. at the time of handing over the charge to him by retaining a large number of important files with him. Thus the petitioner should be held guilty of dereliction of duty.-- Annexure-VIII.

(10) The petitioner has not signed over the admission form of Class-XI (students who were admitted during the period when he was the T.I.C. of the said school). Thus the petitioner should be held guilty of dereliction of duty.--Annexure-IX.

(11) It is also found that when the petitioner was T.I.C., approved staffs were not allotted minimum class in a week and a lot of payments were made to part-time teacher. Thus the petitioner should be held guilty of misuse of school fund.--Annexure-X.

(12) It is found that the petitioner has not even signed over the registration form of students (School copy). Thus the petitioner should be held guilty of dereliction of duty.--Annexure-XI.

(13) That from the answer script in the subject of accountancy of Class-XI having Roll No. 31, registration number 01190 - 0177 for the year of 2007-2008 it reveals that the said student was awarded 21 marks (Twenty one marks only), but in the Mark Sheet the petitioner has manipulated said number by striking out 21 and by putting 31 with his signature. The petitioner declared the said unsuccessful student as successful in Class-XI examination conducted by West Bengal Council of Higher Secondary Education and sent the said manipulated mark-sheet to the H.S. Council and allowed the said student to admit in Class-XII, with such manipulated Mark Sheet.

3. The petitioner replied to these charges, mentioned in the charge-sheet on 23rd August, 2010. The said departmental proceeding is now pending in this preliminary stage of enquiry.

4. Simultaneously with the initiation of the said disciplinary proceeding by the Administrator of the said school, a criminal case has also been initiated by the very same Administrator of the said school against the petitioner alleging commission of offence by him under Sections 406, 409, 467, 468 and 471 of Indian Penal Code. In fact, the charges which were labelled against him in the departmental proceeding were also reproduced in the said complain case before the learned Magistrate.

5. This Court is informed that after holding an inquiry, the Police submitted a charge-sheet against the petitioner in the said criminal case. The said criminal case is now on the verge of commencement of trial.

6. Though the petitioner has filed this writ petition for quashing the said disciplinary proceeding as well as the suspension order, but Mr. Bhattacharya, learned Advocate, appearing for the petitioner, in course of hearing of this writ petition, ultimately prayed for stay of the disciplinary proceeding at least till the conclusion of recording of evidence of the parties in the said criminal case. Mr. Bhattacharya submitted that since the nature of complain against the petitioner in both the aforesaid proceedings is same and identical and the Administrator who initiated the disciplinary proceeding is also the complainant before the learned Magistrate, it is desirable that the disciplinary proceeding should remain stayed till the recording of the evidence of the parties in the criminal proceeding is concluded, as the defence of the petitioner in the criminal case is very much likely to be disclosed prejudicially to the interest of the petitioner, if the parallel inquiry in the departmental proceeding is allowed to be continued.

7. Mr. Bhattacharya further submitted that two parallel proceedings for trial of identical charges cannot proceed simultaneously as the documentary evidences relating to the charge in question in both the aforesaid proceedings have already been seized by the police authority in connection with the criminal case and the said documents are now in the custody of the police authority. Mr. Bhattacharya thus submitted that the petitioner has no access to those records presently and without consulting those records it is practically impossible for him to proceed with the departmental proceeding. Thus he prayed for stay of the departmental proceeding at least till the recording of evidence in the parties in the criminal case is concluded.

8. Though, initially, Mr. Bhattacharya also prayed for quashing of the suspension order but ultimately he restricted his prayer with regard to release of the subsistence allowance admissible to his client which still remains unpaid to the petitioner till date.

9. Mr. Deb Burman, learned Advocate, appearing for the School Authority, in his usual fairness submitted that since the nature of the complain against the petitioner in both the criminal case as well as in the departmental proceeding is same and identical and the relevant documents have already been seized by the police authorities, the departmental proceeding may be kept in abeyance till the recording of evidence of the parties in the criminal case is concluded.

10. Mr. Deb Burman, learned Advocate, also submitted that the school, where the petitioner is working as an Assistant Teacher, is a D.A. getting school and as such the school has to depend upon its own income for payment of salary to the teaching and non-teaching staff of the said school. Mr. Deb Burman further submitted since the school was short of fund, the School Authority could not pay the entire admissible dues to the petitioner towards his suspension allowance. He, however, assured the Court by submitting that the School Authority will pay the entire unpaid admissible dues of the petitioner to him as early as possible.

11. Having heard the learned Counsel of the respective parties and also by taking note of the decision of this Hon'ble Court in the case of Dibakar Das v. Registrar General, Appellate Side. High Court, 2006 (2) CHN (Cal) 48; this Court holds that since the set of facts which gave rise to the initiation of the disciplinary proceeding as well as the criminal proceeding against the petitioner are same and identical, the defence of the petitioner in the criminal case is very much likely to be disclosed prejudicially to the interest of the petitioner, if the parallel inquiry in the departmental proceeding is allowed to be continued. That apart it is rightly pointed out by Mr. Bhattacharya that since the documentary evidence has already been seized by the police authority and the said documents are now in the custody of the police, it will be inconvenient for the petitioner to proceed with the departmental proceeding without getting access to those documents which are in the police custody.

12. Though, this Court has no hesitation to hold that the approach, the standard

of proof, the extent of facts to be established for proving misconduct are different from those in the criminal proceeding, but still then this Court is of the view that justice will be sub-served, if instead of staying the departmental proceeding till the disposal of the said criminal case, the departmental proceeding is kept in abeyance until recording of evidence in the criminal case is concluded.

13. Accordingly, this Court disposes of this writ petition by directing that the departmental proceeding will be kept in abeyance until recording of evidence in criminal case is concluded. The learned Magistrate is, thus, directed to conclude recording of evidence in the criminal case arising out of Jora Bagan Police Station Case No. 47 dated 6th March, 2009 positively within a period of six months from the date of communication of this order without granting any adjournment to any of the parties and if necessary by holding day-to-day trial. This Court further directs that the departmental proceeding will commence immediately after conclusion of recording of evidence of the parties in the said criminal case so that the said departmental proceeding can also be completed as early as possible, preferably within a period of six months thereafter.

14. The School Authority is also directed to pay the unpaid admissible dues of the petitioner towards his subsistence allowance to the petitioner within one month from date. The School Authority is also directed to go on paying the subsistence allowance for the current months to the petitioner month by month during the period of his suspension.

15. The writ petition is, thus, disposed of. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.