
(2010) 11 CAL CK 0065
In the Calcutta High Court
Case No : Writ Petition No. 21828 (W) of 2010

Rohini Nanda Misra

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:

Citation : (2011) 1 CHN 536 : (2011) 128 FLR 742

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Ekramul Bari, H. Barua and S. Mahapatra, Kallol Bose, for the Appellant; S. Banerjee, for the Respondent

Judgement

Dipankar Datta, J.—The Petitioner is the Headmaster of Chatra Kunjarani Bani Bhawan (hereafter the school). In its meeting held on 26.10.2010, the Managing Committee of the school resolved to suspend the Petitioner with effect from 28.10.2010 for the greater interest of the school. It was observed therein that the Petitioner shall be entitled to subsistence allowance as per Management Rules and that necessary papers be forwarded to the West Bengal Board of School Education within a week. Following such resolution, the Secretary of the Managing Committee by his letter dated 27.10.2010 informed the Petitioner that he has been placed under suspension with effect from 28.10.2010 for the greater interest of the school "Pending Disciplinary Proceedings".

2. Placement of the Petitioner under suspension is the subject matter of challenge in this petition. Mr. Barua, learned Advocate for the Petitioner has drawn my attention to the notice of meeting dated 11.10.2010, whereby he was informed that a general meeting of the Managing Committee shall be held on 26.10.2010 at the school premises at 4.35 P.M. The agenda of the notice reads as follows: "Agenda

1. To read and confirm the proceeding of the last meeting held on 1.10.2010.
2. To consider different aspects Including financial affairs of the school.

3. Development of the school.

4. Misc.

3. He contends that there being no agenda in respect of considering the issue of placing the Petitioner under suspension, the Managing Committee could not have decided to place the Petitioner under suspension. In support of his submission, Mr. Barua has placed reliance on the decision of a learned Judge of this Court in *Dolgobinda Kayal v. State of West Bengal and Ors.* 1991 (1) CLJ 222.

4. The other point urged by Mr. Barua is that the resolution of the Managing Committee does not record any intention to place the Petitioner under suspension pending drawal of disciplinary proceedings and that the same is contrary to the express mandate of the statute, i.e. Rule 28(9)(viiia) of the Management Rules. He, accordingly, prays for setting aside of the order of suspension and the resolution of the Managing Committee preceding it.

5. Mr. Bari, learned Advocate appearing for the school on the contrary has referred to Rule 21 of the Management Rules. According to him, although there was no specific agenda for considering the issue of placement of the Petitioner under suspension, such issue could be discussed provided 3/4th of the members present consented thereto, and the matter for consideration is not one related to appointment or deputation or dismissal or removal of a teacher. He contends that all the seven members present in the meeting having unanimously resolved to discuss the issue committed no illegality in arriving at a decision to suspend the Petitioner. Reliance was placed by him on the decision of a learned Judge of this Court in *Miss Sanaka Das v. State of West Bengal and Ors.* 1993 (2) CLJ 440 He prays for dismissal of the writ petition.

6. I have heard Mr. Barua, learned advocate for the Petitioner, Mr. Bari, learned advocate for the school, Mr. Banerjee, learned advocate for the State and Mr. Basu, learned advocate who was requested to represent the Board since none appeared on its behalf despite service.

7. Rule 21 of the Management Rules being relevant for a decision on the issue involved in this petition, is quoted hereunder:

21. Agenda;-The notice of each meeting shall set forth the business to be transacted, at the meeting, the agenda being drawn up by the Secretary of the Committee in consultation with the Head of the Institutions and the President of the Committee and, except with the consent of three-fourths of the members present, no business other than so stated shall be transacted, provided that no matter involving the appointment or deputation or dismissal or removal of a teacher or other employee shall be taken up unless the matter has been placed on the agenda of the meeting issued with the notice, and evidence of service of such notice is maintained and preserved for inspection by any member of the Committee or any person authorised by the Board or the Director or the State Education Department.

8. The first part of the Rule 21 ordains mat the notice of each meeting of a Managing Committee must set forth the business to be transacted, the same being drawn up by the Secretary in consultation with the head of the institution and the President of the Committee. The second part of the Rule permits a Managing Committee to transact business in respect of a matter which has not been stated in the meeting provided 3/4th of the members" present consent thereto. However, there is a rider. Even with the consent of 3/4th of the members present, no matter involving appointment or deputation or dismissal or removal or a teacher or other employee shall be taken up unless such matter has been placed on the agenda of the meeting issued with the notice and evidence of service of such notice is maintained and preserved in the manner specified therein.

9. Having regard to the second part of Rule 21 (supra), it has to be seen whether the resolution that was adopted by the Managing Committee on 26.10.2010 resolving to suspend the Petitioner is sustainable or not.

10. It is an admitted position that the Managing Committee of the school consists of 13 members. It has not been disputed mat on 26.10.2010, only 7 members were present The resolution of the Managing Committee mat has been placed before me reveals mat all seven members resolved, following the discussions that took place, to place the Petitioner under suspension. Mr. Barua has made an attempt to contend mat seven does not constitute 3/4th of the 13 members and, therefore, no resolution to suspend the Petitioner could have been taken.

11. I am afraid, the contention cannot be accepted. The word "present" mentioned in Rule 21 is important and clinches the issue. What it connotes is that 3/4th of the members present in the meeting must and not 3/4th of the members of the Managing Committee consent to an issue not on the agenda being discussed, which does not relate to appointment or deputation or dismissal or removal of a teacher or other employee of the institution.

12. I am conscious that the views expressed in Dolgobinda Kayal (supra) and Miss Sanaka Das (supra) are not consistent. However, one cannot lose sight of the fact that while deciding the case of Miss Sanaka Das (supra), the teamed Judge noticed the decision in Dolgobinda (supra) and observed that for reasons recorded therein, the same would have no application.

13. Upon reading both the decisions and in particular Rule 21 (supra), I am inclined to accept the reasoning given by the learned trial Judge while deciding the case of Miss Sanaka Das (supra) that even if there is no specific agenda in relation to placement of an employee including a teacher under suspension mentioned in the notice convening meeting, such a resolution could be adopted by 3/4th of the members present in the meeting since an order of suspension does not necessarily involve dismissal or removal of a teacher. It may well be so mat after conclusion of the disciplinary proceedings, the Board may not approve the proposal of the school to dismiss or remove a teacher and the school of

necessity is obliged to settle for a lesser punishment.

14. For the reasons aforesaid, I do not find any infirmity in the action of the Managing Committee in suspending the Petitioner without there being a specific agenda in relation thereto in the notice convening meeting.

15. Mr. Barua has sought to impress the Court that since the words "pending drawal of proceedings" are not there in the resolution, the Court ought to interdict. He is correct in the sense that the resolution does not record placing the Petitioner under suspension in contemplation of disciplinary proceedings, i.e. an interim suspension is being ordered. But I do not agree with him in favour of interdiction for the simple reason that during the period the Petitioner would continue to remain under suspension, the Managing Committee decided to pay him subsistence allowance as per the Management Rules. The only provision relating to payment of subsistence allowance is to be found in Rule 28(9)(viia) thereof and, therefore, on reading of the resolution in its entirety, it has to be held that an interim suspension was ordered and not a suspension ordered as a punitive measure. In fact, the communication made by the Secretary of the school to the Petitioner informing him of his placement under suspension mentions that it had been so done pending disciplinary proceedings.

16. For the reasons aforesaid, none of the contentions raised by Mr. Barua have merit. The same stand overruled.

17. In terms of Rule 28(9)(viia) of the Management Rules, the Managing Committee is under obligation to send all the relevant papers to the Board for its approval. I have been informed that the papers have been furnished to the Board and a decision is awaited. The Board shall proceed to consider whether the suspension ordered by the Managing Committee deserves approval or not. However, in the process the Board shall not be entitled to disapprove the suspension on the ground that the item was not included in the agenda of the meeting conducted on 26.10.2010. It shall confine its scrutiny to the points whether suspension of the Petitioner is really in the greater interest of the institution or not and whether presence of the Petitioner in the school while the disciplinary proceedings are conducted is likely to hamper smooth, fair and proper enquiry unto his conduct or not.

18. I have also been informed that the Petitioner has not been paid subsistence allowance. It is settled law, no one can be kept under suspension without payment of subsistence allowance. The school shall take necessary steps to release subsistence allowance in favour of the Petitioner, in accordance with law.

19. While upholding the order of suspension, at this stage, the writ petition stands disposed of with the observation that the order of suspension shall abide by the result of the decision to be given by the Board. While it considers the issue of its approval on the points as mentioned above, it is expected that the Board shall act without unreasonable delay. In any case, the decision must be given within a month from date of receipt of a copy of this order.

20. Copy of the resolution of the Managing Committee filed in Court to day shall be retained with the records.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties at an early date.