
(2006) 07 CAL CK 0047
In the Calcutta High Court
Case No : Writ Petition No. 8227 (W) of 2003

Chandra Sekhar Prasad Sinha

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 06-07-2006

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage (Amendment) Act, 1956 — Section 13
Penal Code, 1860 (IPC) — Section 120B, 323, 379, 479, 498A
West Bengal Board of Secondary Education Act, 1963 — Section 24

Citation : (2006) 3 CALLT 631 : 111 CWN 818

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : Amit Lahiri and S. Banerjee, for the Appellant; T. Chakraborty and K. Dalal and Kamallesh Bhattacharya, for the Respondent

Final Decision : Allowed

Judgement

Indira Banerjee, J.—The question involved in this writ application is whether a teacher can be kept under suspension indefinitely on the sole ground that he had been arrested and kept in custody in connection with criminal proceedings initiated against him.

2. The petitioner, a teacher of Bani Vidyalaya High School at Burnpur in Burdwan, hereinafter referred to as the school, was suspended on or about 29th November, 1999 by the Managing Committee of the school and has since been kept under suspension in the circumstances stated hereinafter.

3. On or about 26th June, 1991 the petitioner got married. After over 7 years of marriage, the petitioner's wife Indu Devi lodged a complaint against the petitioner u/s 498A and Section 379 of the Indian Penal Code and also Sections 3 and 4 of the Dowry Prohibition Act, 1961.

4. The petitioner was arrested on 8th November, 1999 when the petitioner visited

his native village and detained in custody from 9th November, 1999 till his release on bail on 14th January, 2000 pursuant to an order of the Chief Judicial Magistrate, Chapra.

5. It is alleged that there was a little delay in reporting for duty, as the petitioner had after his release taken ill. The petitioner alleges that when he went to join the school he was prevented from doing so. Later, the petitioner was served with an order of suspension dated 29th November, 1999 which is extracted hereinbelow:

The undersigned is directed by the Managing Committee of the school to inform him that he has been suspended from his present post in the interest of the Institution as per Rule 28 of the Management Rules.

This order takes immediate effect.

6. According to the petitioner, no charge has yet been framed against the petitioner in respect of the criminal complaint lodged against the petitioner by his wife. The petitioner's wife has, since obtained a decree of divorce in the Court of the 6th Additional District Judge, Chapra. The petitioner has, however, indefinitely been kept under suspension. The petitioner is being paid a meagre subsistence allowance.

7. The petitioner earlier filed a writ application being W.P. 4496 (W) of 2000 which was disposed of by an order dated 13th March, 2002 of His Lordship the Hon'ble Mr. Justice P.K. Chattopadhyay, whereby His Lordship directed the petitioner to make a representation to the West Bengal Board of Secondary Education against the order of suspension. The Board was directed to consider the said representation in accordance with law within the period stipulated in the said order.

8. By a Memo No. 24/1160/C/02 dated 4th, December, 2002 which is impugned in this writ application, the Secretary, West Bengal Board of Secondary Education informed the petitioner that the Committee constituted u/s 24 of the West Bengal Board of Secondary Education Act, 1963 had decided that the suspension order against the petitioner should continue. Being aggrieved by the said decision of the West Bengal Board of Secondary Education, the petitioner has filed the instant writ application.

9. An Affidavit-in-Opposition has been filed on behalf of the Respondent No. 5 being the Secretary of the Managing Committee of the school. In the Affidavit-in-Opposition and in particular the various sub-paragraphs of paragraph 5 thereof details have been given of the marriage of the petitioner with one Indu Devi on 26 June, 1991 and the treatment allegedly meted out by the petitioner and the members of his family to her. There are also allegations of an alleged illicit relationship of the petitioner with one Renu Devi.

10. Paragraphs 5(c) and (d) of the Affidavit-in-Opposition are extracted hereinbelow:

(c) It was alleged by the wife of the petitioner that when she protested against his husband's wrong activities, she was subjected to assault. Even after intervention of close relatives the petitioner did not care and finally planned to kill her wife and any how she came to know about the said planning and escape from that place and went to her parents house.

(d) That on the basis of a complaint made by the wife of the petitioner a Criminal Case being Case No. 72 of 1999 under Sections 498A/379, 323, 504, 506, 497, 120B of the Indian Penal Code and 3/4 of the Dowry prohibition Act was started in the learned Court of Chief Judicial Magistrate of Chapra with reference Bhagwan Bazar P.S. Case No. 72/99.

11. The averments in Paragraph 5 of the Affidavit-in-Opposition have, however, been verified as true to the knowledge of the deponent. From the nature of the allegations, it is patently clear that the same could not have been true to the knowledge of the deponent and as such this Court cannot take note of the factual allegations in the Affidavit in-Opposition.

12. The respondent No. 5 has in his Affidavit-in-Opposition annexed a xerox copy of the Judgment dated 2nd January, 2003 passed by the learned 6th Additional Judge at Chapra, u/s 13 of the Hindu Marriage Act, 1956, which shows that the wife of the petitioner has obtained an ex parte order of divorce against the petitioner.

13. The order of suspension issued against the petitioner states that the same is in the interest of the institution. It is, however, not in dispute that the petitioner has been suspended only by reason of his detention in police custody in connection with the complaint lodged against him by his wife, who has since obtained a decree of divorce in the Court of the 6th Additional District Judge at Chapra, Bihar.

14. The question before this Court is whether a teacher can be kept under suspension indefinitely just because he has been arrested and kept detained in Police custody in connection with criminal proceedings initiated against him.

15. As per the statement of the petitioner on oath, in the writ petition, which has not been denied by the respondents, no charges have yet been framed against the petitioner in respect of the criminal proceedings initiated against him.

16. In the impugned communication dated 4th December, 2002 reference has been made to Rules 28(8), 28(8a), 28(8b) and 28(9){viia) of the Management of Recognized Non-Government Institutions (Aided and Unaided) Rules, 1969 hereinafter referred to as the 1969 Rules, which are set out hereunder for convenience:

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 facility 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 or 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.

(8a) In case of lapses on the part of permanent or temporary teachers and other employees of an institution, which do not warrant removal or dismissal of the persons concerned, the Committee may impose minor penalties, like stoppage of one increment in pay, reduction of pay in the time scale and censure, with the prior approval of the Board. In all such cases, the Committee shall observe the procedure laid down in Sub-rule (8).

(8b) In the case of teaching and non-teaching staff of an institution detained in custody for a period exceeding 48 hours under any law providing for preventive detention or as a result of a proceeding for preventive detention or as a result of a proceeding either on a criminal charge or otherwise, such staff shall be deemed to have been suspended by an order of the appointing authority, with effect from the date of detention and shall remain under suspension until further orders.

A teaching or non-teaching staff who is undergoing a sentence of imprisonment shall also be dealt with in the same manner, pending a decision on the disciplinary action to be taken against him.

28(9) In aided and unaided Institutions the Committee shall have the power?

...

(viiia) to suspend a teacher or an employee where such suspension is in the interest of the Institution, pending drawal of proceedings against the person concerned within ninety days from the date of suspension and during the period of suspension, the person concerned shall be paid pay and allowances equal to fifty percent of the pay and allowances drawn by him immediately before such suspension. Such steps shall be referred to the Board within seven days of such action for approval. The person affected by the decision of the Committee may, however, make his/her representation to the Board. The order of suspension

shall automatically stand withdrawn in case proceedings are not drawn within a period of ninety days, provided that in exceptional circumstances, this time limit may be waived by the Board after due consideration of the fact of the case but under no circumstances the time limit shall be waived beyond the limit of one year:

Provided that where the period of suspension exceeds 90 days, the amount of subsistence allowance shall be increased after the expiry of ninety days to seventy-five percent of the pay and allowances drawn immediately before such suspension:

Provided further that the person concerned shall not be entitled to any subsistence allowance if he/she accepts employment during the period of suspension elsewhere.

17. The reasons set forth in impugned communication for the decision of the Committee constituted u/s 24 of the West Bengal Board of Secondary Education Act, 1963 that the order of suspension against the petitioner should continue is as follows:

- a) The result of the Criminal Case connected with detention in police custody that led to suspension of the petitioner is yet to be promulgated by the Hon"ble Court.
- b) There is no representation from the school citing the service of petitioner teacher as an utmost necessity in the interest of school.
- c) The Managing Committee of school that initiated suspension proposal is silent about withdrawal of such disciplinary measures.

18. Of the rules referred to in the impugned communication, Rules 28 and 28(a) of the 1969 Rules which relate to the power of the Managing Committee to initiate disciplinary proceedings have no application in the facts and circumstances of the instant case where no disciplinary proceedings have been initiated against the petitioner.

19. Rule 28(b) which has been inserted by amendment in the 1969 Rules by Notification No. 2009-SE(S) dated 3rd November, 2000 does not have retrospective effect. At the material time when the petitioner was arrested and detained in police custody, the said Rule which provides for deemed suspension inter alia of persons in custody for over 48 hours, was not in existence.

20. Prior to amendment of the 1969 Rules by insertion of Rule 28(b), a teacher could only be suspended in the interest of the institution, pending drawal of proceedings within 90 days from the date of suspension, in exercise of powers under Rule 28(9){viia) and in case proceedings were not drawn up within 90 days from the date of suspension the order of suspension would automatically stand withdrawn.

21. The time to draw up proceedings could in exceptional circumstances be extended by the West Bengal Board of Secondary Education, but in no case

beyond the limit of one year.

22. Mr. Bhattacharya submitted that disciplinary proceedings could not be drawn up against the petitioner within 90 days since the petitioner remained in custody for about 65 days and thereafter remained absent from duty for a further period of one month. By the time, the petitioner returned to join work, 90 days had already elapsed.

23. The presence of the petitioner in the school was not essential for initiation of disciplinary proceedings. In any event, no application was even made to the West Bengal Board of Secondary Education for extension of time to draw up proceedings against the petitioner.

24. No proceedings have been drawn up against the petitioner for almost seven years from the date of suspension of the petitioner in November, 1999. The order of suspension stands automatically withdrawn.

25. The impugned order of the Committee constituted by the West Bengal Board of Secondary Education is thoroughly misconceived. The Committee proceeded on the basis that request of the Managing Committee of the school for permission to withdraw the order of suspension, in view of exigencies, was necessary.

26. The Committee ignored the fact that under Rule 28(9)(viia) of the 1969 Rules an order of suspension could in no circumstances be continued beyond one year unless proceedings were started against the concerned teacher.

27. The Committee erroneously proceeded on the basis that the petitioner was under deemed suspension although Rule 28(8b) does not have retrospective operation. The order of suspension dated 22nd November, 1999 which was under Rule 28(9)(viia) of the 1969 Rules, stood automatically withdrawn upon expiry of 90 days, since no proceedings had been drawn up against the petitioner.

28. Learned counsel appearing on behalf of the petitioner has also referred to Memo No. S/606 dated Calcutta the 21st June, 1982 which inter alia provides as follows:

3. The order of suspension shall normally be issued to a member of the teaching/non-teaching staff under Rule 28(9)(viia) when his/her presence in the school is deemed likely to prejudice the proper conduct of inquiry into the charges brought or to be brought against him/her.

4. Proceedings containing the articles of charges shall be drawn up against a suspended person within 90 (ninety) days from the date of his/her suspension on the basis of a resolution of the Managing Committee and communicated to him/her without fail.

5. If such proceedings be not drawn up within 90 (ninety) days, the order of suspension shall automatically stand withdrawn as per provision of Rule 28(9)(viia) of the Management Rules.

29. Learned counsel appearing on behalf of the petitioner submitted, and rightly so, that the order of suspension against the petitioner stood withdrawn.

30. In any case, even under Rule 28(8b) of the 1969 Rules, which, of course, has no application in the case of the petitioner, a teacher is not to be kept under suspension indefinitely irrespective of the nature of the criminal charges against him/her and irrespective of whether charges are framed in the criminal proceedings.

31. A person in detention cannot obviously attend to his duties and is accordingly to be deemed under suspension. Once the teacher concerned is released the teacher concerned cannot claim entitlement to automatically join service. The matter would have to be reviewed by the Managing Committee and a decision would have to be taken as to whether the teacher concerned should be allowed to join.

32. The very fact that under Rule 28(8b) deemed suspension continues until further orders of the Managing Committee, shows that the Rules do not contemplate that a teacher should be kept under suspension indefinitely until conclusion of the criminal proceedings irrespective of the nature of the charges against him. The appropriate authorities are bound to consider the matter and take a decision as to whether or not to reinstate the petitioner.

33. Indefinite suspension of an employee implicated in criminal proceedings, not connected with the employment of the teacher, would be unjust unwarranted and in effect amount to punishment of a person without trial. A criminal proceeding may take years before it is disposed of. An employee cannot be kept under suspension for years.

34. The writ application is, therefore, allowed. The impugned decision of the Committee constituted by the West Bengal Board of Secondary Education u/s 24 of the West Bengal Board of Secondary Education Act, 1963 as communicated by the impugned communication being Annexure P-4 to the writ petition is set aside and quashed. The Managing Committee of the school shall forthwith permit the petitioner to resume his duties as teacher of the school. There will be no order as to costs.

35. Md. Mansoor Alam, learned advocate, appearing on behalf of the Managing Committee, prays for stay of operation of this order. Such prayer is considered and refused.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties expeditiously, subject to compliance with the required formalities.