
(2011) 04 CAL CK 0122
In the Calcutta High Court
Case No : Writ Petition No. 16678 (W) of 2010

Gouranga Prasad Das

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

West Bengal Board of Secondary Education Act, 1963 — Section 24
West Bengal Board of Secondary Education Management Rules, 1969 — Rule 28(8),
28(9)

Citation : (2011) 04 CAL CK 0122

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Biswarup Bhattacharya and Golam Mohiuddin, for the
Appellant; Saktipada Jana, Sougata Bhattacharya, for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—The Petitioner is an approved assistant teacher of Dighirpar Karalichak High School in the District of South 24 Parganas. A disciplinary proceeding was initiated against the Petitioner herein on various charges as mentioned in the charge sheet dated 9th September, 2010 appearing at page 7 of the supplementary affidavit filed by the Petitioner.

2. Pursuant to the resolution of the Managing Committee adopted in the meeting held on 25th June, 2010, the Petitioner was placed under suspension with effect from 1st July, 2010 pending disciplinary proceeding. It is stated in the suspension order that the decision for placing the Petitioner under suspension was taken by the Managing Committee of the said school in the greater interest of the school in accordance with the provisions contained in Rule 28(9)(via) of the Management Rules of the West Bengal Board of the Secondary Education Act. Copy of the letter dated 26th June, 2010 written by the Secretary of the said school containing the order of suspension of the Petitioner which was served upon the Petitioner herein is annexed to this writ petition as annexure P-4 at page 33 therein.

3. The Petitioner herein has filed the instant writ petition challenging the legality and validity of the said order of suspension.

4. At the very outset, when this writ petition was taken up for hearing, Mr. Sougata Bhattacharya, learned Advocate, appearing for the school authorities, namely, Respondent Nos. 4 and 5 herein, raised a preliminary objection regarding the maintainability of this writ petition on the ground that the order of suspension which is impugned in this writ petition being an appealable order as per regulation 3 of the Appeal Regulation and such appeal being maintainable before the Appeal Committee constituted under the said regulation, the instant writ petition is not maintainable before this Hon'ble Court on the ground of availability of an alternative appellate forum for challenging the said order in appeal where the scope for challenging the present dispute is not only much more wider and exhaustive but also speedy as well as efficacious relief can be obtained therein.

5. Considering the aforesaid submission of Mr. Bhattacharya, this Court initially was hesitating to entertain this writ petition in its constitutional writ jurisdiction because of availability of an alternative forum for redressal of the grievances of the Petitioner therein, but ultimately, instead of dismissing this writ petition on the said ground, this Court entertained this writ petition as Mr. Biswarup Bhattacharya, learned Advocate, appearing for the Petitioner, submitted before this Court that though his client filed the instant writ petition by challenging the legality and validity of the said suspension order but, in fact, his client intends to challenge the continuation of the said order of suspension for an indefinite period without making any effort to conclude the disciplinary proceeding initiated against him by this school authority, within the reasonable time. Mr. Biswarup Bhattacharya, learned Advocate, thus submitted that instead of praying for quashing of the said order of suspension right now, he would invite this Hon'ble Court to direct the school authority to conclude the disciplinary proceeding initiated against his client within a time bound period so that the Petitioner is not kept under suspension for an indefinite period.

6. It is brought to my notice by Mr. Sougata Bhattacharya, learned Advocate, that immediately after placing the Petitioner under suspension, his client forwarded the relevant papers to the Board within the prescribed time seeking approval of his client's proposal to place the Petitioner under suspension, pending disciplinary proceeding. This Court is also informed by Mr. Bhattacharya that the Committee constituted u/s 24 of the West Bengal Board of Secondary Education Act, 1963 considered the said proposal of his client and ultimately in its meeting held on 7th July, 2010 resolved that the school's proposal for approval of suspension of the Petitioner be approved, provided there is no contrary order of the Hon'ble Court. Such resolution was taken by the said Section 24 Committee as the said Committee, after considering the facts and circumstances of this case and on perusal of the documents forwarded to it, found that the presence of the Petitioner in school would be detrimental to

the academic interest of the school and was also likely to prejudice the proper conduct of the inquiry into the charges brought against him.

7. The decision of the Section 24 Committee which was communicated by the Deputy Secretary (Administration), West Bengal Board of Secondary Education to the Secretary of the concerned school by his letter dated 12th August, 2010 has also been placed by Mr. Sougata Bhattacharya, learned Advocate, before this Court and the same was kept with the record.

8. On perusal of the text of the said letter and the reasons disclosed by the Section 24 Committee for approving the proposal of the school authority to place the Petitioner under suspension pending disciplinary proceeding, as stated above, this Court does not find any apparent illegality in the said decision of the Section 24 Committee. However, this Court does not want to enter into the question regarding legality and validity of the said suspension order in great details in view of the submission made by Mr. Bhattacharya, learned Advocate for the Petitioner that, in fact, his client does not want to challenge the legality and validity of the order of suspension and he wants to restrict his challenge regarding legality of continuation of his suspension for an indefinite period.

9. Let me now consider as to how far the school authority was justified in prolonging the said disciplinary proceeding for such long duration and thereby keeping the Petitioner under suspension for an indefinite period, in the facts of the instant case.

10. I have already indicated above that the charge sheet dated 9th September, 2010 containing memorandum of charges against the Petitioner was delivered to the Petitioner on 16th September, 2010. The Petitioner submitted his written reply to the said charge sheet which was received by the school authority on 29th September, 2010. The school authority, instead of taking any further step to conclude the first stage of disciplinary proceeding as per Rule 28(8) of the Management Rules, sent certain documents including the said charge-sheet as well as the reply thereto to the Board seeking Board's permission to continue with the disciplinary proceeding against the Petitioner herein and since the school authority has not received the Board's permission till date, the school authority has not proceeded further.

11. The step which the school authority has taken in seeking Board's approval to continue with the disciplinary proceeding, as indicated above, is unknown to law as Rule 28(8) of the Management Rules, does not contemplate any such authorization by the Board for allowing the school authority to conclude the first stage of the disciplinary proceeding against any of its charged employee under Rule 28(8) of the said Rules. In fact, Mr. Sougata Bhattacharya, learned Advocate, appearing for the school authority, in his usual fairness, submitted before this Court that authorization from the Board for continuing with the disciplinary proceeding at the first stage of disciplinary proceeding is not contemplated under the Management Rules and as such neither his client was

required to seek such permission from the Board nor his client should have waited for Board's permission to proceed with the first stage of the disciplinary proceeding against the Petitioner until such permission is granted by the Board. Mr. Bhattacharya was fair enough to submit before this Court that reasonable time be granted to his clients so that the first stage of the disciplinary proceeding can be concluded within such time bound period. He further accepted the submission of Mr. Biswrup Bhattacharya, learned Advocate, that a charged employee cannot be kept under suspension for an indefinite period by unreasonably prolonging disciplinary proceeding for a unknown duration.

12. Considering the submission of the learned Counsel, appearing for the parities, this Court, thus, holds that the school authority was not justified in seeking permission from the Board to continue with the first stage of the disciplinary proceeding against the Petitioner inasmuch as, such permission and/or authorization from the Board is not contemplated under Rule 28(8) of the Management Rules at the first stage of the disciplinary proceeding. Thus, this Court does not find any justification to keep this disciplinary proceeding pending in a suspended animation stage for such a long period and thereby keeping the Petitioner under suspension for an indefinite period.

13. Accordingly, this Court disposes of this writ petition by directing the school authority to conclude the disciplinary proceeding against the Petitioner within a period of six months from the date of communication of this order as per law and by following the principles of natural justice with this rider that in the event said disciplinary proceeding cannot be concluded within the said period, the order of suspension which was passed by the Managing Committee of the said school against the Petitioner will stand automatically withdrawn after the expiry of the said period and in that event the Petitioner will be allowed to resume his duty immediately thereafter subject to the ultimate decision in the said disciplinary proceeding. The Petitioner is also directed to render all sorts of cooperation with the Enquiry Officer in connection with the said disciplinary proceeding so that the time limit which is fixed above for conclusion of the said proceeding can be maintained with this rider and in the event any unnecessary adjournment is sought for by him, the Enquiry Officer will refuse to grant an adjournment and may also proceed with the hearing ex parte if he fails to appear after rejection of his prayer for adjournment. Having regard to the time limit fixed above for conclusion of the said proceeding the West Bengal Board of Secondary Education is also requested to complete the entire exercise on its part in this regard as promptly as possible so that the time limit fixed above can be maintained. It is made clear that during the period of suspension, the Petitioner will be paid his admissible substance allowance regularly within 7th of each following month and the arrear, if there be any, should also be paid to the Petitioner within a month from date.

14. The Petitioner is directed to communicate this order to the West Bengal Board of Secondary Education immediately.

15. The writ petition is, thus, disposed of.

16. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.