

(1956) 08 CAL CK 0005
In the Calcutta High Court
Case No : Civil Revn. Case No. 3747 of 1955

Sm. Arunima Das

APPELLANT

Vs

Secretary, Board of Secondary Education, West Bengal and
Others

RESPONDENT

Date of Decision : 06-08-1956

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1957 Cal 182 : 61 CWN 110

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Jyotirlal Das, for the Appellant; J. Majumdar, (for Nos. 4 and 5), Binayak Nath Banerji and Manash Nath Roy, (for No. 3) and Anil Kumar Sen, (for No. 6), for the Respondent

Final Decision : Dismissed

Judgement

Bose, J.—This is an application under Art 226 of the Constitution for an appropriate Writ directing the respondents Nos. 1 to 3 & the Respondents Nos. 14 and 15, being the Secretary and Administrator of the Board of Secondary Education & Appeal Committee of the Board of Secondary Education & the Board of Secondary Education itself, to hear the Appeal preferred by the petitioner in accordance with the provisions of the Appeal Regulations framed by the Board of Secondary Education under the West Bengal Secondary Education Act 1950 (W. B. Act XXXVII of 1950) and forbidding the said respondents from dealing with the Appeal contrary to the provisions of the said Regulations.

2. The case of the petitioner is that between 17-8-1953 and 31-3-1955 the petitioner functioned as the Head Mistress, of the Baranagore Victoria High School (Girl's Section) which is a secondary school for girls, affiliated to the Board of Secondary Education, West Bengal, and the petitioner was always the head of the teaching staff during the said period. It is alleged that the Board of Education confirmed the appointment of the petitioner as the Head Mistress and

fixed the basic pay ,of the petitioner in terms of the rules or conditions which have to be observed by Secondary schools applying for or receiving grants-in-aid from the Government. According to the petitioner the basic pay fixed was Rs. 175/- per month for the period 17-8-1953 to 31-12-1953 and Rs. 200/-per month from 1-1-1954 onwards. The petitioner tendered her resignation from the post on or about the 28-2-1955 and her service actually terminated on the 31-3-1955. The case of the petitioner further is that a sum of Rs. 2082/2/1 became due to her on the basis of -the scale of her pay as confirmed by the Board of Secondary Education but as the dues were not paid by the members of the Managing Committee of the school, who are respondents Nos. 6 to 13 in this application, the petitioner on 7-4-1955 preferred an Appeal to the Board of Secondary Education in accordance with the Appeal Regulations framed by the Board and published by their Notification No. 1016-Edn/ SB-14/54 dated the 8-2-1955. The relevant portions of the notification containing the Regulations may be set out hereunder:

"Regulations providing for the manner of Hearing and Determining Appeals from decisions in disputes between Teachers and Managing Committees of High Schools by the Appeal Committee.

1. A teacher who is dissatisfied with the decision of the Managing Committee of his school on the question of his dismissal or discharge or the reduction or the withholding of his salary may appeal to the Appeal Committee against such decision.

2. The memorandum of appeal shall be drawn up in the prescribed form which may be obtained, on application, from the office of the Board, and it shall be submitted in triplicate to the Secretary of the Board within one month from the date of the communication in writing to the appellant of the decision appealed against:

Provided that the President may, on grounds which he considers to be reasonable, extend the time for the submission of the appeal.

3(1) On receipt of a memorandum of appeal, the Secretary of the Board shall forthwith forward by registered post with acknowledgment due, a copy thereof to the Managing Committee of the school concerned, inviting its comments, if any.

(2) The Managing Committee shall forward its comments in triplicate to the Secretary of the Board along with a copy of the memorandum of the appeal within one month of the receipt of the memorandum of appeal by it.

4. If no comments are received from the Managing Committee within the time prescribed, the President shall forward the records of the case to the Director of Public Instruction for expression of his views thereon within a month of the receipt of the records by him.

5(1) When the comments of the Managing Committee are received within the time prescribed, the Secretary of the Board shall immediately forward by

registered post with acknowledgment due, a copy thereof to the appellant, and the appellant may, within a fortnight of the receipt of such copy by him forward to the Secretary of the Board his explanation, if any, on the comments made by the managing Committee.

(2) On the expiry of the period prescribed for the submission of the" explanation by the appellant, the President shall forward the records of the case and explanation, if any, received from the appellant to the Director of Public Instruction for an expression of his views within a month of the receipt of the records by him.

6. When the records are received back from the Director of Public Instruction, the Secretary of the Board shall place the case before the Appeal Committee for decision of the appeal.

7. The appeal Committee may, if it thinks fit, grant such interim relief to the appellant as it may consider suitable pending the final disposal of the appeal, provided that such relief, if any, will be without any prejudices to the "final orders which may be passed in the appeal.

8. The Appeal Committee shall dispose of an appeal as expeditiously as possible and without any avoidable delay.

3. Pursuant to the Regulations set out above tile Board of Secondary Education sent the Memorandum of Appeal of the petitioner to the Managing Committee of the School along with the Board's letter dated 29-4-1955, inviting comments of the Managing Committee. The Managing Committee received the Memorandum of Appeal on 3-5-1955 but as the school closed for the summer vacation on . 18-5-1935 and was to reopen on 22-6-1055, the Secretary or the Managing Committee by his letter dated the 26-5-1955 informed the Secretary, Board of Secondary Education that as the school was closed for the summer vacation it was not possible to send the observations of the Managing Committee on the appeal preferred by the petitioner, but the same would be sent as soon as possible after the reopening of the school.

4. On 18-6-1955 the petitioner wrote to the Board of Secondary Education requesting the Board to take action under Regulation 4 of the Appeal Regulation as the Managing Committee had not forwarded their comments within the prescribed time limit. The Secretary, Board of Secondary Education thought that little more time should be given to the Committee to forward their comments having regard to the fact that the school was closed for the summer vacation and so he placed the records before the Administrator, Board of Secondary Education with his recommendation that the Managing Committee might be given a further week's time for forwarding their comments. The Administrator thereupon extended the time by further one week, on the 27th June 1955. It appears that thereafter the Managing Committee sent their comments on 4th July 1955 but the same did not reach the office of the Board of Secondary Education till 9-7-1955, that is beyond the extended time. On 14-7-1955 the Board wrote to

the petitioner calling upon her to file her observations against the comments of the Managing Committee. On the 16th July 1955 and then again on the 22nd July 1955 the petitioner protested to the Board against the legality of receiving the comments after the prescribed time limit, and ultimately on the 29th July 1955 filed her counter-observations under protest, On 15th September 1955 the Board sent the records to the Director of Public Instruction for expression of the latter's views within a month from the receipt of the records. On 12th November 1955 the District Inspectress of Schools wrote to the petitioner to be present at an inquiry to be held by her on the 22nd November 1955 at the school premises. On the 19th November 1955 the petitioner's lawyer wrote a letter to the Director of Public Instruction and the District Inspectress of Schools protesting, strongly against their acts. On the 19th November 1955 the District Inspectress of Schools wrote to the petitioner pointing out that the proposed enquiry could not be postponed unless she was directed by the Director of Public Instruction to do so. On the 22nd November 1955 the enquiry was held by the District Inspectress and on the 29th November 1955 the District Inspectress sent her Report to the Director of Public Instruction who in December 1955 forwarded the Report of the District Inspectress without any comments thereon to the Board of Secondary Education.

5. It appears that in the meantime on the 17th September 1935 the Appeal Committee had passed " a resolution to decide the Appeal Ex parte.

6. The petitioner moved this Court on 19th December 1955 and a Rule was issued by Sinha J. on that date.

7. The question whether the petitioner was functioning as the Headmistress or as the Assistant Headmistress, and whether she is entitled to pay on the scale claimed by her and as to what amount is actually due to her if at all, and whether the Appeal of the petitioner is competent or not are disputed questions of fact which cannot be gone into in proceedings under Article 226 of the Constitution. So this aspect of the matter need not be considered any further.

8. The main questions canvassed in this application have been whether by reason of the comments of the Managing Committee not being forwarded to the Board within the prescribed time limit, the petitioner could be called upon to make her observations on the comments sent after the prescribed period, or whether the Appeal was liable to be decided ex parte ignoring the comments of the Managing Committee and the observations of the petitioner made thereon. The further question that has been raised is whether the Director of Public Instruction is bound to express his views within the period prescribed and what is the effect of non-compliance of the provision as to the time limit.

9. It may be noted however that the questions have really become academic as the Appeal Committee has already resolved to decide the Appeal ex parte and the Director of Public Instruction has sent back the records to the Board without making any comments. But it is apprehended that the Appeal Committee may

change its resolution later on and the Managing Committee of the school feels that it will be greatly prejudiced if the comments are shut out and the Appeal Committee decides the Appeal ex parte. In the circumstances the Court has been requested to express its views on the question raised and accordingly I propose to express my views on the questions mooted before me.

10. It has been contended by Mr. Binayak Banerjee, the learned Advocate appearing for the Respondent No. 3 and by Mr. Jagneswar Mazumdar, the Government pleader appearing for the Respondents Nos. 4 and 5 that the Regulation enjoining the Managing Committee of the school to forward their comments within a month and the Regulations enjoining the Director of Public Instruction to express his views within a month, are directory in character and so non-compliance with the provisions as to time do not affect the validity of the Comments of the Managing Committee forwarded after the prescribed period or the views of the Director of Public Instruction expressed after the expiry of a month from the date of the receipt of the records by him. It is pointed out that Statutes conferring private rights are in general construed as being imperative in character and those creating public duties are construed as directory: *Caldow v. Pixell* (1877) 2 CPD 562 (A). So according to the learned Advocates, the regulation II which creates a right of appeal in favour of the teacher, being one conferring a private right, the provision as to limit of time within which the appeal is to be filed being mandatory in character, a proviso has been added conferring power on the President to extend, on reasonable grounds, the time for submission of the memorandum of appeal, in order that any unavoidable or unintentional delay in any particular case may not work injustice or hardship on the teacher. But the Regulation 3 (2) which requires the Managing Committee to forward their comments within a month and the Regulations 4 and 5(2) which require the Director or Public Instruction to express his views within a month, being regulations which impose public duties upon the Managing Committee and upon the Director of Public Instruction who is a public officer, they are directory in character and no express provision for extension of time with regard to such matters has been left necessary. It appears to me that this contention of Mr. Mazumdar and Mr. Banerjee is correct. There can be no doubt that the whole object of these regulations 3(2), 4 and 5(2) is to procure the comments of the Managing Committee and the views of the Director of Public Instruction in order to assist the Appeal Committee in coming to a right decision in regard to the Appeal. So if the comments of the Committee or the views of the Director of Public Instruction are shut out lightly on the sole ground that the prescribed time limit has expired, the injustice and inconvenience which may be caused to the public interested in the school by reason of the Appeal Committee being deprived of the assistance of the views of a responsible body and a high public official, may be so great as to outweigh the convenience, which the individual teacher may be deprived of, by reason of there being some delay in the matter of disposal of the appeal. It is the Managing Committee of the School which is vitally interested in the questions whether a particular teacher should be allowed

to continue in service or should be dismissed on the ground of incompetency or misconduct or neglect of duty as the case may be, or whether a particular teacher should get salaries to which the teacher is not legitimately entitled. So the interest and welfare of the school demands that the Managing Committee should have their say in the matter which is brought up before the Appeal Committee by the teacher with the object of having the decision passed against him by the Managing Committee, scrutinised or superseded by the Appeal Committee. The intention of the framers of the Regulations could not therefore possibly be that the comments of the Managing Committee would be thrown out On the ground that they were made sometime after the expiry of the prescribed period. Similarly the intention of the framers of the Regulations could not possibly to be to shut out the views of a responsible and impartial official like the Director of Public Instruction whose dispassionate views in the matter are likely to be of help to the Appeal Committee in arriving at a proper decision, of the questions involved in the Appeal. The real aim of these Regulations is prompt or expeditious disposal of the appeals and with a view to secure this end, the regulations have been laid down imposing certain reasonable time limits for the guidance of persons concerned in the appeal.

11. It has been repeatedly pointed out that the question as to whether a statute is mandatory or directory, depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intentions of the legislature must govern, and these are to be ascertained not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it one way or the other.

12. Lord Penzance in the case of *Howard v. Bodington* (1877) 2 PD 203 observed: as follows:

"I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of the provision to the general object intended to be secured by the Act and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

13. In Crawford's Book entitled "Statutory Construction" (1940 Ed.) the following passage occurs:

"In general where a statute imposes upon a public officer the duty of performing some act relating to the interests of the public, and fixes a time for the doing, of such act, the requirement as to time is to be regarded as directory and not a limitation of the exercise of the power, unless it contain some negative words denying the exercise of the power after the time named; or from the character of the act to be performed, the manner of its performance, or its effect upon public interests or private rights, it must be presumed that the legislature had in contemplation that the act had better not be performed at all than be performed

at any other time than that named." (page 535).

14. Mr. Anil Kumar Sen the learned Advocate for the respondent. No. 6 has placed reliance on the; passage in Maxwell's Interpretation of Statutes, which is as follows:

"It may perhaps be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by considerations of convenience and justice and when the result would involve general inconvenience or injustice to innocent persons or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the Legislature."

15. The learned Advocates appearing have also drawn the attention of the Court to the cases reported in H.N. Rishbud and Inder Singh Vs. The State of Delhi, (paragraph 5 of the judgment); Ajit Kumar Sen and Another Vs. State of West Bengal and Others, ; J.K. Gas Plant Manufacturing Co. (Rampur) Ltd. v. Emperor AIR 1947 FC 38; (1940) 8 ITR 635 (Privy Council); Ramhari Mandal Vs. Nilmoni Das, ; Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others, . The principles enunciated or followed in these cases are well known and so it is not necessary to deal with these cases in any detail in this judgment. Mr. Das, the learned Advocate for the petitioner placed reliance on the case of Barker v. Palmer (1881) 8 QBD 9 in which, in construing Orders VIII, Rule 7 of the County Court Rules, 1875 it was laid down by Grove J. that provisions with respect to time are always obligatory unless a power of extending the time is given to the Court. As there was no such power with regard to Rule 7 it was construed as obligatory. But the better view is that no universal rule can be laid down for construction of statutes. It is the duty of the courts to try to get at the real intention of the Legislature by carefully attending to the whole scope of the Statute to be construed.

16. It appears to me that both on the ground of convenience and justice and on the ground that the Regulations affect the performance of public duties, the regulations in question should be construed, as merely directory. The petitioner has therefore no real grievance which calls for interference under Article 226 of the Constitution.

17. In the result the petition fails and it is accordingly dismissed. The Rule is discharged. In the circumstances of this case I make no order as to costs.