
(1993) 03 CAL CK 0015
In the Calcutta High Court
Case No : C.O. No. 10716 (W) of 1990

Nishi Kanta Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 1 CALLT 460 : (1993) 2 ILR (Cal) 170

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Advocate : Saradindu Samanta and L.K. Banerjee, Suprakash Banerjee and Haren Poyra, for the Appellant; D.K. Samanta, for the Respondent

Final Decision : Allowed

Judgement

Ajoy Nath Ray, J.—This is an application where a permanent Teacher seeks to be permitted to resume duties of teaching.

2. The school involved is Gurguripal High School. It is not in dispute that the Writ petitioner was an Assistant Teacher and that the substantive appointment came sometime in early 1988.

The case of the Writ petitioner is that after obtaining due leave he went to have B.Ed, training and that thereafter he was not permitted to join duties in the School.

3. The petitioner makes this case in the Writ petition that for the extraneous consideration of his alleged illicit relationship with one Sm. Janaki Ghose, of which he makes no admission, the School Authorities proceeded without jurisdiction and the District Inspector of Schools also apparently lent support to such proceeding by the Managing Committee on the basis of the said Sm. Janaki Ghose's involvement with the petitioner.

4. Mr. Samanta, learned Advocate appearing on behalf of the petitioner, has

submitted that a Teacher can be proceeded against by the Managing Committee of an educational institution in case and only in case of such breach of duties or other misconduct, which in some manner or the other, has some relationship with the discharge of duties as a Teacher in the school or the institution in question.

5. Mr. Samanta further submitted that in case of some alleged misconduct, which has no bearing whatsoever upon the teaching abilities or discharge of duties as a Teacher, the Managing Committee would be wrong to assume jurisdiction. In such case of, so to speak, extraneous misconduct, it would not be within the province of the Managing Committee either to suspend a Teacher from the post of a Teacher, or to dismiss him, and any approval by the District Inspector of Schools granted in this respect, would be equally without jurisdiction.

6. Mr. Samanta relies in this regard upon the case of *Sk. Alauddin v. The District Inspector of Schools (S.E.), Midnapore*, reported in 1987(1) CHN 327. Mr. Samanta said on the basis of the above authority that case shows an instance of such an extraneous factor being proceeded upon by the Authorities and there the extraneous factor was that of an inter-religious marriage.

7. I am of the opinion that Mr. Samanta is right in his submission and that the alleged affair of the petitioner with Sm. Janaki Ghose should not and could not have been made the subject matter of disciplinary proceeding by the Managing Committee of an educational institution. If the students of the School were benefiting or were likely to benefit from the discharge of teaching duties of the Writ petitioner, then that was all that the Managing Committee was or could be concerned with and it had no jurisdiction to enter into the private life of the Writ petitioner on some such basis as that of a moral inquisition.

8. The learned Advocate appearing for the Managing Committee, submitted that as stated in the eighth paragraph of the affidavit of the Managing Committee, the petitioner in fact was never stopped from attending his duties in School in or about 1990. The learned Advocate submitted, though the same is not in paragraph 8, that the petitioner did not attend his duties because he was to scared to attend the locality because of the rumors of his involvement with Sm. Janaki Ghose. Thus, it was said, that there was no suspension or any approval of suspension nor any prevention of the Writ petitioner from attending his duties, but that the Writ petitioner stayed away en his own.

9. Further and in the alternative, learned Advocate for the Managing Committee, relied upon the case of *Baidyanath Bose and Ors. v. Sm. Sudha Roy and Ors.*, reported in 70 CWN 571 and placed paragraph 17 therefrom.

10. Regulation 3 of the West Bengal Board of Secondary Education (Manner of Hearing and Deciding Appeals by Appeal Committee) Regulations, 1964, provides as follows:-

"3. A teacher or any other employee who feels to have been affected adversely

by any decision of the Managing Committee of the Institution he serves or has served (hereinafter referred to as the appellant) may appeal direct to the Appeal Committee against such decision in accordance with the provisions of these regulations."

11. It was said that the appeal as provided in the above Regulation is the only remedy. It was said on the basis of the above authority in the case of Baidyanath Bose that a civil court is no substitute for the appellate authority and that though a civil court might award damages in a suit for improper action by the Managing Committee, yet the civil court cannot wield the power of the Appellate Authority and thus reverse the decision of the Managing Committee and direct reinstatement of the Teacher.

12. That might well be true, but we are involved not with the powers of an ordinary civil court, but a Writ Court which has powers of rectification and correction over all bodies and authorities, in case, these bodies or authorities exceed their jurisdiction, or act upon matters extraneous to their powers; then a Writ application would lie and the Court can grant appropriate reliefs in its discretion.

13. It is true that an appellate remedy often provides the defence of an alternative remedy which can be taken by a respondent to a Writ application. Existence of an alternative remedy has never been considered to be a complete bar to a Writ application. It is only a factor, one factor, amongst many others, to be taken into consideration by the Court while granting or refusing relief, although it is an important factor.

14. Here the question of alternative remedy is not so material, because the principal case of the School is not that by virtue of a decision of the Managing Committee the petitioner was excluded from joining his duties in 1990, but the case of the Committee is that the petitioner stayed away on his own.

15. There is no material on record for me to come to the conclusion that the petitioner stayed away being afraid to go to the locality and the petitioner has offered to join duties immediately if so permitted by appropriate compulsive orders being passed against the respondents.

16. In view of the above, I am of the opinion that the District Inspector of Schools, in Annexure T, did not and could vest the Managing Committee with jurisdiction to proceed against the Writ petitioner, if they themselves had none for proceeding against him on the allegations relating to Sm. Janaki Ghose. There is no case of any unauthorised leave, as the B.Ed, training was completed by the Writ petitioner after obtaining leave. As such, no show cause notice as against the Writ petitioner can survive as there exists no ground therefore upon which the same could be served or proceeded with.

17. The Writ application accordingly succeeds. There shall be a Rule absolute in terms of prayers (a), (b), (d), (e) and (g) of the petition with, however, the

following modifications. On the basis of the above order the Writ petitioner shall join duties of the latest within eight weeks from date hereof and the Managing Committee of the School shall render all facilities to the petitioner for resumption of such duties. From the date of such joining the petitioner shall be paid monthly salary and allowances regularly month by month for a period of six months. The arrears that have been ordered to be paid shall, however, be paid to the petitioner after and only after the petitioner has rejoined duties and rendered services to the School for a period of six months after such rejoining. In case of completion of six months" service after rejoining as aforesaid, the arrears shall be paid to the petitioner within a period of twelve weeks from such completion. The arrears in that case must be paid, because in the above event there would be no way but to conclude that the petitioner was ready and willing to join service, but he was not permitted to do so without due authority of law.

Let the Writ be drawn up accordingly, expeditiously.

18. Let the xerox copy of the letter written by the Headmaster of the School to the petitioner dated 12.7.89 and the unopened envelope along with the acknowledgement card, filed in Court today, by the learned Advocate for the Managing Committee, be kept with the record.

Let xerox copy of this order be given to the learned Advocates for the parties on usual terms.