
(2002) 04 CAL CK 0052
In the Calcutta High Court
Case No : C.O. No. 17064 (W) of 1995

Kisanlal Sinha Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 CALLT 128

Hon'ble Judges : Pranab Kumar Chattopadhyay, J

Bench : Single Bench

Advocate : Kashi Kanta Moitra, Alope Kr. Ghosh and Srikanta Maitra, for the Appellant; Kazi Safiullah and Madhuri Das for Respondent Nos. 4, 5 and 12 to 16 and Rabilal Moitra and Fazlul Haque for the State, for the Respondent

Final Decision : Allowed

Judgement

P.K. Chattopadhyay, J.—The petitioner is an approved permanent Headmaster of Rahimpur Nabgram High School, an aided institution. The petitioner was appointed as Headmaster of the said school on 30th June 1978 and his appointment as Headmaster was approved on 30th November 1978.

2. It has been stated by the petitioner that he has been working as headmaster in the said school till he was physically prevented from entering the school premises on 12th May 1995. It has also been submitted on behalf of the petitioner that on 10th May 1995 the said petitioner was physically assaulted by some anti-social elements under the leadership of three Assistant teachers of the said school just outside the school gate.

3. The petitioner lodged FIR with the local Police Station immediately thereafter. On the same date, the petitioner also wrote a letter to the Secretary of the school intimating the aforesaid incident of assault. The petitioner also by a written communication dated 22nd May 1995 informed the District Inspector of Schools (SE), Hooghly about the aforesaid incident of physical assault which took

place just outside the school gate on 10th May 1995.

4. In the meantime, Managing Committee of the school was reconstituted and the newly appointed Secretary of the said school by the written communication dated 6th June 1995 asked the petitioner to attend school. In the said letter the Secretary of the Managing Committee of the school also specifically mentioned that the petitioner should not feel insecure inside the school premises as there has been no indiscipline and/or disturbance in the school.

5. The petitioner, however, did not accept the aforesaid opinion of the newly appointed Secretary of the school as according to the petitioner influential political leaders being politically motivated had been instigating the teaching and non-teaching employees of the said school in order to prevent the petitioner from performing his duty as headmaster.

6. The petitioner sent a representation to the Secretary of the school in this regard on 12th June 1995 and also forwarded the copies of the said representation to various authorities including the Director of School Education (West Bengal), President, West Bengal Board of Secondary Education and District Inspector of Schools (SE), Hooghly apart from District Magistrate and Superintendent of Police, Hooghly amongst others. In the said representation addressed to the Secretary of the school, the petitioner alleged that influential political leaders even though they were not connected with the affairs of the school in any way whatsoever were trying to instigate the teaching and non-teaching employees of the said school in order to prevent the petitioner from discharging his duties.

7. The petitioner also lodged a complaint with the Officer-in-charge, Jangipara Police Station again on 20th June 1995 informing him that while he was going to school to join his duty he was informed by his well-wishers that some miscreants and anti-social persons being armed with lathis and other deadly weapons assembled at the school lawn in order to physically assault the petitioner and were openly threatening to kill the petitioner. The petitioner in the said complaint specifically mentioned that he had to return from halfway of the school apprehending the risk of life.

8. The then, District Inspector of Schools (SE), Hooghly also forwarded the copy of the complaint received from the petitioner to the Officer-in-charge, Jangipara Police Station and requested him to take necessary action in this regard. The Secretary of the school in the meantime by the letter dated 18th July 1995 requested the petitioner to attend the school within 7 days from the date of receipt of the said letter and further informed that otherwise the matter would be informed to the higher authorities by the Managing Committee of the school for necessary remedy.

9. The petitioner thereafter by a letter dated 29th July 1995 informed the Secretary of the school that he wanted to attend the school on 24th July 1995 but he was not allowed to enter the school premises. Ultimately, the petitioner

filed an application u/s 144 Cr.PC before the learned Executive Magistrate, Sreerampur and the said learned Executive Magistrate, Sreerampur by the order dated 23rd August 1995 directed the Officer-in-charge, Jangipara Police Station to give every legal protection to the petitioner.

10. According to the petitioner inspite of the aforesaid specific order passed by the learned Executive Magistrate, Sreerampur no step was taken by the local police authorities to ensure physical safety and security of the petitioner and as such the petitioner could not Join the school.

11. It has been specifically submitted on behalf of the petitioner that no effective steps were taken by the respondent authorities to ensure safety and security of the petitioner herein and as such the petitioner could not join the school in order to discharge his duty as headmaster of the school. Accordingly, the petitioner filed this writ petition before this Court on 12th September, 1995.

12. On 27th October 1995 Justice D.K. Basu passed an order on the writ petition directing the respondent District Inspector of Schools concerned to cause an inspection personally or through the senior competent Officer and to submit a report narrating the affairs of the school. During the pendency of the writ petition, the Secretary of the school Issued a show cause notice and a formal chargesheet to the petitioner.

13. The petitioner thereafter filed an application in connection to this writ petition praying for injunction restraining the Managing Committee of the said school from taking any disciplinary action against the petitioner during the pendency of the writ petition and also prayed for payment of arrear salaries. On the said application though an interim order of injunction was passed on 8th April 1997 restraining the Managing Committee of the said school from proceeding with the disciplinary proceeding on the basis of the show cause notice issued earlier to the petitioner till the disposal of the writ petition but no interim direction was given for payment of salary to the petitioner. Against the aforesaid interim order passed by the learned single Judge of this Court, an appeal was preferred before the Division Bench of this Court by the management of the school but the Division Bench on 7th July 1997 dismissed the said appeal.

14. Now, the writ petition has been placed for final hearing. From the records it appears that the petitioner functioned as Headmaster of the school without any interruption till 12th May 1995 when according to the petitioner he was allegedly prevented from attending the school.

15. It has been submitted on behalf of the present Managing Committee of the school that the petitioner harassed one lady teacher of the said school on various occasions in an indecent and ugly manner. It has also been alleged that the petitioner wrote an obscene love letter to the said lady teacher, which was actually the reason for ultimate outbursts against the petitioner, by the teaching and non-teaching employees and the guardians of the students of the said school.

16. The lady teacher joined the school in the year 1991 and admittedly, the said lady teacher instead of making any complaint to the school authorities submitted an application to the seniormost teacher of the school on 20th January 1995 making an allegation regarding sexual harassment against the petitioner herein.

17. Admittedly, the new Managing Committee took charge of the affairs of the school on 19th May 1995. The Headmaster was prevented from joining the school when the life of the earlier Managing Committee had expired and the new Managing Committee was going to take charge of the affairs of the school management.

18. It has been submitted by the learned advocate of the present Managing Committee of the school that after the election process in respect of constitution of the new Managing Committee of the school was over some teachers of the school submitted a written representation to the outgoing Secretary of the school on 1st March 1995 requesting him to take necessary steps against the Headmaster for his alleged immoral activities towards the lady teacher of the school. According to the learned counsel of the Managing Committee, the outgoing Secretary, however, did not take any step in this regard.

19. In any event, the lady teacher never made any complaint against the Headmaster concerned, who is the petitioner herein, either before the Managing Committee of the school or before any other administrative authority including the local police authorities.

20. The cause of the lady teacher was taken up by a section of the teaching and non-teaching employees of the school but the Managing Committee of the school issued show cause notice against the Headmaster after the lapse of almost a period of 2 years though the alleged charges levelled against the petitioner was serious in nature involving moral turpitude.

21. This Hon"ble Court by an interim order restrained the respondent authorities from proceeding with the disciplinary proceeding on the basis of the show cause notice issued to the petitioner till the disposal of the writ petition and as such no step could be taken against the petitioner till date.

22. Curiously enough, the said show cause notice was issued to the petitioner pursuant to the direction of the Managing Committee of the school on the sole ground that the petitioner had been absenting from the school without intimation but admittedly nothing was alleged in the said show cause notice in respect of the conduct of the Headmaster.

23. The allegation of misbehaviour, sexual harassment and writing of obscene letter to the lady teacher were not even mentioned in the said show cause notice. The relevant portion of the said show cause notice is quoted hereunder:

"As per direction of the M.C. of the school, I am to state that you have been absent from school on and from 12th May 95 till date without intimation and showing any reasonable ground so far. The M.C. of the school has taken this

matter to account seriously.

Now, you are asked to show cause of your absence for the period from 12th May, 95 to till date with all your documents within fifteen days from the receipt of this letter without fail otherwise it will be seriously dealt with as per rules,"

24. It is true that the Assistant Inspector of Schools (SE), Hooghly caused an enquiry in respect of the affairs of the school and came to the conclusion that the Headmaster has been absenting from attending the school since 12th May 1995 as the local people after coming to know of the unpleasant incident of the school became very much annoyed and hostile towards the Headmaster. It has been mentioned in the said report that the Headmaster inspite of being informed did not remain present at the time of the enquiry. The relevant portion from the said inspection report of the Assistant Inspector of Schools (SE), Hooghly is set out hereunder:

"Though the Headmaster was duly informed he is absent from the school. I enquired over the matter with all teaching and non-teaching staff of the school, members of the Managing Committee & some of the guardians. I met the victim teacher separately. From discussion, it is more or less ascertained that the allegation as lodged is sustained.

For the unpleasant incidents in the school when it come to light to the local people of the neighbouring villages they are very much aggrieved and for this reason the Headmaster is abstaining from attending school since 12.5.95."

25. The District Inspector of Schools (SE), Hooghly in terms of the earlier order of the school also submitted a report. In the said report, it has also been mentioned that the lady teacher of the said school said about the misconduct of the Headmaster to the other staffs of the school which ultimately resulted in collective aggressions of the local people and as such the petitioner on his own remained absent from the school since 12th May 1995. However, in the said report dated 29th November 1995 the District Inspector of Schools specifically mentioned that the Managing Committee of the school failed to take any steps against the petitioner towards suspension or termination of service. The relevant portion from the said report is set out hereunder:

"The M.C. is yet to take any effective step against the petitioner towards suspension or termination which should have been taken for this offence of moral turpitude where, specially, the school is co-education one."

26. The District Inspector of Schools in his report dated 29th November 1995 though specifically mentioned that the Managing Committee of the school should have taken steps against the petitioner for the alleged offence of moral turpitude by issuing an appropriate order of suspension or termination but the Managing Committee of the school in the subsequent show cause notice dated 2nd December 1996 made no whisper about the alleged offence of moral turpitude of the petitioner herein or referred to any complaint alleged to have been made by

the lady teacher of the said school against the petitioner.

27. In any event, no order of suspension or termination has yet been issued against the petitioner. Accordingly, Mr. Moitra appearing on behalf of the petitioner submitted before this Court that the petitioner is entitled to discharge his duty as Headmaster of the school and the respondent authorities should render necessary assistance in order to ensure physical safety and security of the petitioner herein.

28. Mr. Safiullah, learned counsel of the school authorities, submitted that the petitioner herein humiliated a lady teacher of the said school on various occasions. According to Mr. Safiullah, the said lady teacher became the victim of consistent sexual harassment of the Headmaster. Mr. Safiullah further submitted that the said lady teacher submitted an application to the seniormost teacher of the school on 20th January 1995 narrating the conduct and behaviour of the Headmaster including the consistent sexual harassment made by the said Headmaster on various occasions towards the said lady teacher.

29. According to Mr. Safiullah, though the matter was known to all the teachers and even to the guardians of the students and also to the local people but the outgoing Managing Committee did not take any interest or refused to take effective steps in the matter as at the relevant point of time process of election for constitution of the new Managing Committee was in progress. Mr. Safiullah further submitted that after the election process was over teachers of the said school submitted a written representation to the outgoing Secretary of the school on 1st March 1995 requesting him to take necessary steps against the Headmaster for his immoral activities towards the lady teacher of the school.

30. However, from the records it does not appear that the erstwhile Managing Committee took any steps in this regard. It further appears from the records that the teachers of the school submitted a written representation on 21st June 1995 in respect of the alleged illegal and immoral activities of the Headmaster, who is the petitioner herein to the District Inspector of Schools (SE), Hooghly and a copy of the said representation was also forwarded to the newly constituted Managing Committee.

31. On receipt of the said representation the District Inspector of Schools (SE), Hooghly made an enquiry in respect of the affairs of the school through the Assistant District Inspector of Schools on 26th July 1995.

32. Referring to the show cause notice issued to the petitioner herein dated 2nd December 1996, Mr. Safiullah submitted that the Managing Committee granted an opportunity to the petitioner to explain his conduct about the unauthorized absence from the school since 12th May 1995 and also about the misbehaviour towards the lady teacher of the school involving moral turpitude. The Headmaster replied to the said show cause notice but the Managing Committee was not satisfied with the said explanation of the Headmaster. The Managing Committee thereafter issued a formal charge sheet to the petitioner on 27th

January 1997 on the charge of conspicuous and deliberate absence for a long period beyond Leave Rules and also on the ground of moral turpitude.

33. In the purported charge sheet dated 27th January, 1997 it appears that the Managing Committee of the school at the time of issuing the formal charge sheet to the petitioner expressed its opinion in respect of the charges mentioned in the charge sheet. The relevant portion from the formal charge sheet is quoted hereunder:

"That when all of your mischief were exposed to the whole school staff, the villagers, the guardians of the students and even to the grown up boys and girls of the Institution, you began to absent yourself from the school since 12.5.95 to till date by various pretext like the threatening by the public, the assault by the teachers outside the school premises and so on. Thus you by your act or acts, by gesture and posture and behaviour you are doing against the interest of the school which is detrimental in the management of the school."

34. Mr. Safiullah submitted that the Managing Committee of the school by the letter dated 12th March 1997 requested the authorities of the West Bengal Board of Secondary Education to grant approval for initiating disciplinary action against the Headmaster but this Hon"ble Court at the instance of the petitioner granted an interim order of injunction restraining the Managing Committee of the school from taking any action against the petitioner.

35. Mr. Safiullah urged that this Court should not interfere at the early stage of the disciplinary proceeding. In support of his aforesaid submission, Mr. Safiullah referred to the decision of the Supreme Court in the case of Managing Director, Madras Metropolitan Water Supply and Sewerage Board and Another Vs. R. Rajan and Others, .

36. The learned counsel of the school authorities also submitted that the petitioner failed to furnish reasonable explanation as to why he did not attend the school almost for a period of 7 years. According to the present Managing Committee of the said school the petitioner deliberately refused to attend school for such a long period of 7 years and as such according to the learned counsel of the school authorities this Court should not permit the petitioner to Join the school at this stage.

37. According to Mr. Saflullah, the Managing Committee of the school could not take appropriate action against the petitioner in view of issuance of the interim order of injunction by this Court.

38. Lastly, Mr. Safiullah urged before this Court that the Headmaster by his long unauthorized absence from the school for about 7 years ceased to be in employment of the school in terms of Rule 11(i) of Leave Rules and referred to the decision of the Supreme Court in the case of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, .

Mr. Rabi Lal Moitra, learned Government Pleader appearing on behalf of the State

respondent urged the following points :

(1) In terms of the order dated October 27, 1995 of the Hon''ble High Court the District Inspector of Schools (SE), Hooghly made a spot enquiry in the school as regards misconduct and sexual harassment to the lady teacher by the Headmaster and recommended not to allow the Headmaster to continue in his post since he was found guilty of such mischief and misconduct and therefore the report of the District Inspector of Schools cannot be ignored by the Hon''ble High Court.

(2) Whether the Headmaster of the school, the petitioner herein should be allowed to resume his duty at this stage for the greater interest of the school particularly when a serious charge alleging misconduct involving moral turpitude has been levelled against the petitioner.

(3) Whether the petitioner should be allowed to join the school at this stage even for a single day by this Court particularly when specific charge has been levelled against the petitioner for non-attending the school since May 12, 1995 deliberately and according to the respondent authorities in the event the petitioner is allowed to join the school for a single day then the same would condone the long unauthorized absence of the petitioner from the school.

(4) Lastly, Mr. Moitra, learned Government Pleader submitted that in view of the interim order of injunction passed by this Court no steps could be taken against the petitioner inspite of issuance of the formal charge sheet and as such this Court should now vacate the order of injunction for the interest of justice.

39. Having heard the learned counsel appearing for the parties and considering the materials on record the following facts have emerged in the present case:

(1) The petitioner was assaulted at the school gate on 10th May 1995 and the same was reported to the local Police Station.

(2) The petitioner did not discharge his duties as Headmaster of the school since 12th May 1995.

(3) Formal charge-sheet was Issued to the Headmaster of the school, namely, the petitioner herein by the Managing Committee of the school on 27th January 1997 though the petitioner did not attend the school since 12th May 1995 and furthermore the concerned lady teacher submitted an application to the seniormost teacher of the school narrating her sufferings including humiliation and sexual harassment at the instance of the petitioner herein as far back as on 20th January 1995.

(4) While issuing the formal charge sheet the Managing Committee of the school expressed its opinion in respect of the charges levelled against the petitioner.

(5) The charges levelled against the petitioner have not yet been established in accordance with the expressed provisions of law as are applicable in this regard.

(6) No order of suspension and/or termination from service has yet been issued against the petitioner.

(7) Though it has been urged by the Managing Committee of the school that the Headmaster by his long unauthorized absence ceased to be in the employment of the school in terms of Rule 11(i) of the Leave Rules but admittedly from the records it appears that the school authorities all along treated the petitioner in the employment of the school and all along mentioned the name of the petitioner against the serial No. 1 in the monthly Acquittance Roll of the school and submitted the same regularly before the District Inspector of Schools concerned on behalf of the school authorities.

(8) No order has been passed by the Managing Committee of the school terminating the employment of the petitioner in the said school in view of the interim order of injunction passed by this Court earlier against the Managing Committee of the school.

40. I am not inclined to decide at this stage whether the petitioner ceased to be in the employment of the said school in terms of the Rule 11(i) of the Leave Rules. Admittedly, the Managing Committee of the school never applied the said rules in respect of the petitioner till date apart from advancing argument in this regard through the learned counsel at the time of hearing. Neither from the affidavits nor from any records it would appear that the school authorities applied the provision of the aforesaid Leave Rules in respect of the petitioner and/or put an end to the employment of the petitioner in the school and on the contrary the school authorities regularly mentioned the name of the petitioner in the monthly Acquittance Roll treating him as the Headmaster of the school.

41. It is well-settled principle that an employee is entitled to remain in service till the date of superannuation unless the service of the employee concerned is terminated by an appropriate authority in an appropriate manner in accordance with the provisions of law as applicable to the said employee. Full Bench of the Supreme Court in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), specifically observed as follows:

"12. The position may, therefore, be summarized as follows: In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years" service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him...."

42. In the present case, the petitioner is entitled to defend himself before the competent authority against the charges levelled against him and the competent authority after granting adequate opportunity to the petitioner to defend himself and complying with the established procedure and principle of natural justice

should decide the validity and/or legality of the charges levelled against the petitioner.

43. The disciplinary proceedings should be initiated, conducted and concluded against the petitioner strictly in accordance with the prescribed procedure as has been specifically mentioned in the management rules. Unless the charges levelled against the petitioner are established before the competent authority and a formal order of dismissal is passed by the competent authority in accordance with law, the petitioner should not be prevented from discharging his duties as Headmaster of the school.

44. Though a serious charge involving moral turpitude has been levelled against the petitioner but admittedly the Managing Committee of the school did not issue any order of suspension against the petitioner till date. So, in absence of any order of suspension or an order of removal from service, the petitioner cannot be prevented from joining the service of the school by the respondent authorities.

45. Surprisingly, the concerned lady teacher made a complaint against the petitioner herein involving sexual harassment and humiliation before a senior colleague in writing but I fail to understand why such communication could not be addressed to the Managing Committee of the school. In any event, the Managing Committee of the school even after coming to know of the said complaint did not issue any charge sheet immediately thereafter to the petitioner and waited for a couple of years. The Secretary of the Managing Committee of the school also requested the petitioner to attend the school by the written communication dated 18.7.1995 though, the petitioner did not attend the school inspite of the said request of the Secretary as he felt that his personal safety and security was under a serious threat.

46. In the aforesaid circumstances, I am of the view that the petitioner should not be restrained from discharging his duties in absence of any valid order of suspension and/or termination issued by the competent authority against the petitioner in accordance with law.

47. For the aforementioned reasons I find substance in the present writ petition and the same is accordingly allowed.

48. The respondent authorities are restrained from preventing the petitioner from attending the school in any manner whatsoever since the petitioner all along expressed apprehension in respect of his physical safety and security which cannot be ignored altogether particularly when repeated complaints have already been lodged by the petitioner in this regard with the police authorities.

49. The petitioner is also directed to Inform the Superintendent of Police, Hooghly about the date and time of his joining the school and the Superintendent of Police is directed to ensure physical safety and security of the petitioner in and outside the school premises.

50. However, disposal of this writ petition will not prevent the school authorities

from proceeding with the charge levelled against the petitioner in accordance with law in future. In the event, the earlier request of the Managing Committee of the school to the authorities of the West Bengal Board of Secondary Education under the Management Rules for grant of necessary approval for initiating disciplinary proceeding against the petitioner is again placed for consideration then the authorities of the Board will consider whether the Managing Committee had already pre-judged the issue by expressing biased opinion against the petitioner in the charge-sheet.

51. As the petitioner all along expressed his willingness to attend the school and sought for protection from various authorities including the local police authorities, it cannot be said that the petitioner deliberately did not attend the school since 12th May 1995 unless the charge against the petitioner in this regard is established in accordance with law. In any event, if the respondent authorities had placed the petitioner under suspension during the pendency of the disciplinary proceeding then also the respondent authorities are bound pay subsistence allowance to the petitioner till finalisation of the disciplinary proceeding.

52. In the premises, the petitioner is entitled at least 50% of his arrear salary with effect from 12th May 1995 till the date of joining the school. The school authorities shall submit a bill towards the arrear salary of the petitioner for the aforesaid period within a period of two weeks from the date of receipt of copy of this order and the District Inspector of Schools (SE), Hooghly shall take appropriate steps for release of the necessary funds in this regard for the payment of the aforesaid arrear salary of the petitioner within a period of two weeks thereafter. The respondent authorities, however, will ensure regular payment of salary to the petitioner after joining the school in terms of this order.

53. The petitioner is directed to resume his duty as the Headmaster of the school without any further delay and positively within a period of one week from the date of receipt of the copy of this order.

In the facts and circumstances of the case, there will be, however, no order as to costs.

As a special case xerox copy of this judgment be handed over to the learned advocate of the parties forthwith subject to compliance of usual formalities in this regard.

Later:

Prayer for stay of operation of this judgment and order is considered and refused.