

**(1995) 11 CAL CK 0016**  
**In the Calcutta High Court**  
**Case No : C.R. No. 9635 (W) of 1984**

Nirmal Kumar Jana

APPELLANT

Vs

District Inspector of Schools (S.E.) and Others

RESPONDENT

**Date of Decision :** 22-11-1995

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1996) 1 CALLT 101 : (1996) 1 ILR (Cal) 407

**Hon'ble Judges :** Shree Ranga Misra, J

**Bench :** Single Bench

**Advocate :** B.C. Chakraborty and Kashikanta Moitra, Pabitra Basu, for the Appellant; Harashit Chakraborty, for the Respondent

**Final Decision :** Allowed

## **Judgement**

Shree Ranga Misra, J.—By means of this writ petition, petitioner challenges an order dated 27th of March, 1976 terminating services of the petitioner without assigning any reason or without giving any opportunity of Show Cause. The brief facts giving rise to this writ petition are as follows:-

2. Petitioner alleges that he was appointed on 24th of March, 1975 as an Assistant Teacher in Science Group for Mathematics in the permanent sanctioned post on a temporary basis in pursuance of an advertisement published in the newspaper Inviting application for appointment amongst others a science teacher having qualification of Bachelor Degree in science. Petitioner having applied for the said post of science teacher in Vivekananda Palli Kishore Bharati Junior High School, Vivekananda Palli, P.S. Behala, Dist 24 Paraganas. In response to the application of the petitioner, he was called in an interview along with the several other science graduate. Finally, petitioner was selected for the post and was appointed in the Junior High School. In pursuance of his selection by the appointing Authority, petitioner Joined the institution as science teacher for mathematics against a permanent sanctioned post,

3. It was also stated that appointment letters of other Asstt. Teachers of the School namely Sri. Subrata Sirkar, B. Com. and Arun Das, B. A. dated 25.3.1975 and 30.8.1974 respectively that the Secretary issued appointment letters on Identical terms. The service of the other two Asstt. Teachers of the said School appointed alongwith the petitioner were approved by the District Inspector of Schools (SE) 24 pargs. from 1.1.78 and 30.3.1974, the respective date of joining.

4. While discharging his duties as an Assistant teacher in Mathematics in the science group petitioner was suddenly removed from service by a purported notice of termination dated 27.3.1976 without assigning any reason or opportunity of show Cause. The said notice of termination dated 27.3.1976 was issued by the signature of the Secretary of the School respondent No. 7 terminating service with effect from 1.4.1976 being a notice of 14 days. The letter of termination was Issued without a resolution being adopted by the Managing Committee of the School at all. The purported termination of the petitioner by the secretary was without authority of law and out of malice and to create a vacancy in the science group to appoint his brother-in-law (Sister-in-law's husband) namely Sri Asit Ghosh who was appointed with effect from 20.3.1976. The petitioner was purposely terminated with effect from 1.4.1976 with stigma which came to light from the statements made by the school Authority at the time of hearing vide a letter of the Director of School Education in pursuance of an order dated 28.2.1989 while his letter dated 27.4.1989 in contempt rule being Civil Rule No. 9725(W) of 1986.

5. The writ petition was contested by the management and they set up a case that petitioners service was terminated as there was no sanctioned post and in the absence of any charge the question of affording any opportunity to the petitioner does not arise. After the filing of the writ petition supplementary affidavit and fresh materials were brought on the record on behalf of the petitioner and parties have exchanged their affidavits and the reply and thereafter the matter is being heard. This case has a checkered history. However, it is not necessary to go into the greater details of the matter as has been stated on behalf of the petitioner through various affidavits or the reply stated on behalf of the answering respondents.

6. It is admitted between the parties during the pendency of the petitioner a contempt Rule was issued as CR No. 9725 (W) of 1986 and in the said Rule the learned Single Judge of this Hon''ble Court has pleased to pass the following order :-

"Considering the facts and circumstances of the case as above, it appears that the case of the petitioner is almost identical as that of Shri Kanungoe, the other teacher who was first dismissed and then reappointed. While with the promise of future good conduct, the petitioner did not anything like this. In this circumstances it is hereby ordered that the school authorities should also appoint the petitioner in an appropriate vacancy, if already existing or which may occur in future, on condition that the petitioner should furnish a declaration of good

conduct by swearing an affidavit before an appropriate authority and also appealing separately to the management of the school for his appointment with the request to condone his past lapses and assuring the management of the best service and co-operation. The Management will be at liberty to terminate the services of the petitioner if he does not behave properly as a school teacher in the Interest of education after Issue of appropriate charge sheet and after holding an enquiry into the matter by a neutral and respectable person."

7. "In my view the Director of School Education has come to a correct conclusion of the facts of this case. In view of the facts and circumstances of this case as mentioned in the said report of the Director of School Education this contempt Rule is disposed of by the following order :-

"The petitioner shall be appointed as an assistant teacher in an appropriate post commensurate with his qualification. Such appointment shall be made with effect from 1st September, 1989. This will be treated as fresh appointment but age will not be taken as bar in making this appointment if there be no vacancy at present where the petitioner can be accommodated the appointment shall be made on adhoc basis and the District Inspector of Schools or Director of School Education shall accord approval to such adhoc appointment until the petitioner can be regularised in the vacancy which may arise hereafter. The petitioner shall also file an affidavit as directed by the Director of School Education in his report dated 23rd May, 1989 which I have set out hereinbefore. Fresh affidavit shall be filed after two weeks after the joining his duties.

School authorities shall issue the letter of appointment to the petitioner forthwith.

Let a plain copy of the operative part of this order and Judgement be given to the learned Advocate appearing for the parties."

8. However, it is admitted that after passing of the order in contempt Rule referred to above the relevant portion of the judgement having been quoted, the petitioner who was the applicant in the contempt Rule was not taken in Service in pursuance of the direction of the learned single Judge though parties have given different explanation to Justify their conduct. Having heard the learned Counsel for the parties at length on a number of dates. The written arguments have also been submitted on behalf of the learned counsel for the petitioner and the learned Counsel for the answering respondents.

9. It is admitted between the parties that in pursuance of the order dated 28.2.1989 passed by the learned single Judge in the contempt Rule being C.R. No. 9725(W) of 19.86. The Director of School Education heard both sides on 17.4.1989 and submitted his report on 23.5.1989 before the learned single Judge on 9.8.1989. The original file of this case also summoned by this Court and the Judgement of the learned Single Judge was looked into and the relevant portion have been quoted above.

10. A perusal of the materials on the record it goes to show that the petitioner

was appointed on 24th of March, 1975 and his service was terminated on 1st of April, 1976. But before his termination another teacher, who is said to be a relative of the secretary was appointed on 20th of March, 1976. The said teacher namely Sri Asit Ghosh was continuing the service as a teacher. If the stand of the management is correct that there was no sanctioned post, how Sri Asit Ghosh was appointed in 20th of March, 1976 and a notice for termination of the petitioner's service issued on 27th of March, 1976 with effect from 1.4.1976.

11. It is also admitted between the parties that when the learned single Judge of this Hon'ble Court in CR No. 9725 (W) of 1986 on 29th of August, 1989 directed the School Authority to appoint the petitioner as an Assistant teacher in an appropriate post commensurate with his qualification with effect from 1st of September, 1989. The School Authority did not prefer any appeal against the said judgement and the said judgement admittedly became final. However, the petitioner was aggrieved by the said order of the learned single Judge dated 29.8.1989 as according to him he was contending that he be appointed with effect from his initial appointment preferred an appeal F.M.A.T. No. 75 of 1990. The said appeal was filed three days beyond the time prescribed for filing such an appeal. The said appeal was dismissed and a SLP which has been numbered as SLP (Civil) No. 683 of 1991 was filed before the Supreme Court. The Supreme Court of India directed the High Court to hear out the Civil Rule being C.R. No. 9635(W) of 1984 i.e. the present writ petition.

12. Ultimately, this writ petition was listed before a number of learned single Judges but the petition could not be heard and ultimately, the case has been assigned to this Court. In written argument petitioner has placed reliance on the following authorities:--

1. AIR 1984 SC 10 and 12 at page 641 Anoop Jaiswal (Appellant) v. Government of India
2. AIR 1964 SC 456 Jagdish Mitter v. Union of India
3. Om Prakash Goel Vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla and another, .
4. Bihar State Road Transport Corporation Vs. State of Bihar and Others,

13. The contention of the petitioner is that the letter of termination dated 27.4.1976 is nothing but couched as termination to deprive the petitioner from services under the garb of using word Termination" simplicitor. When the matter was before the Director of School Education on reference by the learned single Judge in connection with the contempt proceedings, serious allegations were made by the Head Master of the School and also by the Secretary against petitioner. But it is admitted that petitioner was never given any chance to explain and/or controvert the allegations made against the petitioner which formed foundation of issuance of the purported letter of termination and according to petitioner this was done with a malafide manner to avoid formalities

to be observed under Rule 28(8) of the Rules for Management of Recognised Non-Government Institution (Aided and Unaided) Rules 1969 which reads as under:--

"RULE 28(8)--powers of committee both in aided and unaided Institutions the Committee shall have the power subject to the prior approval of the Board, to remove or dismisses permanent or temporary teachers and other employees. For this purpose the committee shall first draw up formal proceedings and Issue charge-sheet to the employee concerned, and offer his reasonable facilities 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 recommendation 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."

14. When the petitioner preferred an appeal against the decision of the secretary terminating his service by the Appeal Committee, the petitioner stated that he has been ousted from service illegally and arbitrarily and without giving any opportunity to show cause or without issuing any chargesheet or assigning any reason although serious allegations were made against the petitioner regarding performance of duties, which clearly amounts to misconduct. These facts are recorded in the proceedings of the meeting of the committee held on 12. 2. 1977, three years after the termination of the service of the petitioner. These facts found place in the order of the learned single Judge in Civil Rule No. 9725 (W) of 1986. It was also ascertained on behalf of the petitioner that to create a permanent vacancy in the science group for mathematics so as to accommodate Secretary's brother-in-law Sri Asit Ghosh who joined on 20th March, 1976 and the Education Authority of the Sate namely Inspector of school (S.E.), 24 Parganas approved the appointment of Sri Ghosh, brother-in-law of the Secretary, respondent No. 7 with effect from the date of his appointment on 20th of March, 1976.

15. The petitioner further preferred an appeal No. 59 of 1981 before the Appeal Committee for re-consideration of his case which was heard on 16.4.1983 which was also dismissed. Sri Sibaprasad Kanungoe and the petitioner were identically placed and there has been a clear discrimination in as much as the appeal preferred by Shibaprasad Kanungoe along with the appeal of the petitioner have

dismissed on 12th of February, 1977 being appeal No. 89 of 1976 and appeal No. 90 of 1976 but Shibaprasad Kanungoe was taken in service by the Secretary of the said School though according to Management he was inefficient teacher. After the dismissal of the appeal by him but when the facts and circumstances of the petitioner and that of Kanungoe was one and the same. The Appeal Committee also committed an apparent error in exercise before appellate Jurisdiction clearly ignoring these aspects of the matter of Asit Ghosh, brother-in-law of the Secretary having been appointed on 20th of march, 1976, ten days before the termination of the petitioner's service and he was also approved by the Authority. The termination of the petitioner could not be allowed to remain intact and the same is liable to be set aside. On 19th of July, 1984 the learned single Judge of this Court passed the following order:-

"There will be an Interim order of injunction restraining the respondents from approving any appointment in the post of science teacher in the school without leave of this Court."

16. Yet inspite of this order the post held by Sri Asit Ghosh (Brother-in-law of Secretary) having fallen vacant with effect from 1986, Sri Malay Kumar Dutta has been appointed as an Asstt. Teacher in the Science Group in clear disregard and violation of the interim order of injunction referred to above.

17. In contempt proceeding the matter was dealt with in great detail and yet the management did not obey the order of the learned single Judge it has further been stated in written argument on behalf of the petitioner that the averment of the School Authority that appointment of the petitioner was beyond sanctioned strength and his service were not approved and such he is not a teacher and the rules said to be an applicable as alleged by the petitioner have no application. Admittedly, when the petitioner was appointed though he was appointed temporarily but there was a sanctioned post available at that time as will be clear from the facts that the appointment of Sri Asit Ghosh, brother-in-law of secretary who was appointed by the management and his appointment was approved. Petitioner has further alleged that he has not only challenged the wrongful termination of his service but he has also challenged the decision of the appeal committee. On behalf of the answering respondent it has been stated that there being no prayer of certiorari and petitioner having not annexed order of termination of the letter of appointment he is not entitled to any relief from this Court. It has been further stated that the petitioner has been appointed against an unsanctioned post temporarily in the absence of the letter of appointment. Petition is not maintainable. It has also been stated that the petitioner preferred two appeals before the appeal committee and he has not challenged the validity of the decision of the appeal committee and in straight way he files this writ petition. The Managing Committee is a Statutory body and the members of the Committee has not been impleaded as parties.

18. The petition is not maintainable on these grounds also. A plea of delay has also been taken in the written arguments. Other pleas taken in the writ petition

have been denied. In paragraph 11 of the written arguments on behalf of the management it has stated that Justice Ajit Kumar Sengupta (Judge, as he then was) passed an ex parte order and rule for contempt was issued but the said contempt application was dismissed with certain direction but the petitioner did not avail of His Lordship's order dated 28th of August, 1989 nor the order was communicated to the respondent and unless the order was communicated to the management, the order does not become effective. In paragraph 22 of the said written-argument, it has been stated that the petitioner admitted to assault the Headmaster, the Secretary and those who conducted this case which is very much known to Mr. Biren Chakraborty appearing on behalf of the petitioner. Having heard the learned Counsel for the parties and having perused the written argument there is no substance in the argument and including written argument on behalf of the answering respondent that the petitioner has not challenged the order of termination and the order of the appeal committee. But perusal of the amendment that an application in which parties have exchanged their affidavits clearly goes to show that the petitioner has challenged the order of termination and also the decision of the appeal committee. Answering respondent has failed to make out a case that petitioner is not entitled to relief on account of the delay.

19. There is no substance in the argument of the management that in a contempt proceedings when, an order was passed by a learned single Judge of this Court dated 29th of August, 1989 though the management did not file an appeal against that order and as the petitioner filed an appeal, it was not incumbent for the management to allow him to join in pursuance of the order of the learned single Judge. It was also urged that since petitioner has not given undertaking as directed by the learned single Judge the question of permitting the petitioner to join does not arise but this argument is wholly misconceived. A perusal of the order of the learned single Judge dated 29th of August, 1989 would go to show that the condition was that after Joining the petitioner file an affidavit of his good conduct. As regards the merit of the case that the order of termination was in violation of rule 28 of Rules which provides an opportunity before an order of termination is passed. Once there are allegations of misconduct and admittedly when the matter was examined by the Director of School Education on reference by the learned single Judge there when the materials were placed, it was found as a fact by the Director of School Education that there were allegations of mis-conduct by the management against petitioner and as such the order of the termination cannot be justified for the reasons stated on behalf of the management that it was a simple order of termination and there was no sanctioned post and as such the petitioner is not entitled to relief is misconceived. Another questions arise that during the pendency of this writ petition on the post available, another teacher was appointed and his appointment has been approved. Then a question may arise if there is no post available today how petitioner will be accommodated. As regards the question that it was a simple order of termination in this regard to the learned Counsel of the petitioner placed reliance on paragraph 10 to 12 and other cases referred to

earlier.

20. In those cases it has been held that the surrounding circumstances and the materials could be looked into and the mere use of the word "termination" simpliciter is not decisive. On the other hand material support petitioner's contention that reasons for termination was to appoint another person and termination also on account of the certain charges levelled against the petitioner. In view of this, looking into the facts and circumstances of the case and the materials placed before this court as well as after considering the authorities as the case of the petitioner is\* almost identical to that of Kanungoe, it appears to be appropriate that the School Authority be directed to appoint petitioner as an Assistant teacher in appropriate post commensurated with his qualification with effect from 1st of September, 1989. This may be treated to be fresh appointment but age will not be taken to be bar in making this appointment. If there is no vacancy at present where the petitioner can be accommodated the appointment shall be made on adhoc basis and the District Inspector of School or the Director of School Education shall accord approval to such required appointment or an adhoc appointment until the petitioner can be regularised in the vacancy which may arise thereafter if there is no such post available for the person. Petitioner will be paid his dues as a teacher with effect from 1st April, 1989 after joining in the said post The petitioner files an affidavit as directed by the Director of School Education in his report dated 23rd of May, 1989.

21. Petitioner will file such an affidavit within two weeks of joining his duty. The School Authority shall issue a letter of appointment to the petitioner forthwith and will take a step for the payment of his arrears from 1st of September, 1989 and goes on paying his monthly salary as and when it falls due along with the other members of the staff.

22. This order is passed in conformity with the order passed by the learned single Judge and that order of the learned Judge was depended on the report of the Director of School Education. It is true that after holding an order of termination as bad in the normal course the petitioner should have been reinstated on his post held by him in 1975 but Intervening the facts and circumstances of this case and the report of the Director of School Education without going into further controversy and passing an order throwing huge financial burden on the state and the management. It appears to be appropriate that the same order be passed which was passed by the learned single Judge which was not complied by the management if the management would have complied that order of the learned single Judge, all these futile exercise would not have arisen and the petitioner would have been continued in service but the erroneous view taken by the management not permitting him to join without an affidavit as argued by the learned Counsel for the petitioner was against the order of the learned single Judge. The other factor which has been taken into consideration while disposing of the writ petition is that on the post of which the petitioner was working subsequently. Another teacher has been appointed whose

appointment have been approved and he has been confirmed teacher and to avoid any complication and adjusting equity between the petitioner and respondent. It appears to be appropriate that an order be passed for the appointment of the petitioner with effect from 1st of September, 1989 as referred to above be held.

23. Accordingly, the writ petition succeeds and is allowed. Petitioner shall be appointed as an Assistant Teacher in an appropriate post commensurate with his qualification with effect from 1st of September, 1989. This may be treated to be a fresh appointment but age will not be taken to a bar in making such an appointment. If there is no vacancy at present the petitioner may be appointed on adhoc basis and the District Inspector of School and Director of School Education will accord approval for his fresh appointment on a regular basis if there exist a post or grant approval of his adhoc appointment until the petitioner can be regularised in vacancy which is made thereafter. Petitioner will file an affidavit of his good conduct as directed by the Director of School Education dated 23rd of May, within two weeks from the date of joining, the management will issue the appointment letter forthwith. Petitioner will be paid his monthly salary along with other members of the staff and the management will take a step for the payment of the petitioner's dues with effect from 1st of September, 1989 till the date of his joining within a period of four months from the date of communication of this order or from the date of joining of the petitioner.

24. In view of the facts and circumstances parties are directed to bear their own costs.

25. A prayer has been made on behalf of the learned Counsel appearing for the Managing Committee for staying the operation of the order passed by this Court today. Looking into the facts and circumstances of the case and for the reasons stated in the judgment it is a very hard case where the petitioner has been deprived of his right to continue as a teacher and for special reason recorded in the judgement instead of reinstating him with effect from the date of his dismissal from 1976 the relief has been granted from 1st of September, 1989 as the post in which he was working was already filled up and another teacher who was appointed in that post was approved. Hence, it is not a fit case where the operation of the order passed today be stayed, Accordingly, the prayer is rejected.

Office is directed to issue certified Xerox copy of the judgement within a week from today.