

(2011) 12 CAL CK 0111
In the Calcutta High Court
Case No : Writ Petition No. 20418 (W) of 2009

Lutfar Rahman

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Citation : (2013) 1 WBLR 658

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Uday Sankar Chattopadhyay and Mahadeb Sarkar, for the Appellant; P.K. Mukherjee and Tapas Kr. Majumdar for the Respondent No. 5, for the Respondent

Judgement

Harish Tandon, J.—This is one of unique litigation which has come up before this Court where a contractual appointee has been terminated without following any procedure or without giving an opportunity of hearing. It appears that the petitioner was engaged as Additional Para-Teacher in Social Science Group in Bajitpur High School, Bangaon under Sarva Siksha Avijan. Admittedly, such engagement is purely a contractual post i.e. for one year, and renewable upon recommendation of the Managing Committee of the School subject to satisfactory performance. The petitioner's engagement is terminated before its expiration on a very serious allegation that he has given a love letter to one of the students of the said School. The Managing Committee on the basis of the complaint made from the guardians of the students and also the various other students including the complainant herself unilaterally took a resolution of termination of the engagement of the petitioner. The petitioner has come up with this application on the ground that he was not given an opportunity of hearing to defend against such serious allegation. Admittedly, there is no procedure provided in the said scheme for termination of the engagement of the para-teacher after giving an opportunity of hearing. It appears that a serious impunity attached to a person without giving an opportunity of hearing has a disastrous effect as the said person would be deprived of getting an employment in any

other organization. When a stigma is attached to a person then the said person should be given an opportunity to defend himself. The right to defend is one of the fundamental rights of a citizen and any action by which such rights are being infringed offends the fundamental rights of a citizen.

2. In the instant case, this Court has noticed that the Managing Committee of the said School has proceeded to terminate the engagement of the petitioner without giving an opportunity of hearing or without letting the petitioner aware of such serious allegation being made against him. There are serious lapses which this Court has noticed in the decision making process where the Managing Committee without taking any evidence on the alleged letter have charged the petitioner with such impunity.

3. From time and again, it has been reported by this Court that principle of natural justice shall be adhered to by the concerned employers while taking a decision and/or removal and/or termination of service of the employee.

4. Since there is no procedure provided in the scheme relating to the termination or disciplinary action against the contractual engagement of a para-teacher or additional para-teacher, this Court feels that the following procedures should be adopted by the concerned employers:

(i) The concerned employer shall issue a notice to show cause to the employee enumerating the alleged acts of misconduct committed by him and will communicate the same along with the articles of charge and lists of documents;

(ii) The concerned employer shall appoint an inquiring authority for conducting an enquiry and the said inquiring authority shall submit the report after recording the evidence, both oral and documentary, of all the witnesses including the delinquent and its findings to the concerned employer;

(iii) The concerned employer shall thereafter serve the copy of the said enquiry along with all documents on which the reliance is placed by the inquiring authority to the delinquent and shall give an opportunity to file reply against the said enquiry report;

(iv) After giving an opportunity of hearing, the concerned employer shall record its finding on each of the Articles of Charges relating to misconduct and the proposed punishment and shall, serve the said order upon the delinquent;

(v) The concerned employer shall complete the entire exercise as indicated above before the period of engagement expires or before the expiration of the renewed and/or extended period, if there be any.

5. Reverting back to the present writ petition, as noticed, none of the procedures as indicated above has been followed and the concerned employer has proceeded grossly in violation of the principle of natural justice and as such, the order impugned is not sustainable and is hereby quashed and set aside. The allegations made against the petitioner shall not be deemed to have been proved

against the petitioner and shall not be taken into account in any future employment.

6. After the termination of the impugned order, the petitioner shall be deemed to have been to the post of an additional para-teacher and is entitled to a honorarium till the expiration of the said contractual period. The concerned employers are directed to pay the honorarium in an unexpired period of contract within four weeks from the date of communication of this order.

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

8. Let the copy of this order be circulated upon all the District Project Officers of each District through in State Project Directors, Sarva Siksha Avijan, immediately.

9. Before parting I appreciate the assistance given by the respective Advocates in this matter. Urgent xerox certified copies of this order, if applied for, be supplied to the parties as early as possible upon compliance of all requisite formalities.