
(2007) 04 CAL CK 0001

In the Calcutta High Court

Case No : M.A.T. No. 3699 of 2006 with An Application for Interim Relief (CAN No. 7309/06)

Sisir Kumar Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-04-2007

Acts Referred:

West Bengal College Teachers (Security of Service) Act, 1975 — Section 20, 9(1)
West Bengal College Teachers (Security of Service) Rules, 1977 — Rule 2(1), 7, 7(1), 7(2)

Citation : (2008) 1 CHN 970

Hon'ble Judges : Tapas Kumar Giri, J;Pratap Kumar Ray, J

Bench : Division Bench

Advocate : Indranil Bhattacharyya and Sohini Bhattacharyya, for the Appellant; Ashok De and Debapriya Biswas for Respondent Nos. 3, 4 and 6 and P.S. Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Heard learned Advocates appearing for the parties.

2. In view of the very nature of the application as we have to consider the question of law and the fact in details to dispose of the same, we are of the view that the appeal should also be taken up for hearing. Hence the appeal and the application both are being heard. The matter has been argued at length by the respective parties on different dates.

3. This appeal has been preferred assailing the judgment and order dated 4th September, 2006 passed by the learned Trial Judge in W.P. No. 19502 (W) of 2006. The writ application was filed by the present appellant assailing the continuation of the departmental proceeding as well as second show-cause notice of such departmental proceeding by supplying the enquiry report thereof which, however, was dismissed by the learned Trial Judge by the aforesaid judgment under appeal. The learned Trial Judge held that there was no scope for judicial

review in the matter, though in the writ application the ingredients of bias for initiation of departmental proceeding were thrashed and urged. On diverse dates of hearing, we wanted to see the records of the departmental proceeding as well as the different resolution of the Governing Body of the College right from its very initial stage of preliminary investigation deciding the complaints as filed by different persons as well as till the date of finality of the matter. Records accordingly have been produced during the pendency of this appeal. However, the departmental proceeding concluded and penalty of compulsory retirement from service effective from 13th January, 2007 was passed by the resolutions of the Governing Body which, however, also has been assailed before us in the form of an affidavit by placing the entire documents to that effect. Before the connected writ application with reference to this appeal, another writ application was filed by the present appellant assailing the order of suspension, as issued by the decision of the Governing Body which has been registered as A.S.T. No. 2141 of 2005, subsequently renumbered as W.P. 4020 (W) of 2006 and the same is pending. The factual matrix which led the present appellant to take shelter by the writ application, in a nutshell as follows:

The appellant before us is a Reader in the department of Zoology of Nara Singha Datta College. The College was affiliated by the University of Calcutta. A dispute cropped up with another college teacher of the said College, viz. Dr. Swapan Kumar Das of the same department which prompted Dr. Swapan Kumar Das to lodge complaint to the Governing Body of the College on 28th September, 2005 alleging, inter alia, his personal grievance in the working procedures as well as the behavioural aspect of the present appellant vis-a-vis that gentleman. Another complaint was also lodged addressed to the Principal of the said College on 28th September, 2005 alleging the conduct and activity of the present appellant with reference to his teaching mode and his behaviour with the students and the staffs by five teaching staff of the college inclusive of Dr. Swapan Kumar Das. This complaint, however, was written by Dr. Das as it appears on verification of the handwriting of both the two complaints. Another complaint also was filed purportedly by seventeen students of the first year honours class of Zoology and two laboratory staff of the Zoology Laboratory supporting the contention of Dr. Swapan Kumar Das on the issue of alleged misbehaviour of the present appellant with Dr. Das. This complaint was also written by Dr. Swapan Kumar Das in his handwriting as it appears on mere verification of the handwriting by us. Another complaint also was lodged to the teacher-in-charge of Nara Singha Datta College by a group of teaching staff on 12th September, 2005 making certain allegations about non-taking of second year general practical class and non-assisting the students in the dissection class. This complaint also was signed amongst others by Dr. Swapan Kumar Das. Dr. Das is also a member of the Governing Body. Another complaint was lodged by one student Priyadarshini Bhattacharyya, who was the General Secretary of the Student's Union of the concerned college on 4th October, 2005 as addressed to the Principal of the said College alleging the teaching mode, pattern and behavioural aspect of the present appellant. The

student, Priyadarshini Bhattacharyya also was a member of the Governing Body at the relevant time. All these complaints were considered in the Governing Body meeting dated 30th September, 2005, wherein Dr. Swapan Kumar Das and the student's representative, the said Priyadarshini Bhattacharyya, both were present. In this meeting it was decided by the members present in the meeting wherein Dr. Swapan Kumar Das also took part in the decision making process as well as the said student's representative that a show-cause notice should be issued against the appellant directing him to show cause as to why appropriate disciplinary proceeding should not be initiated. The appellant replied and this reply was considered in the next meeting of the Governing Body dated 25th November, 2005 wherein also the said Dr. Swapan Kumar Das and Priyadarshini Bhattacharyya both were present and took part in the decision making process. In that meeting it was decided that as the answer of the present appellant was not satisfactory, a formal chargesheet should be issued by subsequent resolution. Thereafter, on the next Governing Body meeting dated 12th December, 2005 wherein Dr. Das was present, the Governing Body by their decision, wherein Dr. Swapan Kumar Das also was a party of that decision, decided to initiate formal chargesheet. Thereafter, Dr. Das left the meeting and by considering another agenda the Governing Body authorized the President of the Governing Body to frame a charge and to serve the same to the gentleman, the present appellant and appointed an Enquiry Officer for completion of the departmental proceeding. Before that date by the Governing Body the appellant was suspended which was assailed in the writ application, as referred to. The departmental proceeding proceeded with chargesheet framed by the President of the Governing Body. The appellant took different points about bias and other issues in the departmental proceeding and moved a writ application with reference to the present appeal which was dismissed by the learned Trial Judge.

4. From the records as produced before us, viz., the three resolutions of the Governing Body meeting as referred to, it appears explicitly that the complainant Dr. Swapan Kumar Das and Priyadarshini Bhattacharyya both were the party to the decision making process at the initial stage by holding that the writ petitioner/appellant should be directed to answer as to why departmental proceeding should not be initiated and in the second decision of the Governing Body when the reply of the present appellant was considered as not satisfactory and a decision was taken to initiate appropriate departmental proceeding. Subsequently in the third meeting Dr. Das was also present when the initiation of the departmental proceeding was finalized, but, however, he was absent when the charge framing issue and appointment of enquiring officer matter was considered. Hence, it appears that initiation of departmental proceeding which is the outcome of the mental action and phenomenon of the members of Governing Body present holding inter alia that the reply of the appellant was not satisfactory practically was also the decision of the complainant Dr. Swapan Kumar Das and Priyadarshini Bhattacharyya who as per natural human mind action acted as catalyst of such decision making process adversely of the

appellant. This hit the basic concept of natural justice and more particularly the principles of "Nemo Judex Esse Sua Propria Cause", i.e. nobody should be the judge of his own cause, an age old basic legal principle of natural justice. There is no doubt that the appellant did not raise those issues in the departmental proceeding except in writ petition but as soon as the records have been produced before us it became explicit and there are sufficient materials for application of the said doctrine. It is a settled legal position now that the purpose of rendering justice is a paramount duty vested upon the Court by deciding any issue as would appear before the Court from the admitted facts. The records as produced by the Governing Body, who is the respondent herein is telling the real state of affairs before us which does not require any authentication or verification by the affidavit. It is a settled law that a document is not a chameleon which would change the colour at different times. The document itself will be considered in its face value as it is. Hence, having considering the documents as discussed above, we consider that this point should be dealt with in this appeal irrespective of the fact that this point was not urged earlier in departmental proceeding. The admissibility of urging this point before us on the basis of the document and consideration of the same by the Court of Law and even by the Appeal Court is now res integra in view of the judgment passed in the case of Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, wherein the Court relying upon the earlier judgment passed in the case of A.M. Allison Vs. B.L. Sen, and the case The Cantonment Board, Ambala Vs. Pyarelal, held that even if the question of bias and applicability of the aforesaid doctrine that nobody should be the judge of its own cause are not raised earlier, but the admitted fact is that the said rule has its applicability, the Court out of its anxiety to render justice must entertain it and will pass appropriate order. It is to be noted that before the learned Trial Judge this point was taken, hence, having regard to the basic concept of law, we are of the view that the decision making process at the very initial stage that the reply of the appellant was not satisfactory and as such the departmental proceeding should be initiated was vitiated by the application of the doctrine of bias in the angle that nobody should be the judge of his own cause, in view of the presence of the complainant in such decision making process as referred to. Bias does not require every time a pecuniary bias but it can be inclusive of official bias and non-pecuniary bias. In the instant case, there was a personal dispute which was reflected in the complaint of Dr. Das and as such surely Dr. Swapan Das was a party interested to see that the appellant is punished. This vitiated the entire issue.

5. Furthermore it appears that Dr. Swapan Kumar Das was over zealous on the issue and the complaints of the students and some non-teaching staff was written by him which is being looked into by this Court in caustic angle, as in an educational institution a teaching staff should not involve himself with non-teaching staff and students to lodge a complaint the teacher of that particular college as the same would cause injury to the students itself, for whom the

institution exists. Hence, having regard to those issues the Court allowed the learned Advocate for the Governing Body, Mr. Dey Senior Advocate to argue on that point. However, Mr. Dey, on considering the entire aspect of the matter submitted before us that an amicable solution could be made on the issue itself and accordingly an affidavit has been filed today affirmed by the President of the Governing Body. The relevant portions of the said affidavit, as filed today, viz., paragraphs 3, 4, 6 and 7 are quoted hereinbelow:

3. I state that in the interest of justice, the final order of compulsory retirement issued against the appellant, Dr. Sisir Kumar Mondal, will be deemed to have been withdrawn by the Governing Body.

4. That I state and affirm that the Governing Body of Nara Singha Dutta College, Howrah shall not proceed against the appellant, Dr. Sisir Kumar Mondal in future on the basis of the complaint by the students of the Zoology Department and other Departmental Colleagues, provided Dr. Sisir Kumar Mondal proceeds on leave till 30.4.2007 after joined the College for a single day.

6. That I state and affirm that the College authorities shall prepare all the papers pertaining to his retirement benefits at the earliest and send for the same through messenger at Dr. Mondal's residence for his signature which may be necessary and I expect full co-operation from Dr. Mondal in this regard.

7. It is respectfully submitted that an order may be passed by Your Lordship on the basis of this affidavit in order to resolve the dispute for all time to come, in the interest of justice.

6. As already discussed by us that the principle of bias has its full applicability and full vigour in the instant case and accordingly the initiation of departmental proceeding itself became, void ab initio due to basic breach of the principle of natural justice, as discussed. Hence as a consequential issue and the resultant effect the second show-cause and the penalty, thereafter, by concluding the departmental proceeding all automatically became void ab initio.

7. In view of the affidavit as filed today by the Governing Body, it appears that they have taken a decision to withdraw the final order as imposed. However, for effective adjudication of the issue in question, we are of the view that the entire proceeding should be quashed and set aside so that there may not be any ambiguity. Hence the decisions of the Governing Body dated 30th September, 2005, 25th November, 2005 and 22nd December, 2005 and other decisions imposing penalty as well as touching the disciplinary proceeding all are hereby set aside and quashed.

8. On the question of issue of chargesheet, a point is required to be noticed by us, that is the statutory provision, viz., the West Bengal College Teachers (Security of Service) Act, 1975 and the connected Rule which was framed in exercise of the power conferred by Section 20 of the said Act. Rule 7 of the said Rule under the heading "Manner of holding Disciplinary Procedure" it is stipulated

that the disciplinary authority shall draw up or cause to be drawn up a chargesheet in the form as provided. The disciplinary authority has been defined under Rule 2(1)(c) which speaks that the Governing Body is the disciplinary authority Rule 2(1)(c) and Rule 7(1) and (2) which are relevant for our adjudication are quoted hereinbelow:

2.(1) in the rules, unless the context otherwise requires,-

(e) "disciplinary authority" means the Governing Body as defined in the Act and includes also the Administrator or any Ad-hoc Body set up by the Government or the affiliating University to discharge the function of the Governing Body.

7. No order imposing any of the penalties specified in Sub-section (1) of Section 9 of the Act shall be made except after an enquiry is held in the manner as provided hereunder:

(1) There shall be a disciplinary authority who shall draw up or cause to be drawn up against a delinquent teacher a chargesheet in the form as provided in Appendix C giving the following:

(a) The substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge.

(b) a statement of imputations of misconduct or misbehaviour in support of each article of charge which shall contain-

(i) a statement of relevant facts including any admission or confession made by such a teacher.

(ii) a list of documents by which and a list of witness by whom the articles of charge are proposed to be sustained.

(2) The disciplinary authority shall deliver or cause to be delivered to such a teacher a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour prepared as above and shall require the teacher to submit to the enquiring authority within such time as may be specified a written statements of his defence and to state whether he desires to be heard in person.

9. It is an admitted fact as it appears from the resolution of the Governing Body dated 22nd December, 2005 that the disciplinary authority did not frame any charge but the disciplinary authority authorized the President of the Governing Body to frame charge and to serve it. The President of the Governing Body being authorized to do such had the right to frame it as it was a ministerial function but without approval of the Governing Body there was no scope to consider the same as a valid charge against the delinquent. Such approval is absent herein. In that view of the matter, the charge itself is not tenable and the same is set aside and quashed as it was not duly framed by the competent authority, viz., the disciplinary authority, the Governing Body of the College.

10. The final punishment as imposed is also accordingly set aside and quashed.

In view of the quashing of the entire thing, the writ application W.P. No. 4020 (W) of 2006 on the suspension matter as is pending before this Court in between the parties is also taken up by us on consent of the parties and the same also stands disposed of in view of the final relief as granted to the appellant herein, by holding that suspension order dissolved in final penalty as it will not survive further due to quashing of order of penalty. The reason of such assigned below.

11. Having regard to the affidavit of the Governing Body and our finding hence the appeal succeeds. The impugned judgment under appeal is set aside and quashed. The connected writ application is allowed. Subsequent order of penalty of entire disciplinary proceeding stands quashed and set aside.

12. The Governing Body is directed to allow the joining of the appellant/petitioner forthwith in the college in terms of the affidavit, as filed today by the Governing Body. The writ petitioner/appellant is present before us. He will resume his duty tomorrow, in view of the quashing of the order of suspension, the entire departmental proceeding and the penalty, the petitioner/appellant will be entitled to get all his salary, allowances and service benefits by considering him as in service for the period of suspension, but having regard to the affidavit, we have to add something more.

13. It is true that once a dismissal order is passed and/or penalty is imposed in the nature of any other punishment, viz., compulsory retirement and others, the suspension order during the pendency of the departmental proceeding is merged with such penalty and there is no scope for revival of the same as and when such penalty of dismissal/discharge and/or compulsory retirement is set aside and quashed. Reliance is placed to the judgment of the Constitutional Bench of the Supreme Court reported in AIR 1955 SC 600, and AIR 1975 SC 1281. Hence in the instant case also the suspension order will not revive and petitioner/appellant may continue to work. But having regard to the fact that the writ petitioner will retire very soon from service on 30th April, 2007 and in view of the commission as existing in the College itself on the dispute as lodged by Dr. Swapan Kumar Das, vis-a-vis the present appellant/petitioner and having regard to the affidavit as filed by the Governing Body by affirming it by its President, who is duly authorized to affirm it, wherein it was contended that the College would release all retiral benefits in accordance with law and will not proceed de novo with the departmental proceeding for which they have a right to proceed because in view of quashing of the departmental proceeding, the complaints further revive for its adjudication, we are of the view that appropriate submission has been made by the Governing Body to this effect that in the event the writ petitioner goes on leave after joining the college for one day, the Governing Body will not proceed with the departmental proceeding de novo. Considering the welfare of the writ petitioner/appellant vis-a-vis the function, administration and control of the Governing Body and for balancing the entire issue, we are of the view that the writ petitioner/appellant should work as a teacher of the College for two days, viz., 11th and 12th April, 2007 and, therefore, he would go on leave as per the

Court's order enjoying the full service benefits for such leave. It is ordered accordingly.

14. In view of the affidavit as filed by the Governing Body that they would take all steps for preparing the papers pertaining to retirement benefits of the writ petitioner/appellant, the College authority including the Governing Body both are directed to take all appropriate steps in the matter and to complete all the papers by taking the signature of the gentleman, the writ petitioner/appellant before 30th April, 2007.

15. It is made clear that the writ petitioner/appellant would be entitled to get all service benefits and retirement benefits as per the law. The Governing Body of the College through its President will submit a compliance report before the High Court Registry about compliance of the steps as directed in this judgment, viz., preparation of all papers relating to retiral benefits of the writ petitioner/appellant on 1st May, 2007.

16. Let the xerox copy of the resolution as referred to be kept with the record and the original records, viz., meeting book of the Governing Body be returned to the learned Advocate appearing for the Governing Body. For the reasons aforesaid, the appeal and the application both are accordingly allowed.

Tapas Kumar Giri, J.

17. I agree.