
(2002) 07 CAL CK 0012
In the Calcutta High Court
Case No : Civil Order No. 18930 (W) of 1992

Jagannath Halder

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 02-07-2002

Acts Referred:

Constitution of India, 1950 — Article 20(2)

Citation : (2002) 2 ILR (Cal) 299

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Kanti Roy, Subrata Ghosh and Kuhu Roy, for the Appellant; Rabilal Moitra and Jayanta Kumar Das for Respondent Nos. 9 and 10, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Heard the learned advocates appearing for the parties. In this application the Petitioner has prayed the following reliefs:

(a) A writ in the nature of Mandamus commanding and/or directing the Respondents, their agents and subordinates to cancel, set aside, quash, rescind, and withdraw (i) the impugned decision of the Appeal Committee of the Board taken in its meeting held on 29 February, 1992 in Appeal No. 13/91 communicated to the Petitioner under Memo No. 6117/8/1 dated 28.4.92 being Annexure "I" to the petition, (ii) the impugned order dated 5.5.90 of the Headmaster, Belghoria High School withholding the payment of 5 (five) days salary from the pay packet of April, 1990 being Annexure "C (iii) the impugned order dated 14.8.91 of the Board of Secondary Education, West Bengal, communicated by the headmaster through his letter dated 23.8.91 directing to be censured to the Petitioner being annexure "K"; (iv) impugned order dated 22.9.90 of the Managing committee of Belghoria High School inflicting the punishment/ penalty for absence of 5 days on medical ground contemplating the conduct be censured be noted in the Service Book and forwarded to all concerned and conduct will further be reviewed after every six months for a

period of two years and necessary action will be taken against the Petitioner in the event .-.of recurrence of any such lapses in further, in the situation so warrants, after expiry of the said period of two years commencing from the date of issue of the communication being Annexure "E"; (v) the alleged charge-sheet framed by the impugned order/ memo dated 6.2.92 of the Secretary of the Managing Committee of Belghoria High School after inflicting punishment to the Petitioner and directing him to submit explanation since the alleged charges go to prove prima facie offence as to why disciplinary action, as provided under Rules, shall not be drawn against the Petitioner and why the absence for specified days will not be treated as unauthorized absence leading to break of service being Annexure "P" and directing them further not to give effect or further effect to the same and directing them further to stay the operation of the same as the impugned orders have been passed imposing purported punishment behind the back of the Petitioner and without initiating any disciplinary enquiry proceedings and without prior approval of the Board and without issuing any charge-sheet asking to show cause and without affording any opportunity of hearing to the Petitioner and without following the procedure indicated under Rule 28(8) and 28(8a) of the Management Rules prescribed for initiating the disciplinary proceedings in terms of circular No. S/607 dated 21 June, 1982 and without complying with the natural justice Rules and violating the principles in Article 20(2) of the Constitution of India providing inter alia that "no one shall be prosecuted and punished for the same offence more than once.

(b) A writ in the nature of Certiorari calling upon the Respondents, their agents and subordinates to certify and transmit the entire records of the case to this Hon"ble Court so that conscionable justice may be rendered by quashing and/or setting aside the same ;

(c) Any other writ or writs to which your Petitioner may be found entitled.

2. The facts leading to the writ petition are as follows:

In view of Petitioner's absence to the invigilation duty for the examination conducted by the West Bengal Board of Secondary Education as held in the month of April, 1990, the Headmaster of Belghoria High School by his decision dated May 5, 1990 withheld the salary for 5 days with reference to the salary for the month of April, 1990 and referred the matter for a decision by the West Bengal Board of Secondary Education as well as Managing Committee. A meeting held on June 24, 1990 by Managing Committee on endorsing the decision reached by the Headmaster of the school issued. By a notice dated Spetember 22, 1990, the Committee censured the Petitioner's action for recording in the Service Book and Petitioner was placed under strong vigilance for 2 years in the matter of performance of the duty. In this letter the Petitioner was further directed to show cause for consideration by the Managing Committee and the Petitioner made a reply to such decision of Headmaster as well as the Managing Committee as referred to by contending that his illness was the reason for absence in the invigilation duty for which necessary leave application was filed.

The Petitioner further replied the there was no cause of action for taking such decision by the Headmaster and the Managing Committee and prayed for quashing all those, by the letter dated April 9, 1991 the Headmaster of the concerned school had informed the Petitioner that the matter was discussed in the meeting of the Managing Committee and the decision to withhold the payment of salary for 5 days from the Pay Bill of April, 1990 remained unaltered pending final decision of West Bengal Board of Secondary Education. Challenging the action of the Managing Committee as well as of the Headmaster concerned, an appeal was preferred before the West Bengal board of Secondary Education by the Petitioner on April 30, 1991 highlighting his grievance upon contending that prior to any decision by the Headmaster withholding the salary, the Petitioner was not heard and further contending that when the authority granted leave for other dates during the month of April, 1990 by accepting the Medical Certificate as issued by the concerned Medical Officer refusal to grant 5 days salary which was also .covered under the leave application being supported by the certificate of the self-same Medical Officer was not justified. However, the appeal committee dismissed the appeal and communicated the decision under Memo No. 6117/8/1 dated April 28, 1998. This appeal was registered as Appeal No. 13/91. The appeal committee did not consider the legal aspect of the matter, namely, the question of jurisdiction of the Headmaster to issue the letter withholding the salary of the Petitioner as well as the relevant statutory provision and the jurisdiction of the Managing Committee to endorse the decision of the Headmaster and thereby to confirm such decision of withholding the salary. This decision of the appeal committee as well as decision of Headmaster and the Managing Committee all are under challenge in this writ petition. This writ petition has been opposed by filing affidavit. It is submitted by the learned advocate for the Petitioner that the impugned decision is not legally sustainable as the same is without jurisdiction. It has been argued that in terms of Rule 28 Clause (8a) of the Rules of Management of Recognized Non-governmental Institutions (aided and unaided) rules 1969 (hereinafter referred to as for brevity "Management Rules 1969"), a procedure by drawing a proceeding in terms of Clause 8 of Rule 28 of the said Rules was required to be followed prior to withholding of the salary and after hearing the Petitioner, the Managing Committee had the jurisdiction to pass any decision. It is strenuously contended that impugned decision was passed without jurisdiction and the appeal committee did not at all consider the legal aspect of the matter. This submission of the Petitioner was opposed by the learned advocate appearing for the Respondents. It is submitted by Mr. Moitra, the learned Government Pleader appearing for the School Authorities that in terms of the circular letter of West Bengal Board of Secondary Education, so far as conducting the Public examination as it appears from the circular letter dated December 22, 1986, that all the teaching staff of the school were duty bound to attend the invigilation duty so that the examination as conducted by the said Board could have been take properly in the concerned center. It has been further submitted that in terms of the said circular letter No. Ex/MP-87/C/1 dated December 22, 1986

once duty was entrusted upon a teaching staff in the invigilation duty, absence if any, would be looked into seriously and the same would be deemed as misconduct. It is submitted that having regard to the very serious situation which relates to holding a public examination, the decision of the Headmaster as In-charge of the Centre withholding the salary was justified. It is further submitted that withholding the salary was an interim measure subject to final decision of the Board of Secondary Education which as yet has not been finalized by the said Board. On that submission it is contended that the Petitioner is not entitled to get any relief in this matter. Having considered the respective submissions of the parties and the pleadings as made in their respective applications and re-joinders the only question which is required to be adjudicated in this case is as to whether the impugned decision of the Headmaster as well as the Managing Committee withholding the salary of the Petitioner due to absence of the Petitioner on the dates when he was allotted invigilation duties would be considered as justified and legal. For adjudication of this issue, the relevant rules are to be looked into. Under the management Rules, 1969, it is the Managing Committee who has been vested with the power to initiate any departmental proceeding by drawing up a formal proceedings in terms of Clause 8 of Rule 28 of Management Rules when the Managing Committee would decide to remove or dismiss any permanent or temporary teaching and non-teaching staff. The said Clause 8 of Rule 28 reads thus:

(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.

3. Under Clause 8A of Rule 28 for any lapses on the part of the employees of the Institution which includes teaching and non teaching staff, scope was provided

for initiation of proceeding to impose minor penalties. The relevant provision Clause (8a) of Rule 28 reads as follows:

(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 on 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).

4. Under Clause 9 of Rule 28, the Managing Committee was vested to grant leave casual or medical in terms of the rule, which reads as thus:

(9) In aided and unaided Institutions the Committee shall have the power (i) to grant leave other than casual leave which shall be granted by the Head of the Institution and by the Secretary of the Committee in the case of the Head of the Institution; to grant increments in pay to teachers and other employees in accordance with the procedure laid down from time to time or where in aided schools that grant of increments is regulated by grant-in-aid rules, in accordance with such rules.

5. Under Sub-clause (viii) of Clause (9.) of Rule 28 the Managing Committee had the power to decide any matters as would be brought to the committee in the interest of the Institution. This is the only relevant provision under the statute that is the Management Rules, 1969 to deal with the teaching and non-teaching staff so far adjudication of their conduct as would be considered as mis-conduct by the Managing Committee of the School. There is no doubt in it that when a teaching staff is allotted with certain duties denial to perform and/or absence from such duty without any reasonable cause surely would be considered as absence from duty and such absence for duty is also controlled and guided by necessary leave rules for grant of leave if applied for satisfying the necessary pre-requisites for leave. It is the case of the Petitioner that the Petitioner fell ill and accordingly could not perform, his duties for certain dates as mentioned in the leave application and while granting leave in respect of certain period, the other period as were covered under the Medical Certificate as issued by the Medical Officer concerned was not considered upon holding inter alia that Petitioner deliberately refused to perform the invigilation duty. There was no material before the authority concerned prima facie while the Headmaster concerned took a decision withholding the salary initially for the month of May, 1990. Under the statute i.e. the Management Rules, 1969, the Headmaster of a school nowhere has been vested with any power and jurisdiction to take any decision with reference to any conduct in respect of teaching and non-teaching staff. The Headmaster being the head of the institution though has a duty to supervise the performance of the duties of the teaching and non-teaching staff, but surely he had no jurisdiction to take a legal step of imposing any penalty even by issuing any show cause notice to any teaching and non-teaching staff under the Management Rules, 1969. It is the Managing Committee who is vested with such

power to take any disciplinary action against the teaching and non-teaching staff in the event such committee consider that any conduct of the teaching and non-teaching staff is tantamount to mis-conduct in terms of the statutory rules. It is an admitted fact, in this case that no departmental proceeding was initiated by the Managing Committee asking the Petitioner to show cause with reference to his conduct, namely, absence to "invigilation duty" prior to withholding the salary and that too also by the Headmaster of the school. Hence from the statutory provision ex facie it is clear that the Headmaster of the Institution acted without, jurisdiction by withholding salary of the Petitioner for 5 days, irrespective of the issue as to whether the same would be deemed to misconduct or not on the part of the Petitioner by remaining absent" for those days of invigilation duty with reference to public examination as was conducted by the Board of Secondary Education. Having regard to such position, it is clear that the Headmaster had no jurisdiction to issue the impugned letter which is annexed in this application. Similarly the Managing Committee of the school also did not take a decision independently for withholding the salary by following the procedure of the law as laid down under Clause (8a) of Rule 28 of the Management Rules, 1969. From the resolution of the Managing Committee as placed before this Court being the Resolution dated June 24, 1990, it appears that the Managing Committee simply had endorsed the decision as reached by the Headmaster of the School in question. When statute provides that the Managing Committee as a body corporate will take a decision by its majority views, such Managing Committee cannot endorse views as taken by his employee with reference to a decision as has caused prejudice to another employee. The Headmaster is also an employee of the Institution. An employee under supervision of a Managing Committee cannot take any decision against another employee, who is also under supervision of the same Managing Committee. It is now a settled legal position that a the statutory body must act in terms of the statute. It is also a settled legal position that statutory body only can do those things as are prescribed under statute, whereas an individual can act in any manner save and except the action as are prohibited under the law. Reliance may be placed to the judgments passed in the cases under the Principle of Limitation of Statutory Powers to the following. In the case Maniruddin Bepari v. The Chairman, Municipal Commissioner, Dhaka 40 C.W.N. 17; Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, and the judgment S.R. Tewari Vs. District Board Agra and Another, .

6. Said principle has been discussed in the Book "The Construction of Statutes" by Earl T. Crawford, 1940 publication at page 334-335 which reads thus:

195. Express Mention and Implied Exclusion (*Expressio Unius Est Exclusio Alterius*):- As a general rule, in the interpretation of statutes, the mention of one thing implies the exclusion of another thing. It therefore logically follows that if a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect.... If the statute directs that certain acts shall be done in a specified manner, or by

certain person, their performance in any other manner than that specified, or by any other person than one of those named, is impliedly prohibited.

7. Having regard to such legal position and on scanning the Management Rules, 1969, accordingly, it is held that the Headmaster of the Institution had no power or jurisdiction to withhold, the salary of any employee concerned irrespective of any fact that the person concerned was absenting from duty and/or such absence to duty is tantamount to mis-conduct. Furthermore, the Managing Committee had no power and jurisdiction to impose the penalty prior to a show cause notice and drawing up a formal proceeding asking the delinquent teaching and non-teaching staff concerned to answer on the issue in question. It is also a settled law now that withholding the salary of any employee Concerned is within the domain of "civil consequence". The Petitioner has since suffered a civil consequence in view of withholding such salary irrespective of clause, namely, Clause (8a) and by reasons of Rule 28 of Management Rules, 1969 the Petitioner has got further right in terms of principle of natural justice to be heard.

8. Having regard to all those provisions of law, it appears that the appeal committee did not consider the relevant statutory provision and the legal aspect of the matter. In that view, the decision reached by the appeal committee is violative of statutory rules and the same is not legally sustainable. The decision reached by the appeal committee is thus set aside and quashed and as a consequence thereof the decision as communicated by the Headmaster of the school withholding the salary of the Petitioner by his letter dated May 5, 1990 appearing at page 45 of the writ petition, the decision of the Managing Committee dated June 24, 1990 as produced before this Court, the decision of the Managing Committee as communicated by the Headmaster by his letter dated April 9, 1991 appearing in annexure "I" at page 58 of the writ petition are all set aside and quashed.

9. The Respondents are directed to release the Petitioner's salary as withheld for 5 days from the month of April, 1990 with interest at the rate of 18% per annum. Such payments must be made within 4 weeks from the date of communication of this order. The order for payment of interest is passed following the judgment of the Apex Court passed in the case Union of India Vs. Justice S.S. Sandhawalia (Retd.) and others, whereby it is held by the Apex Court that salary and other benefits remain as the property of the employee concerned and illegal withholding of the same will case responsibility to the persons concerned to pay penalty for such illegal withholding. In a recent decision also the Supreme Court held as a consequential relief to grant interest when house rent allowance was illegally withheld. That view was passed by the Supreme Court in the case Union of India and Others Vs. M/s. Orient Enterprises and Another,

10. Since, the impugned action is highly arbitrary and the action beyond the jurisdiction and authority of the concerned persons who without holding any departmental proceeding and without issuing of any show cause notice

straightway withheld the salary of a teaching staff, the Petitioner is entitled to have an order of cost which to be paid by the Respondents/school authorities in this matter. Accordingly, a cost of 200 Gms. is imposed against the contesting Respondents No. 9 and 10 which to be paid to the Petitioner within 4 weeks from the date of communication of this order.

11. This writ petition is accordingly allowed.