

(2019) 08 CAL CK 0173

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 12171 (W) Of 2019

Niladri Sekhar Duley

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 13-08-2019

Acts Referred:

West Bengal Board Of Secondary Education (Appointment, Confirmation, Conduct And Discipline Of Teachers And Non- Teaching Staff) Rules, 2018 — Rule 2(h), 5

Citation : (2019) 08 CAL CK 0173

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Kamalesh Bhattacharya,, Aninda Bhattacharya, Susanta Pal, Prabir Kumar Ray, Amal Baran Chatterjee, Nitish Samanta

Final Decision : Disposed Of

Judgement

Moushumi Bhattacharya, J

The petitioner has challenged a notice dated 1st February, 2019 written by the Teacher-in-Charge of Lodna Mankhamar Vivekananda Vidyamandir (HS), Mankhamar, Onda, Bankura, where the petitioner is presently working as Assistant Teacher in the language group. By the said communication, the subject matter of which is "refund the excess salary to Govt. Treasury.....", the

Teacher-in-Charge has informed the petitioner that the latter has drawn excess salary of Rs.89,440/- up to November, 2018 and as per a unanimous resolution of the Managing Committee in its meeting held on 9th January, 2019, the petitioner was instructed to refund the excess salary to the Government Treasury. The material part of the communication is as follows:

".....you are further informed that if you fail to do the same, we have no other option available but to stop your salary until the total amount is recovered."

Learned Counsel for the petitioner assails the said communication on the ground that not only all relevant particulars have not been disclosed in the said

communication as to the reason behind the Managing Committee taking the resolution but the particulars forming the basis of the alleged amount of excess salary drawn by the petitioner have also not been given. Counsel submits that pursuant to this communication, the petitioner's salary has been stopped from February, 2019.

Counsel also relies on letters written by the President of the said school to the Deputy Director, School Education, the Secretary, School Education Department and the Commissioner of School Education, Government of West Bengal, on 11th January, 2019 and a letter to the District Inspector of Schools (SE), Bankura, dated 14th November, 2018 by the Teacher-in-Charge of the said school when these persons were apprised of the situation only after the decision was taken. It is submitted that the reason behind the impugned communication is the alleged excess leave taken by the petitioner. Counsel further relies on the details of leave taken by the petitioner starting from 2003 until 2019 and submits that the school authorities have proceeded to calculate the leave availed of by the petitioner even before he joined the concerned school in 2007. The primary submission made is on The West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-

Teaching Staff) Rules, 2018, Clause 2(h) of which defines "disciplinary authority" to mean any officer of the Board not below the rank of Deputy Secretary to Board who has been authorised by the Board to initiate disciplinary proceedings against a Teacher or non-teaching staff of an Institution. Counsel places Rule 5 of the 2018 Rules which gives the authorization to the Board to initiate disciplinary proceedings against a teacher or a non-teaching staff of a school.

Learned Counsel for the respondent no.6, being the Managing Committee of the said school, relies on several documents to show that the petitioner is a habitual absentee and has availed of a total number of 828 days from 2003 till 2019 without informing or taking the required sanction from the Managing Committee of the school. Counsel places several intimations made by the President of the school to the petitioner on 16th February, 2018 and 27th November, 2018 showing that the petitioner was put on notice much before the impugned communication was made on 1st February, 2019. The said notices show that the petitioner was given several opportunities to submit relevant documents failing which the petitioner's leave would be treated as "leave without pay". Counsel also relies on the communication sent by the school to the Deputy Director, School Education and the other authorities including to the Commissioner of School Education in January, 2019 and the minutes of the meeting of the Managing Committee dated 9th January, 2019 which resolved that the petitioner had availed leave more than the period sanctioned under the Rules which prompted the Managing Committee to take a view with regard to the misconduct of the petitioner.

Counsel for the State submits that it is the Board which is authorised to initiate appropriate disciplinary action against the petitioner and that the Board has not

been made a party to the proceeding.

I have heard learned Counsel for the parties and considered the relevant provisions of the 2018 Rules which were brought into effect on 8th March, 2018. The facts presented to this Court clearly show that the petitioner has taken more leave than was necessary from 2003 to 2019. However, the computation made by the school may not be correct since the petitioner joined the present school admittedly on 27th December, 2007. It is also correct that contrary to the first impression which the Court had on the impugned communication from the Teacher-in-Charge dated 1st February, 2019, the documents annexed to the report filed by the school reveal that the petitioner had indeed been put on notice before the impugned communication was made.

Whatever be the basis of the impugned communication which was sent to the petitioner, having considered the relevant Rules of the 2018 Rules, the school authorities were not empowered to stop the salary of the petitioner from February, 2019 since the school authorities do not have the power to take disciplinary action against an errant teacher. Rule 2(h) and Rule 5 of the 2018 Rules clearly show that it is only the Board which is entitled to initiate and follow-through with disciplinary proceedings against a teacher or a non-teaching staff of an institution. In the absence of any power given to the school, the drastic step of stopping a teacher's (petitioner) salary could not have been taken by the school authorities under any circumstances.

In view of the above, the respondent no.6 being the Managing Committee of the said school is directed to pay the petitioner's salary from February, 2019. The West Bengal Board of Secondary Education being the designated authority under the 2018 Rules, will be at liberty to proceed against the petitioner subject to compliance of the relevant Rules. Until the Board comes to an appropriate decision as prescribed under the 2018 Rules with regard to the alleged misconduct of the petitioner, the respondent no.6 is directed to continue to pay the petitioner's salary. The respondent no.6 or the concerned authority, as the case may be, is also directed to pay the arrear salary of the petitioner from February, 2019 within a period of two weeks from today.

W.P.12171 (W) of 2019 is disposed in terms of the above.

Urgent certified website copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.