
(2001) 02 CAL CK 0015
In the Calcutta High Court
Case No : Writ Petition No. 571 of 1998

Asish Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 08-02-2001

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 19, 20
Contract Act, 1872 — Section 23

Citation : (2001) 3 CALLT 111

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Mr. Tapan Kr. Dutta, Miss Tapati Ghosh and Mr. Debaprasad Bagchi, for the Appellant; Mr. Saktinath Mukherjee and Mr. Achintya Kr. Sen, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition relates to alleged termination of service of the incumbent dated 3rd March, 1998 and also declaration that Clause 11(3) of the special rules for the Management of Secondary Schools established and run by a Christian church/Missionary Society/Board/ Religious Society/ Subsidiary Society or other successor in law of West Bengal Secondary Act (hereinafter referred to as the said rules) is ultra vires to the Constitution of India amongst others.
2. The petitioner joined in the school i.e. St. Paul's School at 33/1, Raja Ram Mohan Sarani previously known as Amherst Street, Calcutta-700009 (hereinafter referred to as the said school).
3. A chargesheet was served upon the petitioner on 13th May, 1996 by the Secretary, Governing Body Diocesan Schools containing various allegations i.e. mal-administration, financial irregularities, lack of communication due to non-availability of petitioner in the school quarters for want of food, poor academic atmosphere in the school and hostel, reluctance to take steps against the staff responsible for embezzlement cases, not maintaining Fees and Academic

Registers etc. The petitioner was asked to give reply to the show-cause in the said registrar within a period of 15 days from the date of receipt of such chargesheet positively with a further intimation that failing which it will be presumed that the incumbent has no satisfactory reply to offer and in that case the authorities will proceed in the matter in accordance with law. On 21st June, 1996, the incumbent gave the reply to the show cause in the said chargesheet. According to the petitioner, the authorities concerned did not take any subsequent step against the petitioner. As such, the said purported charges virtually fell flat.

4. In 1997, the petitioner wanted to fill up the vacancy of the various posts with the intervention of the Employment Exchange which caused displeasure to the school authorities and as a result whereof on 7th April, 1997, a letter was served upon the petitioner by the president of this school expressing his annoyance for approaching the Employment Exchange. On 9th May, 1997, by a notice issued by the Secretary, Governing Body of Diocesan Schools superseding the School Committee on the ground of deteriorating discipline in the School and creating an adhoc Committee of three members. Since, according to the petitioner, such supersession was completely unwarranted and the petitioner approached the concerned District Inspector of Schools for the appropriate relief. According to the petitioner, as a counter blast of such steps, on 8th September, 1997 the Governing body intervened with the provisions of the Act by issuing a show cause notice referring to the same vague allegations without any material particulars as made in the year, 1996. The petitioner also stated that such notice was neither accompanied with the articles of charges nor imputation of charges. On 2nd October, 1997 the petitioner replied to the show cause. The petitioner was suspended by a letter of the authority dated 4th October, 1997 with effect from 7th October, 1997 till the finding of the Enquiry Commission is received by the Governing Body of the Diocesan Schools. The petitioner was allowed to get subsistence allowance for the period of suspension under the rules. Accordingly to the petitioner, the entire action of suspension by the authority concerned is bad in law for various reasons which are enumerated in para 16 of the writ petition. In addition to that, the suspension order containing the charges is passed without giving any opportunity to deal with the same as also averting the paragraph 15. According to the petitioner, no copies of the documents on which the charges are levelled have been forwarded to the petitioner. On the contrary, the Enquiry Officer, in a sitting on 26th November, 1997, observed that as soon as any documents or paper was submitted to him by the Governing Body the petitioner will get opportunity to inspect the same or to get a copy unless the same is voluminous making it difficult to make the copies thereof. The Enquiry Officer also allowed the presenting officer to stand as witness in the said proceeding which legally he cannot do. According to the petitioner, at the very inception of the proceeding the petitioner raised the question of jurisdiction and/or maintainability of the said proceeding. But the Enquiry Officer observed that since those points are legal/illegal points he has nothing to do in the matter and

virtually advised the petitioner to choose the way of Court for adjudication of those issues. On 4th December, 1997 the petitioner prayed for supply of copy of special rules which was not available to which the Enquiry Officer did not direct the presenting Officer to produce the same. From the peculiar conduct on the part of the Enquiry Officer it is further evident that the Enquiry Officer rejected the prayer of the petitioners in allowing engagement of Defence counsel on the plea that if the petitioner's Prayer is allowed the management may also ask for appointment of counsel on its side and as such the domestic enquiry would become an arena of legal battle of Court of Law. Such plea is not at all expected from an Enquiry Officer, in number of occasions did not care to bother that the deposition of the presenting officer is not at variance with the charges and Enquiry Officer took into consideration the evidence inspite of fact that such conduct is in gross violation of principles of natural justice and equity which is the paramount consideration of such kind of proceedings. In granting adjustment, such Enquiry Officer made caustic remark which transpired that such Enquiry Officer has proceeded to take biased attitude, further, the Petitioner wanted to reply to the case with the assistance of a lawyer since he was suffering from ill health and since he is not accustomed with the proceedings of the domestic enquiry but the same was refused. He again asked the Enquiry Officer to supply the list of documents by letter dated 29th January, 1998 which has been refused by saying that the petitioner left the Enquiry on 28th January, 1998 informing officer that he would not further want to participate in the enquiry as his requests were not granted. So there was no point in dealing with the enquiry further. The rest of the enquiry was, therefore, conducted and concluded on that day in his absence. Therefore, according to the petitioner, The Enquiry Officer is biased. According to the petitioner, once again the Enquiry Officer miserably failed to follow the essence of the principles of natural justice. The petitioner further stated time to time that the he informed the concerned District Inspector of Schools (SE). Calcutta and other statutory authorities about such illegal conduct on the part of the School Authority and seeking their interference with the same but no such steps has been taken by them. Therefore, the entire proceeding is illegal. The ad hoc committee has already expired on 11th November, 1997 and the Governing Body acted in violation of the special rules by initiating legal proceedings and without observing the general principles of conducting the same. However, on 4th March, 1998 the petitioner was informed by a letter dated 3rd March, 1998 by the appropriate authority about terminating his service with effect from 4th March, 1998. Such notice provides as follows :-

"Further, all your dues, including three months' salary in lieu of the notice, will, be paid to you on handing over the vacant possession of the quarters to Mr. R. Behura, Secretary of the St. Paul's School Committee, who shall act as the representative of the Governing Body of Diocesan School in respect of taking over the peaceful and vacant possession of the said quarters latest by 16th April, 1998".

5. Accordingly to the petitioner, the termination of the petitioner is wholly illegal,

without jurisdiction, and in violation of the provision of the special rules.

6. It appears that the writ petition was presented on 16th March, 1998 and thereafter an application was proceeded for amendments of the certain part of the writ petition on 22nd July, 1998 which was allowed and amendments duly incorporated in the writ petition and becoming the subject matter of determination by this Court. By incorporating paragraphs 31(c) and 31(D), the petitioner wanted to submit before this Court that in view of the recent observation of the Hon"ble Supreme Court of India it has become the settled principles of law that termination letter issued by the respondents being an authority under Article 12 is ultra vires to the Constitution of India as well as to the Articles 14, 16 and 20 of the same and also section 23 of the Contract Act as the same is opposed to the public policy. In view of above, the provision as laid down under Clause 11 (3) of the special rules also stands ineffective. The conduct of the respondents concerned is capricious and against the principles of natural justice and equity. According to the petitioner, the writ in the nature of mandamus has to be issued directing and/or declaring the letter of termination dated 3rd March, 1998 is violative of the Articles of Constitution as above and section 23 of the contract and is against the public policy. Therefore, Clause 11(3) of the special rules is ultra vires to the Constitution of India. Clause 3 of Rule 11 of the aforesaid rules is as follows :-

"The service of permanent employee may be terminated with three months" notice on either side or in lieu thereof three months" pay. Neither side need show any reason in such cases. For termination of service of a temporary or an employee probation, one month"s notice or in lieu thereof one month"s pay shall be given. But the Director of Public instruction West Bengal shall have the right to call for all relevant papers relating to such cases and see if the action taken is consistent with the terms and conditions of appointment.

Note: These rules shall apply mutatis mutandis in the cases of Headmaster/ Headmistress and Assistant Headmaster/Assistant Headmistress".

7. Once this case was decided by a writ Court in favour of the petitioner whereunder the termination notice issued to the petitioner was set aside and when an order of reinstatement was granted by the Court with full back wages. The authorities preferred an appeal when by an order dated 12th July, 1998 such order was set aside by a Division Bench of this Court with a request upon the appropriate single Bench of the Court to hear out the matter in detail without being influenced by any observation of the Court of appeal. Therefore by setting aside the order the matter was remanded before the trial Court for the purpose of passing on order finally. The respondent. College Authorities amongst others very much relied upon an emergent meeting of the Governing Body of the Diocesan School (Diocesan Board of Education) dated 3rd March, 1998 at 4 p.m which is as follows :-

"The meeting opened with prayer offered by the Rt. Revd. Dr. D.C. Gorai, Bishop

of Calcutta and Chairman, Governing Body of Diocesan Schools (Diocesan Board of Education).

GB(S): E: 98: 06 MR. ASISH MONDAL, HEADMASTER (UNDER SUSPENSION). St. PAUL'S SCHOOL. 33/1, AMHERST STREET CAL-9:

The report on the findings of the one man commission headed by Mr. N.C. Mazumdar an independent Labour Advisor who conducted the enquiry into the charges set down against Mr. Ashis Mondal, Headmaster (Now on suspension) of St. Paul's School, 33/, Raja Ram Mohan Sarani, Calcutta- 700009 in the letter of charge Sheet No. Edn./HM/97/3 dated 04.01.1997 by the competent authority on behalf of Governing Body of Diocesan School, Diocesan of Calcutta, 51, Chowringhee Road, Calcutta-71 terms of reference clearly stated therein and submitted the aforesaid findings on 10.2.1998 reveals that the said commission, following normal procedure in respect of such domestic enquiry adhering to all norms and examining relevant records, documents, evidences and taking into account of all rules and regulations applicable to aided schools of the state and observing the academic Code of Conduct as laid down in the "Special rules" notified by the State Government in the Extra Ordinary Gazette No 641 Edn. (S) dated 23rd May, 1974 applicable to Christian Minority Schools u/s 30 of the Indian Constitution and relying on accepted practices and conventions, giving all reasonable opportunities of being heard in self defence to Mr. Ashis Mondal, Headmaster (now on suspension) without inflicting on natural justice, has arrived at the conclusion that the charges contained in the said chargesheet have been established in the matters of Financial, Administrative and Academic affairs of St. Paul's School exposing gross irregularities and lapses, discrimination, indifference, incompetence and above all, lack of responsibility attached to the post as well as office of the Headmaster on the part of Mr. Ashis Mondal now under suspension.

The Governing body after applying its mind to the report as well as after examining the findings of the said report in all its perspectives, unanimously thinks that Mr. Ashis Mondal, Headmaster (on suspension) of St. Paul's School deserves no other punishment but outright dismissal from the post of Headmaster of the said school without being allowed to do any more harm to the nearly two century old Christian Missionary Institution under the Diocesen of Calcutta, CNI.

Inspite of what has been so clearly and evidently brought out in the finding of the Report relating to the activities of Mr. Ashis Mondal, Headmaster (now on suspension) of the school which unanimously call for such a punishment as referred to hereinabove. The Governing Body as a whole of fitness of things decided that the services of Mr. Ashis Mondal, Headmaster (now on suspension) shall be terminated in terms of Rule 11 (3) of the said "Special rules" and not to pursue the disciplinary proceeding in order to avoid a stigma on his service record.

RESOLVED.

1. That the services of Mr. Ashis Mondal, Headmaster (Now on suspension) of ST. Paul's School, 33/1, Raja Ram Mohan Sarani, Calcutta- 700009 be terminated with effect from 4th March, 1998 in terms of Rule 11(3) of the "special Rules" which reads-" the services of a permanent employee (including Headmaster) may be terminated with three months notice on either side or in lieu thereof three months pay. Neither need show any reason in such in such cases" - the said clause having been clearly set down in the letter of appointment of Mr. Ashis Mondal, Headmaster of St. Paul's School.

2. That Mr. Ashis Mondal, Headmaster (on suspension) of St. Paul's School shall vacate and handover the vacant possession of the furnished quarters at the aforesaid address as clearly laid down in the letter of appointment as already referred to which has been allowed to enjoy as the Resident of Headmaster latest by 16th April, 1998.

3. That all the dues of Mr. Ashis Mondal, Headmaster (on suspension) including three months full salary in lieu of the notice shall be resolved or paid to him by a crossed cheque after Mr. Ashis Mondal, Headmaster (on suspension) has handed over the possession of the furnished quarters situated in the school campus to Mr. R. Behura, Secretary of the Managing Committee of the School who shall act as the representative of the Governing Body of the Diocesan School in respect of taking over the peaceful and vacant possession of the Headmaster's furnished quarters when the cheque shall be delivered to Mr. Ashis Mondal on final settlement.

4. That the Director of Secondary Education, West Bengal Bikash Bhavan at Salt Lake, Calcutta-54 be informed of the termination of services of Mr. Ashis Mondal, Headmaster (now on suspension) of St. Paul's School and the full text of the resolutions of the Governing Body of Diocesan Schools in the matter be sent to him in terms of Rule 11(3) of the said "Special Rules"

Further resolved that the termination letter to Mr. Ashis Mondal be pasted in the Minute book for further reference".

8. I have carefully considered the submissions of the parties in detail in finalising the issue. According to me, much emphasis was given on the applicability of Articles 30 of the Constitution of India in respect of the institution. Therefore, a lot of discussion is required about the applicability of the same. By such Article right of minorities to established and administer educational institution was protected. From the plain reading of such Article it transpires that all minorities, whether based on religion or language, shall have the right to establish and administered educational institution of their choice barring the other parts of such Articles which are not very important in this respect. Therefore the connotation "administer" has its wide impact which cannot be curtailed or abridged by any authority by making it inapplicable as one way traffic. Therefore, Rule 11(3) of the said Rules is outcome of such special power as flowing from the Constitution

making it applicable in respect of appointment, confirmation, dismissal of appeal and termination. Clause 3 Rule 11 is a limb of Rule 11 but not the Rule 11 as a whole.

9. Therefore, the other parts of Rule 11 have to be looked into to come to a definite conclusion in this respect. It is an admitted position that in all cases of appointments, permanent or temporary, the School Committee will take an appropriate step under the Rules. No permanent employee shall be dismissed except after giving him or her an opportunity to defend himself or herself and in such cases the employee concerned may appeal to the Governing Body or such other body which the Governing Body may appoint, against the decision. The decision of the Governing Body or the body formed by the Governing Body shall be operative. However, Director of public Instructions, West Bengal shall have the right to call for the relevant records if he is not satisfied with the decision of the Governing Body. He may then advise the Governing Body for reconsideration of their decision. The final decision, however, shall lie with the Governing body and such other bodies which the Governing Body may appoint, as the case may be, except in the case of employees of institutions receiving aid from the State Government in any form in which case the decision of Director of Public instruction, West Bengal on being approached can direct to reconsider the issue if anything appears to be not applicable according to him. However, director of public instruction, West Bengal is not made party herein.

10. Learned counsel appearing on behalf of the petitioner relied upon a decision reported in 1997 (II) CHN 613 (Don Bosco v. Luton Thakur). Herein a single Bench of this Court held that protective umbrella of Articles 30 of the Constitution of India does not confer an unlimited right on the religious minority group to run their institution according to their whim and caprice and that "administration does not include mal-administration". The right conferred by Article 30 is not an unfettered right but is subject to the principle of equality in the eye of law, natural justice and human rights and the principles enshrined in Articles 14, 21, 39 and 41 of the Constitution of India. The backdrop of such referred case was lying in respect of an incumbent whose service was terminated without assigning any reason after rendering it for long 24 years and receiving an award of Rs. 1000/-, as a mark of distinction of the service he rendered as a teacher. Therefore, ratio of such judgment which is dependent upon the circumstances of the particular case cannot be made principally applicable everywhere without ascertaining the true scope of application in the present facts and circumstances.

11. By citing a judgment reported in West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others, Learned counsel appearing for the petitioner contended before this Court that it was held by the Supreme Court that the regulation of the West Bengal State Electricity Board enabling such board to terminate service of a permanent employee by giving three months' notice or salary in lieu thereof is totally arbitrary and confers on the Board, a

right which is capable of vicious discrimination. The background of such decision is that a permanent employee was terminated with immediate effect on payment of three months' salary in lieu of three months' notice. The order gave no reasons for terminating the service and there was nothing in order which could possibly be said to attach any stigma to the incumbent.

12. A further judgment was cited before this Court reported in *Uptron India Limited Vs. Shammi Bhan and Another*, by relying upon the paragraphs 12 to 15 of such judgment. According to the petitioner, the conferment of "permanent status" on an employee guarantees security of tenure. Services of a permanent employees, whether employed by the Government or Government Company or Government Institution or statutory Corporations or any other "authority" within the meaning of Article 12 cannot be terminated abruptly or arbitrarily, either by giving him one month's or "three months" notice or pay in lieu thereof or even without notice. Notwithstanding that, there may be a stipulation to that effect either in the contract of service or in the certified standing orders. In view of the above, legal action taken against a party which was permanent employee was wholly illegal.

13. The basic element to come to a conclusion primarily followed by the well known decision of the Supreme Court of India (*Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, . This is a landmark judgment so far as the concept as above is applicable. Such judgment does not require any more discussion hereunder because it is not only well settled but it has been followed by numerous judgments drawing the similar principle as available in the reference under the erstwhile judgment itself. The ratio of such judgment is that section 23 of the Contract Act is being opposed by the public and also ultra vires under Article 14 of the Constitution to the extent that it confers upon the corporation the right to terminate the employment of a permanent employee by giving him three months' notice in writing or by paying him the equivalent of three months' basic pay and dearness allowance in lieu of such notice. In that, beside being arbitrary or unreasonable, it wholly ignore audi alteram partem rule. It is also violation of directive principles contained in Articles 39(a) and 41.

14. A case was further cited being AIR 1998 SC 259 (*K. Krishnanamacharyulu & Ors v. Sri Venkateswara Hindu College of Engineering & Anr.*) to establish before the Court that an employee of an institution not receiving any grant in aid from the Government can invoke the writ jurisdiction of the Court for his remedy since such institution is catering to element of public interest. Therefore, although the institution hereunder is a minority institution and not receiving any aid, the service structure of the petitioner cannot be differentiated from the Government employee to come to a definite conclusion as regards dismissal of his service in the manner as proposed by invoking Rule 11(3) of the said rules.

15. On the contrary of the aforesaid principle of termination of service another principle has been laid down recently by the Supreme Court of India as reported

in 1999 (3) JT 32 (Yunus Ali Sha v. Mohamed Abdul Kalam & Ors.) That looking into minority status of the educational institution, the Managing Committee of the institution was entitled to terminate the service of the employee or employees therein without obtaining prior approval of the Director of Inspector of Schools since the management and discipline of such an institution is entirely under control of the Managing Committee of the minority institution.

16. therefore, the ratio of the above judgment specifically gives an indication about what would be the appropriate feeling of the Court in respect of coming to a conclusion as regards minority status of an educational institution. It is far more so when it is flowing directly from the Article 30 of the Constitution of India and by following such constitutional directives a Rule has been framed by the appropriate authority in respect of appointment, confirmation, dismissal of appeal and termination as regards the employees of such minority institution. Termination de hors the law without assigning any reason by giving a notice cannot stand in the way of making of such relies as alleged or at all. In the instant rule there is no violation of principle of natural justice as alleged or at all not any action has been taken by the authority concerned in violation of the same. Had it been the position that the authority has proceeded abruptly by dismissing or terminating the service of the petitioner with three months' notice or in lieu of three months, notice a payment for such period it would have been a different action for the sake of determination by a Court under Article 226 of the Constitution of India. Each case has to be determined on the basis of true factual prospect of the same. In the instant case opportunities galore were given to the petitioner. Show cause was issued, chargesheet was given, enquiry proceedings were held. Ultimately, the matter was referred for the purpose of taking a decision. Such decision was unanimously taken and the petitioner was finally terminated. Therefore, there was no question of violation of principle of natural justice of Rule of audi alteram partem. On the contrary, the activities of the institution is so much explanatory that the same cannot be construed at all as a violation of [principle of natural justice at all. Now, coming to the legal position, I am of the view that the true interpretation of the rule 11 of the said rules in this respect, is that the clause 3 of the Rule 11 is not an independent action here. Had it been so, there might have been a question of applicability of the principles as laid down in several judgments referred to above. But when the case of the petitioner is taken into account by the institution principally by following the clause 2 under Rule 11 of the same it cannot be construed as an isolated action on behalf of the institution it respect of abrupt termination of the petitioner from service. This action is in addition to the requirement of all formalities under clause 2 of the same. There, the difference lies in between the case of the petitioner and the referred cases hereunder. If the termination of service is given effect to by applying clause 3 alone no question of adding the word "further all your dues including three months" salary in lieu of the notice will be paid to you on handing over the vacant possession of the quarters..." can arise. It securely speaks that the service was not terminated abruptly taking the principles as laid

down under Clause 3 of Rule 11 of the said Rules alone. The conjoint reading of Clauses 2 and 3 of Rule 11 speaks that a permanent employee can be dismissed by the appropriate school authority or Board which shall be operative finally under the given situation. He may also be terminated by giving three months' notice or payment of three months in lieu thereof. The authority followed the first principally and the second additionally, therefore, there is not mistake in following the Rules applying mutatis mutandis.

17. Under such circumstances, I cannot find any reason to hold that the termination of the service of the petitioner dated 3rd March, 1998 is an outcome of violation of principles of natural justice or ultra vires the Article of the Constitution at all.

Therefore, I do not find any reason to interfere with such order. Hence the writ petition stands dismissed. Interim orders, If any, stand vacated. No order is passed as to costs.

Xerox certified copies of this judgment will be supplied to the parties within seven days from the date of putting requisites.

All parties are to act on a signed copy minute of the operative part of this judgment on the usual undertaking and subject to satisfaction of the officer of the Court in respect as above.

18. Petition dismissed