

(2002) 05 CAL CK 0060
In the Calcutta High Court
Case No : Writ Petition No. 14011 (W) of 2001

Gouri Phani Chakraborty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-05-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226

West Bengal Teachers (Security of Service) Act, 1975 — Section 11, 12, 14, 9, 9(1)

Citation : (2003) 1 CALLT 524

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharjee and Nabanita Roy, for the Appellant; Debasish Kar Gupta and J.N. De for Respondent No. 3, Ashoke Sarkar and S. Ahmed for Respondent No. 4 and Bhudeb Bhattacharjee, for the Respondent

Judgement

A. Lala, J.—The petitioner joined in the post of Principal of the concerned women's college on 22nd December, 1990. Such service was confirmed. However, a show cause notice was issued upon her on 24th March, 2000. On 7th April, 2000 a reply to show cause notice was given. On 11th April, 2000 the governing body of the college took a resolution to issue a chargesheet upon her. She was also suspended with immediate effect on the basis of such resolution. This resolution was sent for approval of the concerned authority of the University under which the college is affiliated. The University disapproved the order of suspension and intimated accordingly on 10th May, 2000. But for various other reasons i.e. not handing over keys etc. on 16th May, 2000 this petitioner moved a writ petition being AST No. 1632(W) of 2000 when a single Judge of this Court was pleased to pass an order directing the college authorities to hand over the keys and documents etc. to the petitioner and further directed to take steps in accordance with law, if necessary, upon giving opportunity of hearing. On 19th June, 2000 an appeal was preferred from such order being MAT No. 1824 of 2000. An order was passed by the Appeal Court to expedite the disciplinary

proceeding and conclude the same within the prescribed period as given thereunder. Such order was communicated on 28th July, 2000. So far the other parts are concerned i.e. issuance of memorandum on 19th August, 2000 to hand over the keys of the almirah and whether same was done or the lock was broken on 24th August, 2000 or not are no way relevant for the purpose of consideration of the issue herein, therefore this Court does not feel to deal with the same.

2. On 26th September, 2000 one Mr. Nirmal Kanti Sarkar an advocate, informed the petitioner that he has been appointed to discharge the function of Enquiry Officer. On 9th October, 2000 such Enquiry Officer directed the petitioner to give reply to the chargesheet. On 14th October, 2000 the petitioner, in her reply, expressed her awareness regarding the appointment of Enquiry Officer. On 27th October, 2000 the stipulated period to conclude the disciplinary proceedings as given by the Division Bench of this High Court expired. On 29th October, 2000, the writ petitioner requested the college authorities to allow her to join in her service. But even after expiry of the period on 9th November, 2000 the President of the governing body of the college authority informed the petitioner that one Mr. Nirmal Kanti Sarkar was appointed as Enquiry Officer vide resolution dated 12th July, 2000. On 3rd February, 2001 the Enquiry Officer informed the writ petitioner to inspect documents in respect of the charges levelled against her and submit her defence. On 7th February, 2001 a reply was given by the petitioner saying that time as given by the Division Bench of this High Court for concluding disciplinary proceedings has since been expired she cannot participate unless the time is extended.

3. On 16th February, 2001 a further writ petition being W.P. No. 2373(W) of 2001 was proceeded against the constitution of illegal suspension dated 11th April, 2000. The respondent has filed the affidavit-in-opposition therein.

4. However, on 7th February, 2001 the petitioner was served with a copy of application for extension of time to conclude the disciplinary proceedings before the Division Bench. Such time was extended for a period of two months from the date of the order i.e. 13th July, 2001.

5. In any event, on 29th August, 2001 an order of suspension till superannuation of the petitioner was passed relying upon the enquiry report, copy of which was not formally served upon the writ petitioner. Such order is impugned under the present writ petition.

6. Several allegations are made by the petitioner in respect of charges levelled against her, process of disciplinary proceedings etc. when the respondent authorities denied such allegations.

7. However, writ Court, not being a fact finding Court, cannot go into such allegations excepting when it appears as bad from the face of it. Nonetheless, writ Court definitely can interfere with the matter if the authority proceeds contrary to law and/or in violation of the principles of natural justice. This is one of such cases.

8. Imposition of penalty was admittedly made under Clause (iv) of Sub-section (1) of Section 9 of the West Bengal Teachers (Security of Service) Act, 1975. Upon going through the same, I find that the governing body of a college can impose various penalties including suspension. From Sub-section (2) I find no order of penalty shall be imposed without informing the teacher concerned of the charges against her and giving her an opportunity of being heard and except after an enquiry held in the matter prescribed. However, proviso says that in case of removal or dismissal, penalty shall not be imposed on a confirmed teacher except on ground of being persistently engaged in activities prejudicial to the academic or financial interest of the college or habitual dereliction of duty or physical infirmity likely to interfere with the normal discharge from her duties or mental derangement or moral turpitude.

9. Section 11 of the Act specifically deals with suspension of teacher. There, I find that the governing body has the power to place any teacher under suspension on two accounts. Firstly, where an enquiry against her under Sub-section (2) of Section 9 is contemplated by the governing body or such an enquiry is pending; secondly, where a case against her in respect of any criminal offence involving moral turpitude is under investigation or trial. From the article of charges I find that following charges are levelled against her: (i) charge of insubordination to governing body of the college; (ii) charge of insubordination to the University authority; (iii) charge of insubordination to the Director of Public Instruction, West Bengal and violation of government order; (iv) charge of dereliction of duty as Principal of the college, as the drawing and disbursement Officer of the college and as the Secretary, governing body of Krishna Nagar Women College; (v) charge of misuse of the chair of the Principal; (vi) charge of financial irregularities and misappropriation of college fund; (vii) charge of misconduct, unfit for holding of the post of Principal and Secretary, governing body of the college. In the instant case, neither any scope of contemplation nor any scope of pendency of enquiry is available. It is also not a case of investigation or trial of any criminal offence involving moral turpitude. Therefore, there is no scope of interim suspension. Even if interim suspension is made the same will be restricted for six months with 50% of monthly emoluments, If further six months it will be with 75% of the same. Even thereafter it extended 90% of the same for the remaining balance period. Under no stretch of imagination it can be construed as final punishment. But here penalty of suspension upto 31st March, 2003 i.e. the date of retirement of the delinquent is passed which is a final order.

10. Therefore, such penalty by way of final order is to be governed u/s 9(1) of the Act. This section provides two types of penalties; (a) minor penalties; (b) major penalties. Minor penalties are (i) censure; (ii) recovery of pecuniary loss; (iii) withholding of increments; (iv) suspension etc. Major penalties are: (i) compulsory retirement; (ii) removal; (iii) dismissal. There is a reason for incorporation of suspension as minor penalties herein. Suppose it appears from the enquiry that charges are not major then the suspension order which has

already consumed by the delinquent will be treated as punishment and he will be relieved. But there is no scope to impose suspension till retirement. In that case, such punishment cannot be construed as minor penalties. In effect, it is a major penalty. Law is now well-settled that every delinquent should get a second show cause before imposition of penalty particularly in respect of major penalties. It appears from this case that the major penalty was imposed in the garb of a minor penalty. Therefore, it is colourable exercise of power. It appears from the respective rule under the Act that there is manner of holding disciplinary procedure. Rule 7(9) says that if the disciplinary authority having regard to its findings on the charges, is of the opinion that any of the penalties specified under Clauses (i) to (iv) of Sub-section (1) of Section 9 should be imposed it shall pass appropriate orders. But if charges are major under Clauses (v) to (vii) therein then a copy of the enquiry report of the enquiry authority statement of findings will have to be furnished and a notice stating the punishment proposed and the grounds therefore and calling him to submit representation in respect of imposition of punishment is to be made within the prescribed period and on certain parameters given thereunder. The disciplinary authority will consider the same in accordance with Section 9(2) of the Act.

11. According to me, law of suspension and law of final punishment are distinct and different. There is no provision in the service law to suspend a delinquent till his/her retirement as final punishment. Therefore, when such penalty has been given effect to in the form of final order which is as good as restraining a confirmed teacher from attending her service till the date of retirement it has to be declared as major penalty like compulsory retirement, removal or dismissal. Thus, the petitioner is entitled for the copy of the enquiry report and second show cause and without such service of the same and without due consideration penalty cannot be imposed.

12. I find that there is a provision of appeal to the University u/s 12 of the Act. I further find there is a provision u/s 14 of the Act to constitute an Appellate Tribunal to refer the matter from the order passed in appeal by the University u/s 12 of the Act. For the first phase of time period is fixed for thirty days from the receipt of the order when another thirty days period is fixed to prefer an appeal to the Tribunal from the date of the order. However, such alternative remedy of appeal cannot debar the petitioner in proceeding with the writ petition when colourable exercise of power is apparent from the face of it. Therefore, alternative remedy is not a bar for the present case. But undoubtedly the same can be proceeded by a party when the authority after giving adequate opportunity by supplying the enquiry report and second show cause imposed a penalty. Since it is glaring that colourable exercise of power has been used by the authority by shutting down the petitioner from getting reasonable opportunity to make representation against imposition of punishment on the basis of the enquiry report and statement of findings, I hold that the order of punishment cannot be sustained. In further, since this Court observed that there is illegal prevention in rendering service by the delinquent which is involuntary in

nature in the present circumstances so there is no scope of enquiry whether the petitioner has been gainfully employed elsewhere or not. As a result whereof the petitioner will be entitled to all service benefits including arrears deducting the amount, if any, paid during the period of suspension.

13. Therefore, the order impugned stands set aside. However, this order will not prevent the authority concerned to proceed in accordance with law, if necessary. Thus, the writ petition stands disposed of. No order is passed as to costs.

The prayer for stay of operation of this order is made, considered and refused.

Let an urgent xeroxed certified copy of this judgment, if applied for, be given to the learned advocates for the parties within two weeks from the date of putting the requisites.