

(1974) 10 CAL CK 0025
In the Calcutta High Court

Parul Sengupta

APPELLANT

Vs

West Bengal Board of Secondary Education and Others

RESPONDENT

Date of Decision : 01-10-1974

Acts Referred:

Citation : 79 CWN 371 : (1975) 1 ILR (Cal) 290

Hon'ble Judges : Anil K. Sen, J

Bench : Single Bench

Advocate : A.P. Sircar and B.B. Giri, for the Appellant; Suprovas Banerji and Naresh Ch. Ganguli, for the Respondent

Final Decision : Allowed

Judgement

Anil K. Sen, J.—The petitioner in this Rule who was a permanent Head Mistress of Bansdroni Benoy Balika Vidyalaya has obtained this Rule on a writ petition seeking for a mandate on the West Bengal Board of Secondary Education (hereinafter referred to as the said Board) directing the said Board to discharge its obligation and perform its duties under regulation 11(3) of the Appeal Regulations framed u/s 27(3) read with section 22(3) of the West Bengal Board of Secondary Education Act, 1963 (hereinafter referred to as the said Act).

2. The petitioner was appointed the Head Mistress of the aforesaid institution on January 1, 1963 and subsequently she was made permanent in that post. She applied for three month" have with effect from December 15, 1966 in view of the fact that her son was due to appear in the ensuing higher secondary examination. The Managing Committee of the said school adopted a resolution on December 4, 1966 granting her leave with pay upto January 31, 1967. But the resolution provided that the leave so granted was for the present. The petitioner who was to rejoin her duties on February 1, 1967 sought for extension of her leave even without pay upto March 15, 1967. The Managing Committee adopted a resolution on January 15, 1967 rejecting the prayer for extension. Petitioner however insisted upon the leave prayed for and made a representation on January 27, 1967. The Managing Committee reconsidered her prayer for leave

as also her representation as aforesaid at its meeting held in February 12, 1967 when a resolution was adopted refusing the prayer and calling upon the petitioner to rejoin her duties within three days. In default, it was directed that she will be considered to have resigned of her own accord. The Secretary of the school addressed a letter dated February 15, 1967 to the petitioner to the effect following :

As informed you by our letter No. BVT1/57/67 dated 2.2.67 we placed your representation of 27th Jan. 1967 in the meeting of the Managing Committee held on 12.2.67.

The undersigned have been directed to inform you by the Committee that the decision taken by it in its meeting dated 15.1.67 as communicated to you in our letter No. BVT1/53/67 dated 17.1.67 in connection with your leave will stand.

You are, therefore, requested again to join your duties within three days from the receipt of this letter.

In case of your failure to do so, your action will be taken as that of a deserter of the institution.

3. According to the petitioner she was not allowed to rejoin her duties on her failure to rejoin in terms of the aforesaid letter and she made various representations to different authorities and ultimately in June 1969 she preferred an appeal before the Appeal Committee of the Board u/s 22(3) of the said Act which was entertained and registered as Appeal Case No. 1103/69. A copy of the petition of appeal having been served on the school authorities asking for their comments the then Administrator of the school submitted a written statement on April 7, 1970. Petitioner's claim for reinstatement was disputed on merits but no objection was taken that the petitioner's appeal was barred by limitation, if any prescribe by the regulation, if any prescribed by the regulation. After a few adjournment, this appeal was heard ex parte by the Appeal Committee on August 26, 1971 when the Administrator failed to appear at the hearing in spite of due notice to him. The appeal was allowed for reasons incorporated in the order which is annexed to the affidavit-in-opposition filed by the Board of Secondary Education. The concluding part of the order reads as follows :

Resolved that the appeal be allowed. The appellant be reinstated as Head Mistress from 1.2.67. She will get all her arrears to pay and admissible allowances with effect from that day except for the period she served or has been serving in any other institution.

4. The Secretary of the Board by a letter issued in September 1971 communicated the aforesaid order of the Appeal Committee to the school authorities. The school authorities received the order on October 25, 1971 and on the day following the Administrator submitted a written representation to the Board for reopening the appeal on various grounds set out in their representation. One of the grounds taken in this representation was that of

limitation of the appeal preferred by the petitioner. It does not appear that the Board or the Appeal Committee took any further cognizance of such a representation or disposed of the same, but the Board on March 22, 1972 addressed a letter to the school authorities directing them forthwith to implement the order of the Appeal Committee dated August 26, 1971. Notwithstanding such direction, the order had not been implemented and the petitioner went on making out representations for enforcement of the order in her favour. Having failed to secure the implementation of the order of the Appeal Committee she moved this Court on July 21, 1972 and obtained the above Rule with a prayer as stated hereinbefore. The Board has appeared and has filed an affidavit. It has acknowledged the position that the Appeal Committee had allowed the petitioner's appeal as early as in August 1971 and it has also acknowledged the position that notwithstanding the order in favour of the petitioner the same had not been implemented by the school authorities. It has further been acknowledged by the Board in this affidavit that the authorities of the school are not willing to comply with the order so that the only course left open to the Board is to disaffiliate the school for not implementing the said order of the Appeal Committee (vide para. 13 of the affidavit).

5. The Administrator of the school has entered appearance to contest this proceeding. Facts set out hereinbefore are not being disputed by the Administrator. It is, however, claimed that it was not a case of termination but then the petitioner deserted and the post having fallen vacant an advertisement was issued on March 10, 1967 inviting applications from candidates for appointment of Head Mistress. Applications were received and candidates were interviewed by the Managing Committee on March 24, 1967 and one Mrs. Jyotsna Rakshit was then appointed as the Head Mistress with effect from April 4, 1967. It is further claimed that such appointment of Mrs. Jyotsna Rakshit has since been duly approved by the D.P.I. on August 17, 1967. The petitioner, who was serving elsewhere obtaining a last pay certificate from the school, filed a belated appeal, which was clearly barred by limitation prescribed by the regulation. On this ground alone the Administrator is opposing the petitioner's claim.

6. Mr. A. P. Sircar appearing in support of this Rule has contended that when the Appeal Committee had made an order in favour of the petitioner directing her reinstatement with back salary, there lies a statutory obligation on the Board to enforce implementation of the order when the school authorities are persistently refusing to implement the same. Mr. Banerjee learned Advocate appearing on behalf of the Board concedes this position.

7. Mr. Ganguly, appearing on behalf of the Administrator has sought to dispute the validity of the order of the Appeal Committee the enforcement whereof is sought for in this writ petition. He has contended that the appeal being prima facie time barred the resultant order is void and cannot be implemented and no mandate should be issued for enforcement thereof. Mr. Ganguly's claim that the

petitioner's appeal was barred contested by Mr. Sircar on two fold grounds. According to Mr. Sircar, the validity of the order had not been disputed by anybody and it is not open to this Court to go into the question of validity of the order even on grounds of limitation collaterally on the defence taken by the school authorities at this stage of execution of the order. Mr. Sircar contested the claim that the order is void and as such cannot be implemented. Secondly, Mr. Sircar has gone on to contend that there is no limitation prescribed for an appeal and as such the order cannot be impugned on the ground that the appeal was time barred. Relying on the decision of the Supreme Court in the case of B.B. & D. Manufacturing Co. & E.S.I. Corporation, 1972 Labour and Industrial Cases, 753, he has contended that if the regulation be considered to have prescribed any limitation, the regulation will be ultra vires the Act.

8. In my opinion, it is really difficult to resist the claim put forward by the petitioner in this Rule. It cannot be disputed that rightly or wrongly the Appeal Committee by its order dated August 26, 1971 had allowed the appeal of the petitioner and made an order in her favour. Under regulation 11 of the Appeal Regulations as also u/s 22(4) of the Act such an order is final and binding on all the parties including the Administrator who is discharging the function of the Managing Committee. Regulation 11(3) is the only provision amongst the different provisions of the Act and the Appeal Regulations which provides for enforcement or implementation or execution of an order passed by the Appeal Committee. It provides as follows:

11(3). - If the appellant or the Managing Committee is found unwilling to comply with the decision referred to in sub-regulation (2) within 30 days from the date of receipt thereof or until such period as may be extended by the Board, such non-compliance shall be considered as a sufficient ground for the Board to take against such party any step, not inconsistent with the Act or the Rules made thereunder which the Board may deem fit and necessary.

9. This provision is mandatory in terms and in my view, casts an obligation on the Board to enforce an order of the Appeal committee if the Managing Committee fails or refuses to comply with the order as otherwise the entire scheme of providing an appeal and adjudication thereon would amount to an useless formality. The Board being a statutory authority and the regulation also being statutory, the obligation is undisputedly enforceable. Now, in the present case, it is not denied that the Administrator has failed to comply with the order and therefore unless Mr. Ganguly succeeds in his contention that the order is void and unenforceable, the petitioner would be entitled to a mandate on the Board directing it to take such necessary steps as may deem fit to the Board to enforce the order to the Appeal Committee in discharge of the Board's obligation under Regulation 11(3).

10. According to Mr. Ganguly the order of the appellate committee is void and unenforceable as the appeal was time barred. In considering this contention, it is first to be seen if there is really any limitation prescribed for an appeal.

According to Mr. Sircar when the statute provides no limitation there is no limitation whatsoever. In deciding the controversy so raised, reference has got to be made to the relevant provisions of the Act and the appeal regulations.

11. Section 22(1) of the Act lays down the constitution of the appeal committee. Section 22(3) provides :-

(3) It shall be duty of the appeal committee to hear and decide appeals by teachers against decisions of managing committees of institutions adversely affecting them in accordance with the regulations made in this behalf.

12. Section 22(4) makes the decisions of the appeal committee final and bars suits or other proceedings in any civil court or criminal court in respect of any matter which has been decided by the appeal committee. Section 27(3) authorises the Board, subject to the approval of the State Government, to make regulations in respect of any matter for the proper exercise of its powers under this Act.

13. Appeal regulations were made by the Board in exercise of its powers u/s 22(3) and section 27(3) of the Act. Regulation 3 provides that any teacher may prefer an appeal to the appeal committee against any adverse decision of the managing committee. Regulation 4 is important for our present purposes and is set out hereunder :-

4(1) The Managing Committee against whose decision an appeal is intended to be preferred shall, on demand in writing from the appellant, furnish a copy of the decision in question to the appellant within a week from the date of such demand.

(2) The appellant shall submit to the Secretary to the Board, by registered post with acknowledgement due, a memorandum of appeal in triplicate in the form appended to these regulations, or in a form substantially similar thereto -

(a) within one month from the date on which the appellant receives a copy of the decision referred to in sub-regulation (1), together with a copy of such decision, or

(b) where the Managing Committee does not comply with the provisions of sub-regulation (1), within one and half months from the date of his demand, without a copy of the decision.

14. Regulation 5 provides that preferring of an appeal by itself would not mean stay of operation of the order appealed against unless the appeal committee otherwise directs. Regulations 6 to 8 prescribe the procedure how the appeal is to be dealt with. Regulation 9 prescribes what orders can be passed by the appeal committee on an appeal. Regulation 10 provides that the appeal committee who normally dispose of an appeal within two months from the date of the appeal being placed before the committee - a time schedule which is rarely observed by the committee - notwithstanding the fact that non-maintenance of such time schedule results in serious consequences like the one now in the

present case. Last of the regulations is regulation 11 which I have referred to hereinbefore. These are all the provisions and the limitation, if any, is what is prescribed by regulation 4(2).

15. On the provisions as aforesaid, in my view, the right to prefer an appeal by a teacher against an adverse decision of the managing committee emanates from section 22(3) of the Act. That section when it vests a duty on the appeal committee to hear and decide an appeal preferred by a teacher, necessarily confers a right on the teachers to prefer an appeal against any adverse decision. Though such a right is prescribed by the statute, the statute itself has not provided nay where any limitation. Nor has it authorised the rule-making authorities or the regulation making authorities to prescribe any such limitation. u/s 27(3) read with section 22(3) of the Act what the Board can provide by regulation is the manner or the procedure in accordance with which the appeal can be heard and decided. It only refers to the procedural part. Unlike the wider powers conferred by section 27(2) (m), the power to make regulation u/s 27(3) is limited to matters for the purpose of proper exercise of its powers under the Act, namely, hear and decide the appeal. Regulations so made do not stand in the position of ordinary discipline and appeal rules which provide both for the appeal, its limitation and procedure for its hearing and disposal. Therefore, if regulation 4(2)(b) be construed to prescribe a limitation debarring the right to get any relief by way of any appeal then in that event regulation 4(2) would be ultra vires the statute. The decision of the Supreme Court relied on by Mr. Sircar and as pointed out by Mr. Banerjee well supports this view. In that case the Supreme Court in holding rule 17 of the rules framed by the State of Bombay under the Employees' State Insurance Act, 1948 to be ultra vires the Act itself observed:

That apart the nature of the Rule bars the claim itself and distinguishes the right which is not within the pale of procedure. Rule 17 is of such a nature and is similar in terms to Section 80. There is no gain saying the fact that if an employee does not file an application before the Insurance Court within twelve months after the claim has become due or he is unable to satisfy the Insurance Court that there was a reasonable excuse for him in not doing so, his right to receive payment of any benefit conferred by the Act is lost. Such a provision affects substantive rights and must therefore be dealt with by the legislature itself and is not to be inferred from the rule making power conferred for regulating the procedure unless that is specifically provided for.

16. On the authority of the principles so laid down by the Supreme Court in (1972) Labour and Industrial Cases 753, if Rule 4(2) be construed to be rule of limitation, it would be ultra vires the regulation making powers of the Board and as such this regulation should not be construed to be a rule of limitation at all.

17. That apart, in order to be a rule of limitation the provision must be of universal application to all appeals of like nature. Though mandatory in form regulation 4(2) does not cover all the appeals. Under clause (a) the time

prescribed is one month from the date on which the appellant receives a copy of the decision to be appealed against either on his own prayer or otherwise. Under clause (b) the time prescribed is 11/2 months from the date of demand of a copy of a decision where the managing committee had failed to furnish a copy. But so far as appeals which are preferred in cases where the decision appealed against has neither been received nor asked for are concerned there is no limitation as the same order does not come under the pale of either of these two clauses and such an appeal can be preferred at any point of time. A provision which leads to such a result cannot be considered to be a rule of limitation, however, mandatory in form. This being the position I must accept the case of Mr. Sircar and hold that there is no limitation for an appeal provided for by section 22(3) of the Act.

18. Mr. Ganguly may be right in pointing out that such a view may lead to undesirable results because there being no limitation an aggrieved teacher may wait indefinitely and then prefer an appeal to embarrass the managing committee by an order in his favour after long years and thus unsettle things which had settled in the meantime otherwise. In my view, such a result follows because of a lacuna in the Act itself for which it is or the appropriate authorities to take necessary steps to amend but that cannot impel me to hold the provision as prescribed in regulation 4(2) to be a rule of limitation. Then again such delay in the matter of preferring an appeal u/s 22(3) of the Act may not render the appeal barred by limitation yet the committee itself would be well within its powers to take into consideration the delay in deciding what actual relief is to be given in terms of regulation 9.

19. There is still one more difficulty in accepting the contention of Mr. Ganguly to the effect that the appeal being time barred, the order is void. I have my doubts whether an order made in breach of a rule of limitation would altogether be void or not. But that apart whether the appeal was really barred or not is dependable on certain facts, namely, whether the decision was served on the appellant or whether she had ever applied for a copy of the decision and such prayer was really refused or not. These facts cannot now be gone into by this Court on a collateral challenge to the order of the appeal committee by the Administrator. So it is not possible to conclude with certainty that the appeal before appeal committee in the present case was not filed within time on the provisions of regulation 4. Thus, the case for limitation not being made out no question of the order being void does arise at all.

20. On the conclusion as above when the objection raised by Mr. Ganguly fails for reasons given herein before the application succeeds and the Rule is made absolute. Let a Mandate do issue on the respondent West Bengal Board of Secondary Education directing the said Board to implement the order of the appeal committee dated August 26, 1971 in accordance with regulation 11(3) of the appeal regulations.