

(2004) 02 CAL CK 0030
In the Calcutta High Court
Case No : F.M.A.T. No. 2921 of 1996

Prasanta Kumar Chakravarti

APPELLANT

Vs

The President, West Bengal Board of Secondary Education
and Others

RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 CALLT 259 : (2004) 1 ILR (Cal) 205

Hon'ble Judges : Asok Kumar Mathur, C.J.; Jayanta Kumar Biswas, J

Bench : Division Bench

Advocate : Arup Kumar Lahiri, for the Appellant; Ashok De and P.S. Bhattacharjee, for Respondents 6 to 13, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—In this Letters Patent appeal the sole writ petitioner is the appellant. His writ petition [C.R. No. 5728 (W) of 1983] was dismissed by the learned single Judge by judgment and order dated August 12th, 1996.

2. As in July 1981 the appellant was working as Headmaster of Aswini Pally High School at Barasat of the District 24-Parganas (now North 24-Parganas). With effect from January 15th, 1981 the school was under the management and control of an administrator, who issued a charge-sheet dated July 27th, 1981 against the appellant. Levelling twenty-seven charges the administrator asked the appellant to show cause why disciplinary action should not be taken against him. The charges levelled in this charge-sheet were:-- (a) fabrication and forgery of records of the school, (b) misappropriation of school funds, etc.

3. The appellant was a member of the teaching staff of the school, which was a recognised non-Government aided secondary school. Hence the disciplinary action proposed against the appellant could have been taken only in terms of Sub-rule 8 of Rule 28 of the Management of Recognised on-Government

Institutions (Aided and Unaided) Rules, 1969 (hereinafter referred to as "the Rules"). The rules were framed by the State Government in exercise of its power conferred by Section 45 of the West Bengal Board of Secondary Education Act, 1963, Sub-rule 8 of Rule 28 of the Rules reads as follows:

"(8) Both in aided and unaided institutions the committee shall have the power, subject to the prior approval of the Board, to remove or dismiss permanent or temporary teachers and other employees. For this purpose the committee shall first draw up formal proceedings and issue charge-sheet to the teacher or the employee concerned and offer him reasonable facility 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 recommendations 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."

4. By letter dated August 3rd, 1981 the appellant replied to the charges. While denying the charges, he made requests (a) for allowing inspection or supplying him copies of the relied on documents, and (b) for giving him opportunity to (i) cross-examine the witnesses, and (ii) produce evidence and examine witnesses in defence, before the enquiring authority. No enquiry was held. After receiving reply to the charge-sheet the administrator straight-away forwarded the papers to the West Bengal Board of Secondary Education (hereinafter referred to as "the Board"). The Board decided that there were sufficient grounds to take disciplinary action against the appellant. The administrator then issued the notice dated September 2nd, 1981, By this the appellant was called upon to show cause why he should not be dismissed or removed from service for the charges mentioned in the charge sheet. The twenty-seven charges levelled in the charge-sheet were reproduced in this show-cause notice with a little cosmetic changes here and there. In this show-cause notice one more charge was levelled under item No. 28, and this also related to certain financial irregularities allegedly committed by the appellant. Thereafter on September 25th, 1981 the appellant moved a writ petition challenging the decision of the Board that there were sufficient grounds to take disciplinary action against him. By order dated November 23rd, 1981 such writ petition was dismissed. In the circumstances on

November 25th, 1981 the appellant submitted his reply to the show-cause notice dated September 2nd, 1981. He once again made requests for holding an enquiry, and giving him reasonable opportunity to defend himself by cross-examining the witnesses and adducing oral and documentary evidence in defence. However, on November 27th, 1981 he was served with the order dated November 25th, 1981 passed by the administrator. By this order the administrator dismissed the appellant from service with immediate effect. It was stated in this order that the appellant's removal from service had been approved by the president of the Board in exercise of his emergent powers u/s 28(2) of the West Bengal Board of Secondary Education Act, 1963.

5. Being aggrieved, the appellant filed an appeal before the appeal committee of the Board. By letter dated January 28th, 1982 the Board directed the administrator to give his observations regarding such appeal. Through his letter dated February 27th, 1982 the administrator submitted the observations that the appellant should have been prosecuted in criminal Court for the offences committed by him. In its meeting dated December 18th, 1982 the appeal committee decided the appeal. The decision was communicated to the appellant by the Secretary of the Board through his letter dated January 28th, 1983. The appeal committee dismissed the appeal after holding that the appellant had been found guilty of a number of financial irregularities and misappropriation of school money.

6. Challenging the dismissal order passed by the administrator on November 25th, 1981 and the decision of the appeal committee dismissing the appeal, the appellant filed the writ petition dated February 16th, 1983. Only respondents 6, 7, 9 to 13, 15 and 16 in the writ petition (they were the members of the managing committee of the school) contested the writ petition by filing an opposition affirmed in May 1995. The appellant filed his reply affirmed on June 6th, 1995.

7. The learned single Judge was pleased to dismiss the writ petition. He proceeded on the basis that in it the scope of enquiry was limited only to the question whether the decision of the appeal committee suffered from any perversity or illegality. He held that the decision of the appeal committee did not suffer from any infirmity. Regarding the contention that the appeal committee was wrong in sustaining the dismissal order passed without holding an enquiry, the learned Judge held that the appeal committee rightly rejected the contention, as the procedure prescribed in Rule 28(8) of the Rules was duly followed by the authorities concerned, and all the charges being based on records, no illegality was committed by them by not holding an enquiry and examining witnesses in support of the charges.

8. Before us, the learned counsel for the appellant has contended that the manner in which service of the appellant was terminated is not contemplated by Rule 28(8) of the Rules. His contention is that the authority concerned was under an obligation to hold an enquiry, prove the charges by adducing evidence, prove

the documents on which reliance was placed, prove the complaints by examining the complainants, give opportunity to the appellant to cross-examine such witnesses, give opportunity to the appellant to adduce oral and documentary evidence in his defence; but, admittedly, none of these were done; and hence the termination order cannot be sustained. It is his contention that both the appeal committee and the learned single Judge proceeded on the wrong basis that for taking disciplinary action under Rule 28(8) of the Rules no regular enquiry is required, and only (a) an opportunity to submit explanations to the charges, and (b) an opportunity to show cause before passing the termination order, are to be given. He has contended that such a procedure is unknown in law; and in any event, the procedure prescribed by Rule 28(8) of the Rules does not say so. He has placed reliance on two decisions of this Court:--(1) Yogesh P. Sukhanandi Vs. State of Gujarat and Others,); and (2) Arun Kumar Hati v. State of West Bengal and Ors. 1999(1) CHN 521 .

9. The learned counsel for the contesting respondents has fairly admitted that no enquiry was held before passing the order to dismiss the appellant from service. It is his contention that the authority concerned did not hold any regular enquiry on the ground that Rule 28(8) of the Rules does not contemplate, in express terms, the requirement of holding an enquiry, and it contemplates only a charge-sheet inviting explanations, approval of the Board to take the disciplinary action, a post approval notice asking the charged person to show cause why he should not be removed or dismissed, and passing of the final order. He has contended that the appellant cannot raise the question regarding enquiry, because his previous writ petition having been dismissed such question is now hit by res judicata. He has pointed out that at present it will not be practicable at all to hold the enquiry, because the appellant in the meanwhile has reached the age of superannuation.

10. We find from the charges levelled in the charge sheet that they were not of such nature as to dispense with the requirement of their formal proof. Allegations were made that the appellant had forged and fabricated many documents and records, and using them he misappropriated school funds, stipends, etc. while working as Headmaster of the school. Admittedly, by his reply to the charge sheet the appellant denied and disputed each and every charge; he wanted inspection of the relied on documents, copies of additional documents for defence, opportunity, to cross-examine the persons named in the charges, and opportunity to adduce oral and documentary evidence in defence. There is no dispute that the administrator who initiated the disciplinary proceeding did not accede to any of these requests made by the appellant. On the contrary, he sent the papers straight to the Board, and after receiving its decision that there were sufficient grounds to take disciplinary action against the appellant, he at once issued the show-cause notice reproducing therein the charges nearly in same language and order in which they had been levelled in the charge-sheet. The appellant's reply to the show-cause--once again requesting for holding a regular enquiry with opportunity to lead evidence in defence--did not find any

consideration whatsoever in the hands of the administrator. He just mechanically issued the order to dismiss the appellant from service after obtaining approval from the Board to impose the punishment of removal.

11. Both the appeal committee of the Board and the learned single Judge held that as the administrator followed the procedure prescribed in Rule 28(8) of the Rules, and all the charges were based on records, the order issued by the administrator to dismiss the appellant from service did not suffer from any infirmity. We find that the administrator of the school, the appeal committee of the Board, and the learned single Judge proceeded on the basis that in a disciplinary proceeding initiated against a teacher under Rule 28(8) of the Rules a regular enquiry is not required, and only an opportunity to submit explanations to the charges and another opportunity to show cause why punishment of removal or dismissal should not be imposed are to be given to the charged teacher before a final decision is taken in such proceeding.

12. We are of the view that the procedure followed by the administrator of the school is not the procedure prescribed by Rule 28(8) of the Rules. This is a composite rule worded in a very wide manner. It does not contain details of all the stages to be followed and observed in a disciplinary proceeding. But for this there is no reason to say that the rule by implication dispensed with the requirement of holding an enquiry. It empowers the committee of a recognised non-Government aided or unaided secondary school to remove or dismiss a teacher or employee thereof. After empowering, it speaks about the procedure that the committee shall follow. The different stages contemplated by the procedure are: (1) drawing up a formal proceeding; (2) issuing the charge sheet; (3) offering reasonable facility to the charged person for defending himself; (4) submission of explanations to the charges by the person proposed to be proceeded against, ordinarily, within a fortnight from the date of receipt of a copy of the charge-sheet; (5) sending to the Board all relevant papers including the charge sheet; explanations submitted by the charged person, and the reasons recorded by the committee for which it decides in favour of taking the disciplinary action; (6) consideration by the Board to ascertain the existence of sufficient grounds for taking disciplinary action; (7) communication of decision by the Board; (8) issuing a formal notice calling upon the charges person to show cause why he should not be dismissed or removed, if the Board decides in favour of taking disciplinary action; (9) cause to be shown by the charged person, ordinarily, within a fortnight (it does not specify from which date the fortnight time will run); (i) sending again by the committee to the Board all the relevant papers, including explanations submitted by the charged person and its recommendation for the action proposed to be taken; (ii) taking the final decision by the Board.

13. We find that the Board is the actual authority empowered to impose either of the two major penalties mentioned in Rule 28(8) of the Rules; and the committee is the enquiring authority. The final decision is to be taken by the

Board, and the rule specifically says that the committee shall be bound by such decision. The rule requires that the committee shall offer reasonable opportunity to the charged person for defending himself. It will be a travesty of justice if the rule is interpreted to hold that once an opportunity to submit explanations to the charges is given nothing more is to be done to give the charged person reasonable facility for defending himself, and even the charges will not require any proof. The charges when denied by the charged person require formal proof; it is the universally accepted elementary principle; and in a disciplinary proceeding they are proved by holding an enquiry where evidence is adduced in support of the charges. The rule, we are considering, does not dispense with this elementary requirement of proof in a disciplinary proceeding. We have no hesitation to hold that Sub-rule (8) of Rule 28 of the Rules, casts an unambiguous obligation on the committee to hold an enquiry when the charged person proposed to be proceeded against denied the charges.

14. In the case of Sujit Das, relied on by the learned counsel for the appellant, a Division Bench of this Court, while considering the scope, purport and intent of Rule 28(8) of the Rules, held as follows:

"30. A disciplinary proceedings as against a delinquent can be subdivided into 3 parts in terms of Rule 28(8) of the said Rules. The said Rule provides for drawing up of a formal proceeding and issuance of charge sheet to the teacher and offering him reasonable facilities for defending himself. The word "formal proceeding" evidently means a proceeding initiated for the purpose of enquiring into the charges against the delinquent employee. In the said proceeding, the delinquent must be offered reasonable facilities for defending himself which, without any shadow of doubt, means that the principles of natural justice have to be complied with. The Rule of audi alteram partem roots in fairness. It entitles the delinquent to have a fair hearing. Charges when drawn up as against a delinquent are required to be proved in a proceedings after offering him reasonable facilities for defending himself. The word "facilities" imports procedural fairness."

15. The Division Bench in the case of Sujit Das was also considering the validity of the punishment of dismissal imposed on a Headmaster of a secondary school under Rule 28(8) of the Rules without holding any enquiry. The Division Bench held that the dismissal order being passed in gross violation of the principles of natural justice was bad in law. We are in respectful agreement with the view taken by the previous Division Bench in the case of Sujit Das.

16. The legal position was again clarified by a Special Bench of this Court in the case of Arun Kumar Hait in which one of the questions that arose for decision was, "what is the procedure to be followed by the Managing Committee under Rule 28 of the 1969 Management Rules?" While answering this question the Special Bench held as follows:

"34. The implicit rules of procedure which complement the express procedure

follow from the phrase in Rule 28(8) of the Management Rules which requires the Managing Committee to offer the delinquent "reasonable facilities for defending himself." In other words, the procedure adopted must conform to the principles of natural justice but ultimately "the test is one of prejudice i.e. whether the person has received a fair hearing considering all things."

35. The procedures which have been considered sufficient compliance with the requirement of a reasonable opportunity of defence have been laid down in *State Bank of Patiala and others Vs. S.K. Sharma, ; Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,* .

36. Briefly speaking these would include as far as the first stage is concerned, the giving of a clear charge sheet; provisions of facilities for inspection and/or taking copies of the documents upon which the Managing Committee relies; granting an opportunity to the delinquent to cross-examine the witnesses examined by the Managing Committee and the right to examine witnesses in his favour.

37. The implicit procedure also includes the right of the Managing Committee to delegate the function to hold the enquiry after the charges have been framed and served on the delinquent to an independent person."

17. In the face of the above Special Bench decision there is no scope to argue that for taking a disciplinary action under Rule 28(8) of the Rules no regular enquiry is required.

18. In view of the legal position as noted before we have no hesitation to hold that the service of the appellant was wrongfully terminated by the administrator who, at the material point of time, exercised the powers of the committee under Rule 28(8) of the Rules. The charges were not proved by any admissible evidence; rather no attempt was made to prove them. If all the connected records had been removed by the appellant, as alleged, then how all the charges were based on records has remained a mystery. The appellant was not allowed opportunity to examine himself and his witnesses in defence. The allegations of fabrication and forgery of records and documents, and misappropriation of funds did not stand proved simply because they were mentioned in the charge sheet, and the appellant's reply denying them was not acceptable; they should have been proved by holding an enquiry. We find no merit in the contention that the appellant is not entitled to question the validity of the termination order, because his first writ petition was dismissed. The first writ petition was against the Board's decision that sufficient grounds existed for taking disciplinary action against the appellant; it had been moved and decided before the disciplinary proceeding attained finality. The termination order and the decision of the appeal committee were given subsequently. So the appellant was entitled to challenge such order and decision on all available grounds. The ground that the order and the decision are illegal, because no enquiry was held, goes to the root of the whole thing.

19. As both the appeal committee of the Board and the learned single Judge proceeded on a basis that is contrary to the above noted legal position, we find that their decisions are also not sustainable. We are of the view that the writ petition should have been allowed and the decision of the appeal committee of the Board and the order of the administrator of the school should have been set aside with liberty to the committee of the school to hold an enquiry into the charges after following the principles of natural justice. For these reasons we are of the view that this appeal must succeed.

20. Because of the facts that the charge sheet is dated July 27th, 1981 and in the meanwhile the appellant has reached the age of superannuation we are faced with the question what should be done after setting aside the order whereby the appellant was dismissed from service. Since we have found nothing to interfere with the charge sheet, there is no question of quashing the charge-sheet; and hence in ordinary situation we would have given the committee liberty to hold an enquiry. But we find that such a liberty if granted to the committee at this distance of time will serve no purpose. We have been informed that no records connected with the charge-sheet are available with the committee, and the committee even cannot say what was the last pay drawn by the appellant who was never suspended. So we find that even if the liberty to hold the enquiry is given, there will be no enquiry worth the name. There is no scope of reinstatement also, because the appellant has attained the age of retirement. The effect of setting aside of the dismissal order is the appellant's deemed reinstatement from the date of dismissal, ordinarily with all benefits. But we find that this is not a case where all benefits should be given. We think it will be just and proper, on the facts of this case, if the appellant is allowed 25% of the arrears of salary and allowances.

21. For the aforesaid reasons we allow this appeal. The impugned judgment and order dated August 12th, 1996 is hereby aside. The appellant's writ petition being C.R. No. 5728 (W) of 1983 is allowed. The decision of the appeal committee of the Board and the order dated November 25th, 1981 passed by the administrator to dismiss the appellant from service are hereby set aside. The appellant shall be deemed to be reinstated in service as from November 25th, 1981. He shall be deemed to have continued in service till the date of reaching the age of superannuation for all purposes including pension and gratuity, except full back wages. For the period from November 25th, 1981 till the date of his reaching the age of retirement, the appellant shall be paid 25% of the salaries and allowances to which he would have been entitled had he remained in service in usual course. All the respondents shall take the steps they are required to take for making all the payments, which they shall make within six months from date. There will be no order for costs.

Urgent xerox certified copy of this judgment and order may be supplied to the parties, if applied for.

Asok Kumar Mathur, C.J.

22. I agree.