

(1997) 05 CAL CK 0002
In the Calcutta High Court
Case No : C.O. 11069 (W) of 1989

Durgapada Mukhopadhyay

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 07-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 144
Penal Code, 1860 (IPC) — Section 323, 351, 379, 447

Citation : (1997) 2 ILR (Cal) 296

Hon'ble Judges : Basudev Panigrahi, J

Bench : Single Bench

Advocate : Ashis Sahyal, Jagadish Das and Pratip Chatterjee, for the Appellant;
Murari Mohan Das, for Respondent 8 and Netai Chand Manna, for Proforma
Respondents, for the Respondent

Final Decision : Allowed

Judgement

Basudev Panigrahi, J.—In this writ petition the Petitioner Durgapada Mukhopadhyay, who was working as an Assistant Teacher in Tiluri Kripamayee High School, has sought for a direction against the opposite parties 1 to 4 and 7 to 9 for payment of his salary from the period August, 1989 onwards till the date of release from the aforesaid school. The Petitioner having requisite qualifications for being appointed as an Assistant Teacher had applied to Tiluri Kripamayee High School (hereinafter called as the "School") in or about 1970. He was, accordingly, appointed as Assistant Teacher in the said School and his appointment was approved by the competent authority. Since then he had been rendering his services to the School as an Assistant Teacher maintaining high dignity, sincerity and faithfulness. It is claimed by the Petitioner he was regarded in high esteem from all concerned, i.e. students, guardians, people of the locality and even from his colleagues. He was also the Secretary of the staff council for a period of about 14 years.

2. On the eve of retirement of the then Headmaster Ananda Kishore Ray with effect from October 1, 1980, the Assistant Headmaster. Sri Kamal Kumar Ghosh became the teacher-in-charge/Acting Headmaster of the said School and was functioning as such till the date of his suspension on August 29, 1986. The then Managing Committee had, however, passed a resolution with regard to the appointment of the teacher-in-charge of the school by which one Sisir Kabi was appointed as teacher-in-charge. The said resolution was passed with a view to remove Kamal Ghosh from the said post. But the said appointment of Sisir Kabi was disapproved by the District Inspector of Schools vide his memo No. 323/8 dated February 14, 1981. Therefore, Sri Kabi after having failed to become the teacher-in-charge moved a writ petition in this Court in C.R. No. 13169 (W) of 1981 along other Petitioners making a prayer therein for removing Kamal Kr. Ghosh. This Court passed an order on July 21, 1983 holding, inter alia, that the Administrator would conduct a fresh election according to Election Rules and, further, directed Sri Kamal Kr. Ghosh to continue as acting headmaster.

3. Intermis of the direction passed by this Court dated July 21, 1983 the Managing Committee was reconstituted with effect from October 11, 1983 and one Kalipada Bauri was elected as the Secretary of the reconstituted Managing Committee. It is claimed by the Petitioner that the said Kalipada who assumed the charge of the Secretary made relentless effort to administer the affairs of the School in order to sub serve the interest of the political party to which he owned allegiance. So, therefore, he appointed one Asoke Kr. Acharjee to act as an Assistant Teacher who, however, agreed to work voluntary. Apart from appointing several other teachers who are said to be the sympathiser and supporter of the party in power, the Secretary wanted or tried to appoint one Akalanka Maity as Headmaster of the said School. So, therefore, Kamal Ghosh who was allowed to work as teacher-in-charge moved a writ petition in this Court for not proceeding with the appointment of Headmaster to his exclusion. In the said application, the interim order of injunction was granted. After the interim order, the then Secretary was said to have exerted pressure upon Kamal Ghosh for giving up his claim for the post of Headmaster. But when he failed in such pressure tactics, it was said that the Managing Committee passed a resolution by suspending Mr. Ghosh and instead appointed Sailen Kr. Shit a junior most Assistant Teacher as the teacher-in-charge in place of Sri Kamal Kr. Ghosh. But the majority of the teachers stood solidly behind Mr. Ghosh, therefore, a group of teachers who were loyal to the then Secretary had illegally and unreasonably acted against the teachers and the Institution at large. Against such brutal acts of the then Secretary and his hence-men, various representations were said to have been sent by the Petitioner, so also the telegrams and personal representation. But the concerned authorities seems to have slept over the matter without any positive response. Sri Kamal Ghosh had, however, lodged a written complaint on August 30, 1986 before the local Police station complaining against the action of the then Secretary and his hence-men. Despite such reports, the then Secretary and his supporters continued the same behavior towards the teaching staff. It has

further, been stated that the local police was also under the influence of the then Secretary, Kalipada and his hence-men and, therefore, they too did not take any action in the matter. Thus the then teacher-in-charge along with 17 members of the staff (teaching and non-teaching) moved writ petition being CO. No. 13198 (W) of 1986 in this Court which is still pending and whereupon was even U.C. Banerjee J. who, inter alia, passed an interim order for making payment of salaries to the Petitioners of that case within 10 days from the date of the order. But, however, the said order was not complied with. Thereafter, steps were taken for election of the Managing Committee. Since the election was not conducted fairly, properly and in conformity with the rules and it was only a camouflage, again it was challenged in this Court and in that case an administrator had been appointed to conduct election afresh for reconstitution of the Managing Committee of the School. In the said case, the School authorities were directed to take steps for payment of the salary of the teaching and non-teaching staff since August, 1986. The election which had been conducted was declared illegal and, therefore, this Court presided over by Mr. U.C. Banerjee J. set aside the election, against which an appeal had been filed being F.M.A.T. 828 of 1987. Since the teaching and non-teaching staff could not get adequate protection from the onslaught of the then Secretary and his hence-men which led to a proceeding u/s 144 of the Code of Criminal Procedure. The learned Magistrate directed the Block Development Officer to hold an enquiry. It is said that the Block Development Officer was proved no exception from being influenced by the Secretary and, therefore, the criminal proceeding turned out to be a mere fiasco. Since the teacher-in-charge was illegally suspended, he moved a writ petition in this Court and the Court had set aside such illegal order.

4. After the revocation of suspension, the then teacher-in-charge Mr. Ghosh had sent an information to the Officer-in-charge Saltora Police Station apprising him about hooliganism which might be created if he and other teaching and non-teaching staff wanted to go to School for resuming their duties. There was an atmosphere surcharged with tense and fear. The teacher-in-charge also sent a copy of the letter to the District Inspector of Schools and subsequently met him and explained that they were under duress due to unbecoming attitude of the then Secretary. The teaching and non-teaching staff went in a group for attending the school on March 17, 1987 but on the day following i.e. on March 18, 1987, some outsiders who happened to be relatives and/or well-known associates of the then Secretary Kalipada trespassed into the school premises during working hours, assaulted the teachers severely for which a report was lodged in Saltora P.S. being registered as P.S. case No. 1 dated March 19, 1987 under Sections 351, 323, 379 and 447 Indian Penal Code. But, however, the police which was under the influence of those people refused to take any action against the culprits and at last submitted the final report to the Sub-Divisional Judicial Magistrate. The Sub-Divisional Judicial Magistrate too mechanically accepted the final report and dropped the proceeding. Therefore, the Petitioner moved this Court in Crl. Revision being C.R. No. 1111 of 1988 and the order of

the Sub-Divisional Judicial Magistrate was set aside and the criminal case was revived.

5. The Management passed a resolution by asking Mr. Ghosh to forgo his claim for the post of Headmaster and had further forced to withdraw the case being CO. No. 5997 (W) of 1986 and in the said meeting it was further resolved to appoint one Sailen Kr. Shit who was one of the junior most teacher to be the teacher-in-charge of the School by replacing Kamal Ghosh.

6. The Division Bench passed an order on September 18, 1987 on the application of the Petitioner directing the Secretary of the Managing Committee to release the Petitioner's salary if he had attended the school. After the aforesaid order, it is claimed by the Petitioner that he had sent his father-in-law to make an on-the-spot-study of the situation to find out whether the atmosphere of the school was congenial to the Petitioner to join. But his father-in-law expressed in negative. Thereafter Mr. Murari Mohan Das was appointed as special officer by the Division Bench on March 30, 1988 who had been asked to conduct the election of the Managing Committee. After Mr. Das being appointed as the administrator, since he having failed to take any positive steps for holding an election, the Petitioner had again filed an application in Court for appropriate direction. It has been further alleged that the then Special Officer Sri M.M. Das had acted under the influence of the then Secretary Kalipada Bauri. Since the atmosphere was not favorable to join, the Petitioner addressed a letter to Mr. Das asking him to give adequate protection. The Petitioner could not join the school for having been prevented by the Management and he was under constant duress by the Secretary and his hence-men. There has been a circular issued by the W.B.B.S.E. being circular No. S/ 574/G/Misc./765 dated September 22, 1977 wherein it has been clearly laid down that the teaching and non-teaching employees of recognised Government Secondary School if prevented under duress from attending schools, would be entitled to their full emoluments. But even the above circular was brought to the notice of the special officer yet there was no change in his attitude. This Court passed an order that "the Respondent-teacher Durgapada Mukhopadhyay will be paid his monthly emoluments as and when he joins and not otherwise". The administrator was directed to do the needful, in order to give sufficient protection for Petitioner's security so as to enable him to assume duties in the school at an earliest point.

7. It has been further narrated that though the Petitioner in all sincerity wanted to join the school but he was prevented from doing so due to alarming and awful situation prevailing inside the school. Therefore, the Petitioner addressed a letter dated on October 31, 1988 requesting the administrator to provide police help while he would attend the school. But there was no response from the administrators" end. There were serious allegations made against the administrator, teacher-in-charge Saileh Kr. Shit and also the out-going Secretary Mr. Bauri. The teaching and non-teaching staff those who had been prevented from going to the school on and from August 30, 1986 for several months,

submitted prayer to the Sub-Divisional Judicial Magistrate, for necessary police protection, whereupon the learned Magistrate was pleased to direct the Block Development Officer, Saltora to make an enquiry into the concerned matter. But the position did not improve since the B.D.O. also joined hands with the other persons looking after the management.

8. The Petitioner has claimed that he has been not paid salary since August, 1986 till date for no fault on his part. He as well as the other teaching and non-teaching members finding no way out had filed an application in the Court which appeared in the Division Bench which passed an order directing the authority to pay for the period during which the Petitioner and others employees of the school were prevented from attending the school. The Court passed an order directing District Inspector of School, Bankura for conducting an enquiry as regards the situation of the School and pass a speaking order while deciding the claim. The said application was duly received by the District Inspector of Schools, on the basis of this Court's order. When the Petitioner wanted to substantiate his statement relying on the papers/records, the copies of some of the documents already left in the custody of the District Inspector of the Schools, the latter showed least inclination to go in detail into those documents. On the other hand, he allowed to administrator and the teacher-in-charge to interrupt the Petitioner while making his statements. So far as the contentions of the opposite parties were concerned the Petitioner had strongly refuted and desired to place his further material but ultimately the District Inspector of Schools passed an arbitrary, fanciful and whimsical order. It is claimed that from the memo of District Inspector of Schools it appears that he has relied upon the statement of the administrator and the teacher-in-charge but denied to record the statements of the Petitioner. He has failed to make an enquiry as to what were situation which had compelled the Petitioner from not joining the school under duress. But to the Petitioners' utter dismay, the District Inspector of Schools, instead of visiting the school for making an enquiry relating to the situation whether it was congenial to the Petitioner for attending the school, has rejected the Petitioner's claim unreasonable and unjustly with a closed mind. The Petitioner on earlier occasion had requested the administrator to provide police protection at Petitioners' cost if it was so required, but the administrator on his part did not take any steps for making necessary arrangements. There-fore, according to him those grounds were sufficient for the Petitioners for not attending the school as he was involuntarily prevented.

9. The Respondent No. 7 has filed an affidavit-in-opposition, it has been claimed that the writ Petitioner has intentionally and voluntarily avoided to attend the school. It has been further stated that he is a litigant, always attending the Court who is seen either in the corridor of the Court or in his lawyers chamber. He has filed a number of writ petitions by bringing false, scurrilous, fictitious insinuation against the administrator as well as the then Secretary. Since the Court has passed earlier orders directing him to join and after his joining he would be entitled to his salary, as he intentionally avoided to attend the school, he cannot

claim his salary in this writ petition. In the affidavit-in-opposition, it has been stated how the Petitioner was dealt with by the Management of the other school where he has been presently working. Since that matter is outside the scope and purview of this writ petition, I am not inclined to deal with those allegations.

10. Mr. A. Sanyal, the learned senior advocate appearing for the Petitioner, has submitted that in the writ petition the Court has to satisfy itself whether the absence of the Petitioner from the school was intentional, deliberate and voluntary or such absence was actuated due to coercion, duress and tension. If it is held that absence of the Petitioner was due to duress and forceful situation, then notwithstanding such absence of Petitioner from the school he would be entitled to the salary. In support of his submission, he has relied upon a letter sent to Mr. M.M. Das, advocate who was the administrator of the school requesting him for payment of his salary and for rendering necessary protection in order to enable him to resume his duties in his school. It has been contended by Mr. Sanyal that the administrator on his part replied to the Petitioner that he has no objection to render police protection at the cost of the Petitioner. From the letter it further transpires that pursuant to this Court's order for providing the Petitioner the police protection at his cost the administrator had agreed to make arrangement for rendering police protection. On October 31, 1988, the Petitioner again sent a letter to the administrator explaining him that he was prepared to meet the cost for police assistance, but, conspicuously, as submitted by Mr. Sanyal, there was no reply from the administrator to the above letter. In such situation, it was neither possible nor desirable for the Petitioner to attend the school without police protection in the background as narrated in the writ petition.

11. Therefore, the Petitioner is entitled to the salary during the period when there was unhealthy and undesirable environment which, rather, prevented the Petitioner from attending the school. So, therefore, the management should be directed to pay the salary.

12. Mr. M.M. Das, the learned advocate appearing for the Respondent No. 7, the management, has submitted that whether there was duress or not is a substantial question of fact, which, while hearing the writ petition this Court should desist from making a roving enquiry. He has further contended that he himself knew, being the Ex-administrator of the management that the Petitioner intentionally avoided to attend the School. Of course, this part of his statement cannot be taken note of, since acting as a Counsel he cannot be permitted to import his personal knowledge. From the narration of the facts, it has been established that Kamal Ghosh had claimed as acting Headmaster and obtained an interim order on April 1, 1986. There-after, since the situation in the school was neither healthy nor conducive and the then Secretary and his group started reign of terror in the mind of the staff, he requested the local police for taking appropriate action but the local police had failed to rise to the occasion for giving necessary protection. Therefore, the teaching staff came to this Court by filing a

writ petition being CO. No. 13198 (W) of 1986 stating, inter alia, that the Petitioners were prevented by the then Secretary and his hence-men from discharging their duties. This Court directed the Respondents to pay their salaries within 10 days there from- The said writ application is still pending for final adjudication". Sri Kamal Ghosh was illegally placed under suspension which was subsequently revoked by this Court. The Petitioner as well as other staffs apprised the authorities against the management. While teachers were performing their duties, it is stated by the Petitioner that the supporters, relative and also the sympathiser of the then Secretary committed trespasser into the school premises ; assaulted the teachers black and white. The Petitioner was also treated alike by those unruly mob. Written complaint was lodged which is still pending. As a matter of fact the Petitioner has brought serious allegation against the accused in the said P.S. Case 1 of 1987. I refrained from discussing the truth or otherwise of those allegations since it would seriously affected the merit of the criminal case. But, however, it is sufficient to hold that the situation of the school was far below normal and serene for any teaching and non-teaching staff who could work. On December 7, 1987, Sisir Kabi, who was appointed as teacher-in-charge of the school by this Court, issued a letter to the lawyer of the Petitioner as appearing in annexure "H" which would explain itself that the condition of the school was so bad that it would amount to risk, safety and security of the Petitioner. From the correspondence between the then Administrator, Mr. M.M. Das and the Petitioner it has been established that the Petitioner was requesting more often than riot for providing police protection. But the administrator presumably had not taken adequate safeguard for providing necessary protection to the Petitioner. It is unnecessary for me to deal with whether the administrator could act as a Counsel for the management, since that issue is not so much pertinent in this case. After the administrator failed to provide necessary police protection to the Petitioner, tie again approached this Court before the Division Bench which directed District Inspector of School (S.E.) Bankura to examine the claim for salary and allowances of the Petitioner by giving an opportunity of hearing to him and by making a speaking out. The District Inspector of Schools only after hearing the teacher-in-charge as well as the secretary of the school passed an order disallowing the claim of the Petitioner without adequate grounds.

13. Mr. Sanyal, the learned advocate appearing for the Petitioner, has relied upon a decision Sheikh Alauddin v. District Inspector of Schools (S.E.), Midnapore 1987 (1) C.H.N. 327 which reads as follows:

The Petitioner is a permanent Assistant Teacher of a High School in Midnapore. His case was that he regularly attended the school for several days but was not allowed to sign the attendance resister and/ or to take his classes ; he was also not paid his salary. He accordingly moved this writ petition inter alia praying that the District Inspector of Schools be commanded to direct the Headmaster and the Secretary of the school to allow the Petitioner to sign the attendance register and to pay his salary. Though the copy of the application was served on the Respondents, no affidavit-in-opposition was filed on their behalf. The learned trial

Judge disposed of the application by holding that no writ was maintainable against the managing committee of a school. Being aggrieved, the Petitioner filed an appeal and an interim rule of stay was issued. In the affidavit-in-opposition the Respondents inter alia stated that the Appellant was elected Pradhan of Gram Panchayat and having been so elected, he remained absent from the school for about three years that a mass petition was made to the Headmaster by the guardians and the students alleging bad character of the Appellant. After hearing the parties, their Lordships made the rule absolute directing the school authorities to allow the Appellant to discharge his duties and to pay him all arrears of salary, pending disposal of the appeal. The appeal court ultimately heard the appeal. The contention on behalf of the Respondent was that the writ application was not maintainable and that the Appellant was not entitled to claim salary for about three years when he remained unauthorisedly absent.

The Appellant has been working in an aided school and the entire salary of the teaching and non-teaching staff of the school is paid by the Government. The school is governed by the Rules framed under the W.B. Board of Secondary Education Act, 1963 known as Management of Recognised Non-Government Institutions (Aided and Unaided Rules, 1969).

Under these Rules, the appointment of the teaching and non-teaching staff must be approved by the District Inspector of Schools (Secondary Education) and for dismissal or removal of any staff or for that matter, for any disciplinary proceeding the approval of the District Inspector of Schools or other competent authority under the said Rules has to be contained. Thus, the school is subject to the regulations made by the West Bengal Board of Secondary Education. The Writ application is therefore maintainable. In any event, the writ Petitioner prayed that the District Inspector of Schools should be commanded to direct the Headmaster and the Secretary of the school to allow the Petitioner to put his signature on the attendance register and to pay his salaries upto date. The writ was in effect directed against the statutory authorities. In that view of the matter also the writ application is maintainable.

The school authorities did not consider it necessary to initiate any disciplinary proceeding against the Appellant for his alleged unauthorised absence allegedly for three years. In the first affidavit filed in the appeal Court it was only mentioned that the Appellant was absent for eighty days. The school authorities are determined not to allow the Appellant to resume his duties, the allegation against him was that he being a Muslim married a Hindu widow which enraged the feelings of the Hindu community. So long as his choice to marry a Hindu lady is not illegal under the law or the Constitution, there cannot be any misconduct or moral turpitude in such a marriage. In the facts and circumstances it is clear that the Appellant attended the school but was prevented from putting his signature in the attendance register and taking his classes.

14. On a careful reading of the judgment, it appears that the facts of the present

case imperimateria similar with the above mentioned case. Another interesting question has been raised by Mr. Das that while exercising the writ jurisdiction, this Court should refrain from making a roving enquiry. But Mr. Sanyal the learned Counsel appearing for the Petitioner, has taken a formidable point that ordinarily this Court should not proceed with the factual matrix of the, case but where it exult be found that the order impugned suffered from unreasonableness and no principle of natural justice was followed the Court should rise to the occasion to undo the injustice meted to a party. In support of his submission he has placed reliance on a judgment of the Apex Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others,

The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior Courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which . is apparent on the face of the record can; be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, ; Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and

Others, and Kaushalya Devi and Others Vs. Bachittar Singh and Others,

15. Mr. Sanyal then again relied upon a decision of M/s. Overland Investment Ltd. and Vs. State of West Bengal and others,

In our view, the Judges should be active and non passive. The Judges and the judiciary have an important role in law making in the present day society.

The Reform of Equity, in C.J. Hamson Law Reform and Law-Making (1953), P.31 was observed, "The truth is that the law is uncertain. It does not cover all the situations that may arise. Time and again practitioners are faced with new situations, where the decision may go either way. No one can tell what the law, is until the Courts decide it. The judges do every day make law, though it is almost here say to say so. If the truth is recognised then we may hope to escape from the dead hand of the past and consciously mould new principles to meet the needs of the present.

For him the function of the Judge was to be active in reforming the law - "if the law is to develop and not to stagnate, the House must, I think recapture this vital principle - the principle of growth. The House of Lords is more than another Court of law.... It acts for the Queen as the fountain of justice in our land." (From precedent to precedent (1959), p-34) These two passages have been quoted from the Law Making Process by Michael Zander, Fourth Edition page 313.

James S.C. Reid, in "The Law and Reasonable Man" 1968, proceedings of British Academy, 193 194-5, said. "I suppose that almost every doctrine of the common law was invented by some Judge at some period in history, and when he invented it he thought it was plain common sense - and indeed it generally was originally. But with the passage of time, more technically minded Judges have forgotten its origin and developed it in a way that can easily cause injustice. In so far as we appellate Judges can get the thing back on the rails let us do so ; if it has gone too far we must pin our hopes on Parliament.

Judicial restraint is good, but that does not mean judicial cowardice. In this case, for, want of appropriate provisions in the law and any power conferred upon the Reserve Bank of India on the existing terms and conditions of the directives a dangerous situation has arisen where the fates of the millions of people are at stake. Under such circumstances, the Court must as of necessity should do everything in its power to salvage the millions of depositors and to protect their interest. If the Court have to depend entirely upon the Reserve Bank of India and keep its hands folded, closing its eyes, in that event, the mischief that would be done to the millions of depositors could not be remedied either by the Reserve Bank of India or by the Parliament or by the Court in the long run. We never intended to interfere with the function of the Reserve Bank of India but we are forced to interfere in the interest of millions of depositors whose life savings are frittered a way and the R.B.I's directions do not contain any provisions for recovery or refund of the depositor's money.

Under the power of judicial review, the Court in order to render complete justice in appropriate cases including inference with merits of a decision what are necessary by substituting its own order on review of the whole record. What will be such appropriate case must necessarily be left with the Court decide? In the case of M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others,

Where a question of law is at issue, the Court may determine the Tightness of the impugned decision on its own independent Judgment. If the decision of the authority does not agree with that which the Court considers to be the right one, the finding of law by the authority is liable to be upset. Where it is a finding of fact, the Court examines only reasonableness of the finding. When that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision, and the decision is one which any reasonably minded person, acting on such evidence, would have come to, then judicial review is exhausted even though the finding may not necessarily be what the Court would have come to as a trial of fact. Whether an order is characterized as legislative or administrative or quashi-judicial, or, whether it is a determination of law or fact, the judgment of the expert body, entrusted with power is generally treated as final and the judicial function is exhausted when it is found to have "warrant in the record" and a rational basis in law: See *Roghester Tel. Corporation v. United States* (1938) 307 US 125 : 83 Law Ed. 1147. See also *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948) 1 KB 223 In the instant case, I found that some teachers other than the Petitioner were allowed to had receive their salaries by the West Bengal Board of Secondary Education who were obstructed from attending the School under duress from August 30, 1986 to May 1, 1987. If other teachers could be allowed to receive salary for the aforesaid period, how the Petitioner could be denied the same right, that too when he was not permitted by the school authority from attending the school. Not only this, from the factual scenario which has emerged from the aforesaid discussion it has clearly been established that the Petitioner is entitled to the salary from August, 1986 onwards till he was relieved of the school.

16. Therefore, the Respondent-opposite parties 1 to 4 and 7 to 9 are directed to pay the salary to the Petitioner for the aforesaid period within 3 months here from. Accordingly, the writ petition succeeds against the other opposite parties without cost.