
(1991) 05 CAL CK 0013
In the Calcutta High Court
Case No : C.O. No. 12534 (W) of 1988

Bholanath Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-05-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 18, 19, 21, 226
Penal Code, 1860 (IPC) — Section 504

Citation : 95 CWN 1039

Hon'ble Judges : Mohitos Hazumdar, J

Bench : Single Bench

Advocate : Swapan Kumar Dutta and Gobinda Chaudhuri, for the Appellant;

Final Decision : Allowed

Judgement

Mohitosh Majumdar, J.—This writ application was presented on October 5, 1988 when this Court passed an order to the following effect:

Considering the urgency of the matter as pleaded in the writ application, requirement under Rule 27 of the Writ Rules is dispensed with.

Considering the facts and circumstances of the case and the grievances of the petitioner, as effectively placed by Mr. Dutta, I am prima facie satisfied that an interim order of injunction is merited for grant of an interim order in terms of prayer (g) of the petition till Friday, October, 7, 1988. The petitioner shall not be allowed to join his duties in the meantime.

Let this application appear for hearing on Listed Motion on October 7, 1988.

Copies of this application are to be served upon all the respondents and an affidavit-in-service is to be filed in the meantime.

this Court while granting interim order of injunction directed that the copies of the writ application be served upon all the respondents and an affidavit-of-service be filed in the meantime. Accordingly, copies of the writ application

together with all annexures were duly served upon all the Respondents and affidavit-of-service was affirmed on October 7, 1988 and the matter was placed in the List of December 14, 1988 when Mr. Swapan Dutta was present on behalf of the petitioner, but no one was present for the respondents. In those circumstances, this Court passed an order, inter alia, to the following effect:

14.12.88. Mr. Swapan Dutta..... for the petitioner.

The petitioner has filed an A/S. Let it be kept with the record. The interim order passed on 5th October 1988 is extended until further orders.

Let the A/O be filed within two weeks after the X-Mas holidays and let reply thereto be filed by two weeks thereafter and the matter will come up as a contested application- four weeks after the X-mas holidays.

2. Thereafter, on March 12, 1991, the matter was taken up for hearing when the order to the following effect was passed by this Court:

12.3.91. Mr. Swapan Kumar Dutta..... for the petitioner.

Despite service of the copy of the writ application upon the Respondents" and despite directions given for filing of affidavits, no one appears for the respondents nor any A/O has been filed. However, I allowed Mr. Dutta, learned Advocate for the petitioner to proceed with his arguments.

Hearing is concluded and judgment is reserved.

The facts of the case are as follows:

On July 20, 1964, the writ petitioner joined the Nandanpur Rupchand Academy (Aided Higher Secondary and Co-education) School (for short the said School) hereafter as an Assistant Teacher and since then the petitioner has been" discharging his duties to the satisfaction of all concerned. The approval of the appointment of the petitioner to the post of Assistant Teacher was duly effected by the concerned authority.

3. The petitioner raised serious grievances in the writ petition against the interference with the functioning of the petitioner by some interested persons of the present ruling clique that the petitioner was and/or is prevented from attending the said School; as a result whereof the petitioner had to file the criminal case against the persons owing allegiance to the present ruling clique in the State. The said case was initiated in the court of Sub-divisional Judicial Magistrate, Arambagh, which was numbered as C.R. Case No. 313 of 1981. The accused in the said case were found guilty of offence of intentional insult with the intent to provoke breach of the peace punishable u/s 504 of the Indian Penal Code and accordingly, convicted by a judgment dated June 9, 1987 passed by the Judicial Magistrate, Additional Court, Arambagh. Against the said judgment, Opposite Parties preferred an appeal which was at the material time pending before the Additional Judge, Hooghly. At the instance of Ka lobar an Manna (for short the respondent no. 9 hereafter), one of the accused parties in the said

Criminal proceedings at the material time was a Member of the Managing Committee of the said school and other rank outsiders, who were also the Opposite Parties to the said criminal proceedings, the Managing Committee of the said School has sought to do harm to the petitioner's service career for some oblique reasons since 1987, the illegal and unlawful interference and particularly after the petitioner succeeded in the Criminal case No. 313 of 1981 pursuant to the judgment dated June 9, 1987, assumed a serious proportion. On July 6, 1987, the petitioner attended the School and signed the Attendance Register with the help of the Police authorities. Since July 7, 1987, the petitioner was and is prevented from attending the School, under threat and intimidation by Respondent No. 9, in spite of lodging a number of complaints with the various authorities including the Secretary of the School, the District Inspector of Schools concerned as also the Officer-in-charge of the local Police Station, the Superintendent of Police, District Hooghly, Director of School Education, West Bengal, Sub-divisional Officer, Arambagh, Headmaster of the said school, Assistant Inspector of School, Arambagh. All the authorities indicated above including the Managing Committee of the said school, District Inspector of Schools, Hooghly, Officer-in-Charge, Khanakul Police Station have shown no concern and have and had maintained total silence over the matter. The District Inspector of Schools and the Director of School Education, West Bengal, have failed to discharge their statutory duties. Furthermore, the police authorities namely, Superintendent of Police and also the Officer-in-charge of Khanakul Police Station did not take any steps whatsoever to secure protection of life of the petitioner. By a Memo No. 122 (3)/S.E. dated January 8, 1988 issued for and on behalf of the District Inspector of Schools, the petitioner was informed that in connection with the release of the salary of the petitioner an enquiry would be held on January 20, 1988 when he was requested to be present and cooperate. The enquiry was due to be held on 20th January, 1988 and the petitioner received the said memo dated January 8, 1988 on February 3, 1988 a long time after holding of the said enquiry, as a result the petitioner was not given any opportunity to make his grievance before the authority. The said Memo reads thus

Sub : Release of salary of Sri Bholanath Roy, Asstt. Teacher of his school.

In connection with the above an enquiry will be held on 20.1.88 during School hours. He is requested to make it convenient to remain present at the time of enquiry and co-operate.

4. The petitioner duly sent a letter dated February 5, 1988 to the District Inspector of Schools which reads thus :

I beg to inform you that unfortunately the copy of your Memo No. 122(3)/SE dated 8th January, 1988 addressed to the Secretary, Nandanpur Rupchand Academy could only be delivered by the postal department to me on 3.2.1988 long after the appointment date on 20th January, 1988 when I was requested to remain present at the enquiry to be held by you in the school. I was, therefore, unable to comply with your request which my please be hated. The fact,

however, is that the situation prevailing in my village Nandanpur continues: to remain as it was and as a result of the same I am still compelled to reside outside the village.

The miscreants are at large and are threatening me with dire consequences and physical assault if I enter my village and attend my duties in the school. The fact could have been established if I could have remain in the enquiry held by your good-self. I have got no doubt that you must have also found out the truth during your enquiry, even though there may not be any one to represent my case before your goodself.

You will kindly appreciate my hardship in the "absence of the payment of my salaries for several months by the school authorities. My " subsistence is as such at stake.

Your kind and sympathetic intervention is solicited. I would also request you to please supply me with a copy of your kind enquiry report.

5. The petitioner made several grievances about the wrong that were and are being done to him by the Respondents. A letter dated 21st January, 1988 was issued by the Secretary of the said school, whereby the petitioner was requested to receive his payment on any working day other than Thursday during the school hours and on receipt of the said letter the petitioner through, his learned Advocate's letter of February 2, 1988 intimated the Secretary of the School to arrange for payment of the entire outstanding salary of the petitioner by a Demand Draft on any Bank in Arambagh as the petitioner, under compelling circumstances, was unable to be personally present at the school. Thereafter, the petitioner was not informed as to why, how and under what circumstances the payment could not be made available to him.

6. In spite of the petitioner's recording of his inability to attend the school under compelling circumstances from time to time, the authorities and others have failed to take any steps whatsoever in the matter and no payment in respect of salaries of the petitioner has so far been made. On August 9, 1988 with the help of the Police authorities the petitioner attended the school and submitted a letter addressed to the Secretary of the school expressing his desire to resume his duties and" requested the Secretary to allow him to sign the Attendance Register. The petitioner further requested the Secretary of the School to make payment for the period from 1st May, 1987 till date. Although the petitioner duly discharged his duties by signing the Attendance Register for the months of May and June, 1987, he was not paid his salaries as yet. The Assistant Headmaster of the said school duly received the aforesaid letter of the petitioner dated June 9, 1988 after putting his signature thereon. But the petitioner was not allowed to sign the Attendance Registrar and resume his duties which the Managing Committee of the said School agreed to do so pursuant to a discussion held in the presence of the concerned District Magistrate, Superintendent of police, Sub-divisional Officer, Sub-divisional Police Officer, the Circle Inspector of Police, the

Officer-in-charge of Khanakul Police Station, Sabhadhipati, Zilla Parishad., Hooghly and others on August 4, 1988 in the Office of the Sub-Divisional Officer at Arambagh. The said, letter dated August 9, 1988, written in Bengali script, inter alia, states as follows:

On August 4, 1988, in presence of (1) District Magistrate, (2) Superintendent of Police, (3) Sabhadhipati, Zilla Parishad, Hooghly, (4) S.D.O. (5) S.D.P.O., (6) Circle Inspector of Police, (7) Officer-in-charge, Khanakul Police Station, (8) Local M.L.A. and many others, it was discussed and decided that along with other Teachers I should be allowed to sign the Attendance Register after resuming the duties. Since 7.7.1987 till 8.8.1988, due to compelling circumstances, leave of absence was granted and I would request you to arrange for payment of all outstanding dues since 7.7.1987 to 8.8.88.

7. Despite the aforesaid state of affairs, the Managing Committee of the said school started issuing Show cause notice to the petitioner one after another as would appear from paragraph 17 of the writ application. By a letter dated August 10, 1987, the petitioner was asked to join his duties within a forth night from the date of receiving the said letter, failing which it was threatened to take action against the petitioner for such unauthorised absence. Receiving the said letter dated August 10, 1987, the petitioner replied the same requesting the School authorities for his security so that he could enter the school or to grant leave with pay. Another letter dated October 26, 1987 levelling charges against the petitioner for his unauthorised absence was issued by the Managing Committee and the petitioner was directed to show cause within 15 days. Accordingly, by a letter dated November 6, 1987, the petitioner explained the situation once again. The Managing Committee of the said school never considered the "insurmountable difficulty and impediment created by the Respondents for the purpose of preventing the petitioner from attending, functioning and discharging his duty. Rather, one after another show cause notices had been issued, namely, show Cause notice being Memo No. 24/88-89 (Regd. A/D) dated August 8, 1988 levelling charges against the petitioner. The said Memo, dated August 8, 1988 is in the manner following:

In exercise of the power conferred under Rule 28(8) of the Management Rules and in compliance with the direction of resolution of the Managing Committee dated 2.8.88, and in compliance of letter No. 24/6774/G dated 26.7.88 of the Secretary, Board of Secondary Education, West Bengal, I am to bring to your notice that the Managing Committee, Nandanpur Rupchand Academy framed the following charges against you:

1. You are illegally absenting from duty since 7.7.87 to upto date.
2. During the period from 7.7.87 to uptodate, you have been requested to join your duty several times vide letter No. 98 87-88 dated 28.7.87, No. 101/ed dt. 19.8.87, 109/ed 87-88 dated 20.10.87.
3. Inspite of several requests you have not joined your duty and your absence

has hampered the interest of large number of students.

4. There is no reasonable ground behind your absence.

5. You have failed to satisfy the Managing Committee regarding the reason of your absence from 7.7.87 by your letter dated 6.11.87.

6. You have changed your address whimsically which has not been communicated to the school management at all.

7. You came to school too late on 6.7.87 and signed attendance register without any permission of the Head Master and left school too early without any permission of the Head Master.

In view of above charges, the Managing Committee decided that you are liable to be terminated and you will be asked to show cause in this respect-So you are asked to show cause why your service shall not be terminated and the school management will not move to authority concerned, within fortnight from the date of receipt of this letter.

8. The petitioner by his letter dated August 22, 1988 replied to the said show cause notice dated August 8, 1988 and recorded his answer to the charges made against him in the following manner:-

Re: Your letter bearing No. 24/88-89 (Regd. A/D) dated 8.8.1988.

In response to your letter above referred to, I beg to state the following facts with a view to show cause against the alleged charges levelled against me allegedly in exercise of the power conferred under Rule 28(8) of the Management Rules along with others :

(1) that the alleged resolution of the M.C. dated 2.8.88 as referred to is completely without my knowledge and it may be passed in my absence and behind my back, as such this is against the principles of natural justice, without giving me any opportunity whatsoever to be heard.

(2) that it is regretted that neither from your end nor the author of the letter No. 24/6774/g dated 26.7.88 has communicated the letter concerned. This is quite against the principles of natural justice and denying me the reasonable opportunity to be heard and as such inoperative.

(3) That the charges levelled against me though those were written in Bengali as in a letter ref. No. 109/S.D/87-88 dated 26.10.87 are neither same in nature and those were recuted by me with my letter dated 6.11.87 under regd. with A/D post.

More or less 9 months have been passed without any response neither from your end nor from any concerned quarter. It is reasonably hoped that authorities concerned were satisfied with my answers to the said alleged charges, particularly in the facts and circumstances of heart-rendering conditions. May I humbly submit that you along with the authorities concerned are estopped from

taking any step after so long being kept themselves mum waiving their right to do anything against me attracting the legal jurisprudence of principles of estoppel and those of waiver.

Again, I humbly request you not to take any action which will go against law and justice and present position of the law of the land. However, to remind you my answers as previously adduced I may refresh my answers to the present alleged charges levelled by you against me without any propriety or reasonable authority, as such.

(1) With regard to the allegation no. 1, I say in consonant with the facts and circumstances which are within your knowledge, that I have been compelled to be absenting from my pious duty to my dearest object of imparting lessons to my students since 7.7.87 upto date. It is the first duty of being a flesh and blood to save himself, one cannot run in the midst of constant threat of losing his life. May I again request you to be reasonable to excuse me for my unwilling absence and to create a situation in which I may give my service to my society in the forum of giving lessons to my beloved students.

(2) With regard to item 2 of the charges.....but it is unfortunate that your failure to create a congenial environment by your noble eloquence to the local people to be justified and grudgeless which is under your authority and capacity and competence, causes me not to comply to your requests to join my duty so long in the face of fatal danger.

(3) In response to the 3rd charges I say that you know better than myself that I am not lagging behind your concern about the loss of my beloved students but I am helpless in the context of fears of losing my life.....

(4) With regard to 4 and 5 of your charges I say that it is fact that I could not continue my service to the school even after joining duties with security help from the police, if it is not the circumstances producing reasonable ground behind my unwilling absence what will be the reasonable ground satisfying you and the Managing Committee I do not know.....

9. As indicated above, the petitioner failed to get any protection from the School authorities and the Statutory authorities. In those circumstances, the petitioner has been compelled to come to this Court for the direction upon the Respondents to act and proceed in accordance with law under Rule 28(8) of the Rules for Management of the Non-Government Institutions (Aided and Unaided) 1969 (for short the said Rules hereafter). The petitioner further prays for mandate upon the respondents, namely, School authorities as also the Board of Secondary Education to forbear from giving any effect or further effect to the said show cause notice dated 8th August, 1988 and from acting in any manner adverse to the rights and interests of the petitioner and to grant salaries allowances as admissible under the rules and also prays for direction upon the respondents to cancel, withdraw rescind the show cause notice dated 8th August 1988 and also for injunction in terms of prayer (g) of the petition i.e. - "An order of injunction

do issue restraining the respondent school authorities and the Board each one of them and/or their servants and/or subordinates and/or assigns, from giving any effect or further effect to and/or taking any step or further steps pursuant to and/or acting or further acting on the basis of the impugned show cause notice dated 8.8.1988 being annexure "F" co this petition and/or from acting in any manner adverse to the right and interests of the petitioner as Assistant Teacher of Nandanpur Rupchand Academy, P.O. and Village Nandanpur, District Hooghly, pursuant to the impugned Memo, dated 8.8.1988, being Annexure "I".

10. Reference was made to the action of the Managing Committee issuing the show cause notice which was seriously assailed by the petitioner on the ground that the Managing Committee after having failed to give the reasonable facility to the petitioner to join the "school and by providing measures for security and safety of the petitioner should have issued the show cause notices. The Superintendent of Police and Officer-in-charge of Khanakul Police Station being the custodian of law and order situation should have protected the" petitioner from being subjected to intimidation and coercion. The petitioner's right to liberty which includes the right to work and livelihood has thus been imperiled by reason of inaction of both the Superintendent of Police and Officer-in-Charge of Khanakul Police Station. Both the authorities should have come forward to protect that right of the petitioner. Now, the court is required to consider the conduct of respondents and their particular failure to prevent those respondents, namely, Sri Kalobaran Manna, the Secretary of the School from committing wrongful acts as detailed hereinabove. The District Inspector of School, Officer-in-Charge, Khanakul Police Station, Superintendent of Police, Hooghly, Director of School Education (S.E), Sub-divisional Officer, Arambagh, Headmaster of the said School, and the Sub-Inspector of Schools Arambagh according to Mr. Dutta, adversely affected the right of the petitioner to this personal liberty.

11. It appears from the grievances of the petitioner that despite the repeated prayers made by the petitioner neither the members of the Managing Committee nor the other respondents have taken any steps to allow the petitioner to join his duties or to discharge his function. The Superintendent of Police, Hooghly and Officer-in-Charge, Khanakul Police Station failed to prevent the respondents from interfering with the right of the petitioner to discharge his normal functions as an Assistant Teacher.

12. It is also to be recorded that the Respondents never cared to appear before the Court and contest the challenge of the petitioner. In those circumstances, the basic assertions of the petitioner go unchallenged. The grievance of the petitioner is that his right to life which includes right to livelihood and right to continue his employment has not be taken away nor can be curtailed by those respondents. The Superintendent of Police and the Officer-in-Charge being the authority of maintaining the law and order are bound to protect the petitioner from being subjected to the violence by those respondents and the statutory functions of the superintendent of Police and the Officer-in-Charge are to see and protect the

right of the petitioner to life which includes his livelihood and his right to continue his employment.

13. It has been argued by Mr. Dutt that the said show cause notices have seriously prejudiced the right of the petitioner, Mr. Dutta claimed that the abuse of power gurb of exercise of power under Rule 28(8) of the said Rules, in the facts and circumstances of the case, have emboldened the members of the Managing Committee to commit unauthorised acts. Sub-rule (8) of Rule 28 of the said Rules is to be construed fairly, reasonably and properly. Recourse to Rule 28(8) of the Rules cannot be made in a case where the members of the Managing Committee who cannot, thereafter, be allowed to saddle an Assistant Teacher with the show cause notices. The case of the petitioner remains overlooked by the members of the Managing Committee. None of them did raise his voice against the illegalities that are being allowed to be perpetrated for the purpose of ousting the petitioner from the said school. Apart from that in the case of present nature, the Superintendent of Police, the Officer-in-Charge, Khanakul Police Station and the District Inspector of Schools and the Director of School education - are liable for wrongful acts by not taking steps against the wrong-doer.

14. The Police holds the balance between order and violence, security and anarchy, law and lawlessness. This balance determined the fate of all the activities in every sphere of human life. The police in such situation are immediately identified with law and in many respects, they are more important than the law itself as it is the Police who decides how and when it has to be applied. The police is very often in the lowest tier of justice and an integral part of it. The facts of the case as are detailed above would show that the Superintendent of Police and the Officer-in-Charge excepting the solitary occasion lamentably failed in accomplishing, the ends for which it is established. This is indeed not a glorious feat. The role of the police is for the prevention of violence. They should detect the crime otherwise how the common citizen could have faith on the police as has been done in the facts of this case. A police an employee under the Government is not meant for securing advantage of any political party nor the police force could be employed to the advantage of political party for subverting the rule of law. It is for the administration to find the desirability of isolating the police from the politics of the country and the police people should be made to realise that politicking by them is outside the sphere of their functions. Where a citizen's personal liberty is in danger, the police is to safeguard and protect the cherished right of a citizen. Mere a muscle power of any group or organisation cannot be allowed to interfere with the said right in, the country where the police has been given ample power to see and protect the right of a citizen to life. The very essence of civil liberty certainly consists of the right of every individual to claim the protection of the law whenever he receives any injury. One of the duties of the police is to afford the protection. Judicial activism in a response to the problem of the lawlessness of the State and Rule of Law must respond to rule of life. In the instant case, judicial activism cannot be

allowed to yield to legal escapism.

15. Let me now examine the show cause notice in the background of the State lawlessness and of Article 14 and 21 of the Constitution of India. The show cause notice itself shows the members of the Managing Committee have shown scant regard for protection of the life of the petitioner nor they have taken into account the basic grievances of the petitioner which were presented before them from time to time. Show cause notices were issued in clearest breach of sub-rule (8) of Rule 28. The decision to terminate the service of the petitioner without observance of fair play in action and the provisions contained in sub-rule (8) of Rule 28 rendered the said show cause notice wholly a nullity. The very mention of the punishment or termination of service in the show cause notice dated August 8, 1988 makes it clear that the concerned School authority from the very inception has made up their mind to punish the petitioner which clearly disclosed capsuled mind of the authority.

16. Mr. Dutta severely assailed the show cause notice as contained in Annexure "I" to the writ application by contending, inter alia, that the show cause notice apart from being infected with the capsuled mind of the authority and disclosure of the canned decision is ultra vires the sub-rule (8) of Rule 28 and also the Circular being No. S-607 dated June 21, 1982 Which is binding upon the school authorities. The said Circular inter alia provides that the school management shall initiate the disciplinary proceedings against any member of the teaching/non-teaching staff of the school in two stages namely, first stage and second state.

(a) First stage: The procedure of the first stage shall comprise the following ad seriatim:-

(i) Resolution of the Managing Committee containing the charges against the person to be proceeded against;

(ii) Formal charge sheet to be issued to the person concerned, containing the articles of charges as per resolution of the Managing Committee:

(iii) Reply to charge sheet by the person proceeded against to be submitted to the Managing Committee ordinarily within a fortnight from the date of receipt of the charge sheet:

(iv) Consideration of the reply by the Managing Committee and its decision thereon, with the underlying reasons for taking such decision to be stated in detail.

The school management shall, thereafter, send to the Board their proposal along with attested copies of all relevant papers coming within the scope of the "First stage" above.

If the Board considers that there are sufficient grounds for taking disciplinary action against the person concerned on the basis of papers submitted by the

School and also papers that may be subsequently called for, if necessary, the Board will accord first approval to the School's proposal for initiating disciplinary proceeding against him/her.

In all cases, the Board will acknowledge the school's letters on the subject at the earliest opportunity.

If no communication from the Board be received within one month of submission of the proposal regarding the punishment to be meted out to the teacher/non-teaching employee, the school concerned will meet the Secretary of the Board along with all relevant papers with a prayer for expeditious disposal of the case.

17. In the instant case, the petitioner was not given copy of the resolution of the Managing Committee containing charges against him to be proceeded against. The petitioner was not served the formal charge sheet which is required to be issued to him containing the charges as per resolution of the Managing Committee. The reply to the charge-sheet by the petitioner proceeded against was not obtained from him by the Managing Committee in terms of clause (ii)(a) of the said Circular. There was no consideration of the reply by the Managing Committee and its decision thereon, with the underlying reasons for taking such decision to be stated in detail. School Management, as assailed by the petitioner, did not send to the Board their proposal along with the attested copy of all the relevant papers nor there was any consideration of the same by the Board. There does not exist sufficient ground for taking disciplinary action against the petitioner on the basis of papers submitted by the School and also the papers that may be subsequently called for.

18. Second stage required for observance of the procedure is in the manner following:-

Second stage: The procedure of the second stage if necessary, shall comprise the following ad seriatim:

(i) On receipt of the Board's aforesaid approval the Managing Committee shall issue a show cause notice, on the basis of their resolution, to the person concerned ordinarily within a fortnight, specifying the nature of the punishment proposed to be awarded to him/her, as provided under Rule 28(8) or 8(a).

(ii) On receipt of the person's reply to the show cause notice, the Managing Committee shall consider the reply in its meeting, and take a decision thereon in the form of a resolution.

(iii) The school management shall thereafter forward all relevant pages as mentioned in (i) and (ii) above, to the Board for consideration ordinarily within one month of the reply to the show cause notice, as indicated under (b) (ii)

The Board will then consider the case in all its aspects, decide it finally and communicate its decision to the school authority for implementation. The decision of the Board on the matter is final and binding upon all concerned.

2. The school management shall not remove any person from service or award any punishment without the prior approval of the Board and without following the procedure indicated under Rule 28(8) and/or (8a) of the Management Rules as elaborated in item I above.

3.....

4.....

5..... If no communication from the Board be received within one month of submission of the proposal regarding the punishment to be meted out to the teacher/non-teaching employee, the school concerned will meet the Secretary of the Board along with all relevant papers with a prayer for expeditious disposal of the case.

19. The Managing Committee of the school before taking steps in the matter and sending the papers to the Board is required to comply with the mandatory requirements as contained in sub-rule (8) of Rule 28 of the said Rules. The challenge of Mr. Dutta is that sub-rule (8) of Rule 28 has not been complied with and School Authority has acted in clear breach of sub-rule (8) of Rule 28. Apart from that, the said show cause notice did not take into account the incurable infirmity crept In the show cause notices that the School authorities are bent upon doing away with the service career of the petitioner by any means or manner. The Secretary of the School issued a further show cause notice on August 8, 1988, without considering the basic fact that the petitioner has been prevented from attending the school at the instance of the Respondent No. 9 herein.

20. The District Inspector of Schools (SE) held the enquiry in the absence of the petitioner and number of memo issued by the District Inspector of Schools was received by the petitioner after the date for holding of the enquiry. The Officer-in-charge of the Khanakul Police Station, despite repeated complaints lodged by the petitioner, did not discharge his statutory functions as provided for in the Police Regulations by taking appropriate steps for the safety and security of the petitioner. Payment of due salaries and allowances was denied to the petitioner. It is contrary to all canons of justice and fair play in action that a penal decision has been taken first and then a show cause notice has been issued by the Managing Committee of the School against the petitioner in clear violation of Rule 28(8) of the said Rules. Rule 28(8) of the said Rules reads thus:-

28(8) - Both in aided and unaided Institutions the Committee shall have the power, subject to the prior approval of the Board, to remove or dismiss permanent or temporary teachers and other employees. For this purpose the Committee shall first draw up formal proceedings and issue charge sheet to the teacher or the employee concerned and offer him reasonable facilities for defending himself. The teacher or the employee proposed to be proceeded against shall submit his explanation, ordinarily, within a fortnight of the receipt of the charge sheet. The Committee shall send to the Board all relevant papers

including the charge sheet, explanations submitted by the teacher of the employee concerned and the reasons for which the Committee decides in favour of taking disciplinary action. If the Board considers that there are sufficient grounds for taking disciplinary action the Committee shall issue formal notice calling upon the teacher or the employee concerned to show cause, ordinarily within a fortnight why he should not be dismissed or removed from service. The Committee shall, then send again to the Board all relevant papers including the explanation submitted by the teacher or the employee concerned and the recommendations of the Committee for the action proposed to be taken. So far as the Committee is concerned, the decision of the Board shall be final :

Provided that, the Board may delegate to any Committee constituted u/s 24 of the Act the powers and functions conferred on the Board by this sub-rule.

21. The Committee shall have the power subject to the prior approval of the Board to remove and/or dismiss permanent or temporary teachers and other employees and for this purpose, the Committee shall first draw up a formal proceeding and issue charge sheet to a teacher or an employee concerned and offer him reasonable facilities for defending himself.

22. In support of his claims and contentions Mr. Dutta, Learned Counsel appearing for the petitioner cited the following Supreme Court cases:

1. Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another,
2. Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others,
3. Olga Tellis and Others Vs. Bombay Municipal Corporation and Others,
4. Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another,

On the question of personal liberty and the principle of reasonableness, the learned Judges of the Supreme Court in the case of Maneka Gandhi (supra) held -

If a law depriving a person of personal liberty and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex hypothesis it must also be liable to be tested with reference to Article 14.

The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Art. 21 must answer the test of reasonableness in order to be in conformity with Art. 14. It must be "right and just and fair and not arbitrary, fanciful or oppressive: otherwise, it would be no procedure at all and the requirement of Art. 21 would not be satisfied.

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The principle of audi alterem partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice.

Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The enquiry must, always, be does fairness in action demand that an opportunity to be heard should be given to the person affected.

23. Further, the learned Judges of the Supreme Court in the case of D.T.C. vs. D.T.C. Mazdoor Congress (supra) observed that:

In the year 1990, it is not necessary to discuss in detail the authorities which have widened the horizons of Article 14 of the Constitution. Some of these precedents are directly on the point inasmuch as the validity of similar service rules was considered there. It is enough if I summarise the position of law as it obtains to-day.

There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of individuals, however, high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies..... The -right to life includes right to livelihood. The right to livelihood therefore, cannot hang on the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to due limbo of undefined premise and uncertain applications. That will be a mockery of them.

24. In the case of Olga Tellis vs. Bombay Municipal Corporation (supra) also the learned Supreme Court on the question of deprivation of right to livelihood, observed the same view. The relevant portion of the judgment reads thus:

The right to life includes the right to livelihood. The sweep of the right of the life conferred by Art. 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as for example, by the imposition and execution of the death sentence, except according to procedure established by law..... Such deprivation would not only denude the life of its effective content and meaning fulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life.....

The procedure prescribed by law for the deprivation of the right conferred by Art. 21 must be fair; just and reasonable. Just as a malafide act has no existence in the eye of law, even so unreasonableness vitiates law and procedure alike.

It must be reasonable and must conform to norms of justice and fair play.

25. Mr. Dutta further contended that equal protection of Law to all citizens is guaranteed under the provisions of Article 14 of the Constitution and in support of his contention, Mr. Dutta, cited the case of Central Inland Water Transport Corporation vs. Brojo Nath Ganguly (supra) which are in the manner following:

Article 14 of the Constitution of India guarantees to all persons equality before the law and the equal, protection of laws.

The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the strong party or go without them.

26. Mr. Dutta further cited the decision of the Supreme Court in the case of Union of India vs. Md. Ramjan Khan (1991 Lab. I.C. 309). While dealing with the question of reasonable opportunity envisaged by the provision under consideration, the learned Judges held-

(a) an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based-

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or by other witnesses in support of his defence and finally-

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, such he can only do if the competent authority after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved, against the Government servant tentatively proposed to inflict one of these three punishments and communicate the same to the Government servant.

27. Reliance was placed on another decision (Mazharul Islam Hashmi vs. State of U.P.) (1974) 4 SCC 537) where the learned Judge held-

Every person must know what he is to meet and he must have opportunity of meeting that case. The legislature, however, can exclude operation of these principles expressly or implicitly. But in the absence of any such exclusion, the principles of natural justice will have to be proved.

28. Mr. Dutta further referred to the decision in the case of Frances Coralie Muliin vs. The Administration, Union Territory of Delhi & Ors., reported in AIR 1981 SC 747, where the Supreme Court inter alia held as follows:

The right to life enshrined in Article 21 can not be restricted to mere animal existence. It means something much more than just physical survival.

Right to life and right to work are integrated and inter dependent.

29. Article 21 of the Constitution should be read in conjunction with Articles 14 and 18 of the Constitution. The Supreme Court In the case of Maneka Gandhi vs. Union of India (supra) observed - "right to life and personal liberty cannot be taken away except by legislative procedure Which should be just, fair and should not be arbitrary, fanciful and Oppressive one. It is further held that the Court is to protect the life and personal liberty."

30. In those circumstances, the attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than to attenuate meaning and content by a process of contraction. The judicial activism helps in checking governmental lawlessness, justice D.P. Madan while speaking for the court in Central Inland Transport Corporation vs. Brojonath Ganguly (supra) pronounced that law should move forward in tune with the changed ideas and ideologies of the Society; courts must adapt the law to the changing needs of society. He asserts : The law exists to serve the needs of the society which is governed by it. If the law is to play its allotted role of serving the needs of society, it must keep time with the heart beats of the society and with the needs and aspirations of the people."

31. The Court must always bear in mind that the variations of civil liberty certainly consist of the right at individual to claim the protection of the laws whenever he receives the injuries. One of the paramount duty of the government and its various agencies is to afford protection and not to deny it. Judicial activism is an essential part of the judicial function.

32. The basic challenge of the petitioner unfolds State lawlessness and the Court cannot overlook such lawlessness on the part of the Government. It is the duty and responsibility of the State, in particular the police administration to protect the life of the petitioner and also to afford necessary protection for his safety and security. It is also very shocking when such challenge is thrown before this Court, no affidavit-in-opposition was filed on behalf of the police administration, in particular, Superintendent of Police, Hooghly, the Officer-in-charge Khanakul P.S., nor there is any engagement of the counsel for contesting the case on behalf of the State. There cannot be any worse form of callousness as will appear from the conduct of the Respondents, also from their indifference to the court and in the present case the Court should not overlook that indifference. It is to be borne in mind that the police is the executive civil force of State to which is entrusted the duty maintaining public order and of enforcing regulation for the prevention and detention of crime. The function of the police should be to curb the liberty of a citizen only when it degenerates into licence and unwarranted variation from the standard is to be seriously deprecated as being arbitrary and tyrannical. Police should curb down any kind of tyranny, any kind of arbitrary action on the part of

an individual or a group of persons so as to enable the people to live in a society governed by Rule of Law. Rule of Law happens to be a closure to rule of life. this Court feels extremely shocked by the conscious inaction of the statutory functionaries in not taking steps for securing protection to the petitioner and to take steps against wrong doers. After all, we are living in civilised country and we cannot afford to permit such inaction of the authorities, meant for maintaining law and order in a case where the right to life and personal liberty of a citizen are seriously imperiled.

33. In the instant case, a decision to terminate the service of the petitioner has been taken by the Managing Committee without offering reasonable facilities to the petitioner to defend himself in gross violation of Rule 28(8) of the Rules of 1969. The School authorities having first taken the decision to terminate the service of the petitioner and thereafter issue the show cause notice to the petitioner, haws thus sought to deprive the petitioner of his right to livelihood and work. The school authorities withheld the salaries and allowances of the petitioner and such acts as detailed above are thus violative of the petitioner's rights under Articles 14, 19, 21 and 300A of the Constitution of India.

34. Mr. Dutta, thereafter, strongly relied upon the case of Manmohan Jaitla vs. Commissioner of Union Territory reported in AIR 1935 SC 364. Here the learned Judges of the Supreme Court observed-

The matter can be reviewed from a slightly different angle as well. After the decision of the Constitution Bench of this Court in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, the aided school receiving 95% of expenses..... by way of grant from the public exchequer and whose employees have received the statutory protection under the 1969 Act and who is subject to the regulation made by the Education Department of the Union Territory of Chandigarh as also the appointment of Headmaster to be valid must be approved by the Director of Public Instruction, would certainly be amenable to the Writ jurisdiction of the High Court. The High Court unfortunately, did not even refer to the decision of Ajay Hasia's case. In Ajay Hasia case, Bhagawati, J. observed that the financial assistance of the state is so much as to meet almost entire expenditure of the Corporation being impregnated with governmental character. Add to this "the existence of deep and pervasive State control" which may afford an indication that the Corporation is a State agency or instrumentality. Substituting words "public trust" in place of the Corporation the reasons will mutatis mutandis apply to the school. Therefore, also the High Court was in error in holding that the third-respondent school was not amenable to the writ jurisdiction of the High Court.

35. Therefore, the action of the respondents in the instant case must satisfy the test of Articles 14 and 21 of the Constitution. The impugned action or show cause notices issued by the School authorities as also the state lawlessness by reason of ominous silence of the Superintendent of Police, Officer-in-Charge, Khanakul Police Station and the District Inspector of Schools who consciously and

deliberately did not discharge their duties, call for judicial review. At this stage Mr. Dutta severely commented on deliberate and conscious inaction of the Respondents by claiming, inter alia, that the petitioner cannot be fastened with the threatening termination of service and threat by reason of the persistent coercion and intimidation to him at the vagary of the concerned officers. In those circumstances, the Court is required to refer to the case of P.T.C. vs. D.T.C. Mazdoor Congress (Supra) as already indicated earlier in this judgment. The show cause notices in may view, being ultravires sub-rule (8) of Rule 28 of the Rules are hereby declared illegal and nullity. The failure of the School authorities to give protection to the petitioner's personal liberty and also deliberate inaction of the Superintendent of Police and Officer-in-Charge, Khanakul, adversely affected the right of the petitioner to life, which includes right to livelihood, right to locomotion, right to continue to work. It is a clear case of Governmental lawlessness which completely impairs the aforesaid rights calls for strongest condemnation by the Court. The Court cannot remain silent visualiser to watch the State lawlessness which imperiled the right of a citizen to the extent of right to livelihood and right to work.

36. I, therefore, hold that the Superintendent of Police, Hooghly, Officer-in-Charge, Khanakul Police Station and the District Inspector of Schools (SE), Hooghly, are responsible for keeping the petitioner out of his work without any salary for months together and also placing him at the mercy, vagaries whims and caprice of the School Committee and Respondent no. 9 and his fellow-travelers. The Court cannot allow fundamental rights of the petitioner to be consigned to the limbo of indefinite promises so as to make a mockery of them. The court should come forward within definite limitation of Article 226 of the Constitution of India to protect a citizen from being deprived of his right to life.

The application is allowed.

37. The show cause notices are hereby declared ultra vires being violative of Regulation 28(8) of the Rules. The Superintendent of Police, Hooghly, Officer-in-Charge, Khanakul Police Station and the District Inspector of Schools (SE) Hooghly, are hereby directed to take immediate steps for resumption of duties by the petitioner as an Assistant Teacher of the said school, namely Nandanpur Rupchand Academy (Aided High Secondary and Co-education). The Respondent nos. 2, 3, 4, 5 and 6 are further directed to see that the Members of the Managing Committee of the said School do not interfere with the functioning of the petitioner as an Assistant Teacher of the said School.

38. The Superintendent of Police, Officer-in-Charge, Khanakul Police Station and the District Inspector of Schools (SE), Hooghly, are also directed to see that the petitioner's right to work in the school as an Assistant Teacher is not otherwise jeopardised, interfered with and/or adversely effected by any act or acts of the School authorities or their associates. The Officer-in-Charge is further directed to post a Police Picket to prevent the Managing Committee or outsiders so that the petitioner should not be under any difficulty to resume his duties or to discharge

his function as an Assistant Teacher of the said School.

39. The District Inspector of Schools is hereby directed to pay all the arrears of salaries and allowances since May 1987 till date to the petitioner within a period of one month from the date of communication of this order and shall go on paying the current salaries and allowances, after proper revision and relaxation, without any default. All the respondents are directed to implement the order within seven days from the date of communication of the order without any delay.

There shall be no order as to costs.