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**(1995) 07 CAL CK 0016**  
**In the Calcutta High Court**  
**Case No : C.R. No. 16227 (W) of 1993**

Smt. Anjula Pal (Roy)

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 21-07-1995

**Acts Referred:**

**Citation :** (1996) 1 CALLT 88

**Hon'ble Judges :** Asok Kumar Chakravarty, J

**Bench :** Single Bench

**Advocate :** Seva Bose, for the Appellant; Kashi Kanta Moitra and Pijush Kanti Khanna, the Respondent No. 5, for the Respondent

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## Judgement

Asok Kumar Chakravarty, J.—The petitioner's case is that she was appointed as an Assistant Teacher of Sri Sri Radhamadhab Jew Junior High School at Chrimarshi, P.S. Kotwali District Midnapore in 1966 and her appointment was duly confirmed by the District Inspector of Schools (SE) Midnapore on and from January 2, 1969. She initially applied for leave from 6.7.71 to 14.9.71 and after the said leave was granted she went to reside with her husband and submitted an application for maternity leave from 15.9.71 to 15.1.72. The school authorities by letter dated 16.11.71 directed the petitioner to join her duties within a week from the date of the notice. On receipt of such notice she informed the school authorities that she had given birth of a child on 30.11.71, and prayed for leave for a further period of two months from January 15, 1972 to March 13, 1972. The Secretary of the managing Committee thereafter informed her by letter dated 15.2.72 that she must join her duties within a fortnight from the date of receipt of the letter failing which her service shall be dispensed with. The petitioner received the said letter on 23.2.72 and sent a reply praying for a fortnight's time to resume her duties as such time shall be required for medical treatment and for making arrangement for return journey from Agartala. Her letter was received by the Secretary on 22.2.72. She also sent a telegram to the school authorities on 8.3.72 for a further extension of medical leave for a further

period of ten days. On 15.3.72 the petitioner went to the school to resume her duties and submitted her Medical certificate and other relevant papers. But the Headmaster and the Secretary did not allow the petitioner to resume her duties and she was told that she had already been dismissed from her service and so she was also directed not to attend the school and threatened her of physical assault. The petitioner thereafter made several applications before the school authorities on various dates praying for allowing her to join her duties and finally on 16.3.74 she made application for allowing her to join duties and pay her arrear salaries and allowances but no step was taken on the said application. The petitioner met the Director of School Education (SE), Midnapore and he assured her to look into the matter. The respondent No. 5 the Director of School Education, thereafter held a fresh enquiry on 9.9.85 through the Assistant Director of Schools but the report of the enquiry was not received by the petitioner. Thereafter she made another representation before the respondent No. 7, the District Inspector of Schools, informing him that no enquiry report had been received by her and prayed that her case be disposed of as quickly as possible. The petitioner alleged that no disciplinary proceeding was ever initiated against her and that there never any termination of her service as per Rule 28(8) of the Management of Recognised Non-Government Institutions (Aided and Unaided) 1969. The petitioner also alleged that no notice of termination of service was ever issued against her. The petitioner thereafter filed a writ petition being C.O. 9249 (W) of 1986 in this court and that petition was disposed of with a direction upon the director of School Education to consider the representation of the petitioner in accordance with law. The petitioner also having failed to get any report from the Director of School Education in terms of the Court's order, she filed the present application for a writ in the nature of mandamus for directing the school authorities to allow the petitioner to resume her duties as Assistant Teacher of the said school and also for direction upon the respondents to pay the petitioner's all arrear salaries and allowances according to the revised scale of pay from 1969 till date.

2. The respondent No. 9, the Headmaster of the school, filed an affidavit in opposition in which it was alleged that the petitioner having kept herself absent for a long time since 6.7.71 and she having applied for further leave and since no leave was due to her according to rules, the Managing Committee informed her by registered post for joining her duties immediately. She having not joined her duties in spite of receipt of a such letter the Managing Committee after consultation with the Director of School Education passed a resolution dated 9.1.92 that she should be again informed to join her duties and if she failed again to join her duties, her services shall be dispensed with. The petitioner was granted time up to 8.3.72 and that the petitioner having not resumed her duties on 9.3.72 she was informed that her services was terminated with effect from 9.3.72. In the earlier writ petition filed before this Court, this Court directed that no further appointment shall be made in the vacancy of the petitioner but prior to the passing of the said order the school authorities had appointed one

Bishnupada Jana in the said vacancy caused by the termination of service of the petitioner and appointment was duly approved by the District Inspector of Schools (SE) Midnapore. Thereafter as per order of the court the Director of School Education considered the matter and rejected the prayer of the petitioner for allowing her to resume her duties as the services of the petitioner has been terminated.

3. In the reply the petitioner has denied the allegations made in the affidavit in opposition and alleged that her service had never been terminated according to the rules and the Managing Committee in collusion with the Director of School Education had not allowed her to resume duties and illegally filled up the said vacancy by other candidate.

4. No affidavit in opposition was filed by any other respondents excepting the respondent No. 9, nor any other appeared to contest the matter on their behalf.

5. Heard the submissions of Ms. Bose Id. Advocate for the petitioner and Mr. Moitra Id. Advocate appearing for the respondent No. 9.

6. It appears that the writ petition was dismissed by this Court on the ground that the facts do not warrant intervention of this Court without giving any reason. An appeal was preferred against the said order and the Appeal Court by its order dated 3.9.73 directed as follows:

"The question that is to be decided in the writ application is whether the service of the petitioner was terminated in accordance with law or not. If it is found that the service was terminated lawfully the appellant/petitioner is not entitled to any relief but if it is found reverse then the appellant/petitioner is entitled to relief. The writ petitioner stated in the writ petition that she is a permanent teacher of the school and her service had not been properly terminated and in that event she is entitled to relief. The question whether her service was terminated validly or not requires to be decided on affidavits. But this is not a case where the writ application, in our view, should be dismissed in limine."

7. Heard the submissions of the learned Advocates for the parties appearing before this Court. In terms of the Appeal Court's order this Court is to find out whether the petitioner's service was terminated in accordance with law. The relevant rule in respect of termination of service is rule 28(8) of the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided) 1969. It is prescribed in this rule--

"For this purpose the Committee shall first draw up formal proceedings and issue charge sheet to the employee concerned, and offer him reasonable facilities 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, explanation 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 ground 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."

8. It is not the respondents' case nor was submitted by the learned Advocate for the respondent No. 9 that the procedure prescribed for termination of services of a teacher had been taken recourse to in the case of the petitioner. The order of termination of service is, therefore, patently illegal. It should also be remembered in this connection that under compelling reason, the school authorities had to adopt such extra legal means to dispose with the service of the petitioner. The long and continued absence of the petitioner by issuing successive letters for extending her leave might have given rise suspicion in the mind of the school authorities about the intention of the petitioner whether she was at all willing to resume her duties or not. That, however, cannot be a reason for the school authorities to terminate the service of an approved teacher without following the procedure as prescribed by law. In the said circumstances this Court cannot but hold that the petitioner had been in continuous service of the institution and there was never any termination of service of the petitioner in the eye of law.

9. In so far as arrear of pay of the petitioner is concerned admittedly the petitioner had not rendered any service to the Institution since 6.7.71. It is not known whether the petitioner had been employed elsewhere in the mean time. For the ends of justice, therefore, instead of payment of entire amount due to the petitioner from 6.7.71 till her joining to the post, in my opinion, justice will be properly served if the entire arrear pay taking all her increments and revision of pay and other allowances she might have received had she been in service into account the half of the said amount is to be paid to her in lump-sum. The school authorities are, therefore, directed to allow the petitioner to join her duties within a week from the date of communication of this order and upon her resuming her duties in the said school her scale of pay be fixed taking into consideration all her increments and the revision of pay that have occurred in the mean time. The respondents authorities are further directed within one month from the date of receipt of this order to calculate the half of the arrear amount which she was entitled to receive had she been in service with her increments and revision of pay as stated above and pay half of the said amount in lump-sum within one month from the date of communication of this order.

It is made clear that if the petitioner resumed her service in the said school she will be entitled to get her monthly salary and allowances as per law on calculation of the same from the date of her joining the service.

The Rule is made absolute accordingly. There will be no order as to costs.