

(2016) 03 CAL CK 0014

In the Calcutta High Court

Case No : Writ Petition No. 26844 (W) of 2012.

Soma Das (Mallick) - Petitioner @HASH The State of West Bengal and Others

Date of Decision : 09-03-2016

Acts Referred:

Citation : (2016) 3 CalHCN 408 : (2016) 4 LLN 349

Hon'ble Judges : Samapti Chatterjee, J.

Bench : Single Bench

Advocate : Mr. Saugata Bhattacharyya and Mr. Sunit Kumar Roy, Learned Advocates, for the Petitioner; Mr. Ekramul Bari and Mr. K.M. Hossain, Learned Advocates, for the School Authority; Mr. Santanu Kumar Mitra, Learned Advocate, for the W.B.S.S.E.; Mr. Sailaja Nanda

Final Decision : Disposed Off

Judgement

Samapti Chatterjee, J. - The petitioner has filed the present writ petition for cancellation of the impugned letter dated 29th September, 2012 being Annexure "P-16" of the writ petition whereby it was unanimously resolved in the meeting no.10 dated 20th September, 2012 that the service of the petitioner as an assistant teacher in physical science is no longer required in favour of Neturia Girls High (H.S) School.

2. The petitioner's case in brief is as follows :-

The petitioner was appointed as an assistant teacher of science group in Netural Girls High (H.S) School on 27th April, 1989 and subsequently her appointment was approved by the District Inspector of School (SE) Purulia on 15th July, 1989. Since 2001 onwards due to prolong illness and the pendency of divorce suit before the Learned Burdwan Court the petitioner could not attend the class for a considerable period of time for which the petitioner made repeated application for sanction of medical leave and other leave as per leave rules by submitting Doctor's certificate in support of her illness and absence.

3. Mr. Saugata Bhattacharyya, learned Advocate appearing for the petitioner

contended that the petitioner also on 16th July, 2003 made a representation to the District Inspector of School (SE) Purulia praying for extraordinary leave in view of her illness and she also requested vide letter dated July, 2003 to concerned District Inspector of School (SE) Purulia to take a necessary step on that issue. Ultimately on 29th October, 2009 the petitioner went to join her duty but the school authority refused to permit the petitioner to resume her duty on the pretext that issue of resumption of duty of the petitioner would be discussed in the next meeting of the Managing Committee of the school that was endorsed in the said letter of petitioner on 29th October, 2009.

4. Since the petitioner was refused to join her duty therefore, against such refusal the petitioner preferred appeal before the appellate authority being Appeal No.4 of 2010 in prescribed form. The appellate committee vide its order dated 27th July, 2011 directed the school authority to provide reasonable opportunity of hearing in terms of Rule 28 (8) of the Management Rules and disciplinary proceedings, if any be initiated against the petitioner and that should be disposed of within six months from the date of receiving of the order of appellate committee. This order of Appellate Authority was duly communicated by the petitioner to the school authority. Surprisingly, despite communication of the appellate authority order the school authority failed to initiate any disciplinary proceedings against the petitioner. Against that the petitioner preferred appeal and the same was entertained by the appellate committee on 30th January, 2012. During course of hearing the said school authority took a stand that the petitioner should be deemed to have resigned from the post of assistant teacher which was not accepted by the appellate committee. Therefore, the appellate committee directed the school authority to allow the petitioner to join the school within 15 days from the date of communication of the said order. The said order of appellate authority dated 30th January, 2012 was engaged by the Deputy Secretary (Administration) of Board to the school authority.

5. In the meantime, on 16th February, 2012 the school authority issued one charge-sheet against the petitioner and the petitioner was asked to give reply to the charge-sheet within 15 days. The petitioner on 5th March, 2012 sent reply to the said charge-sheet thus denying allegations contained in the said charge-sheet.

6. Mr. Bhattacharyya further contended that the petitioner also prayed for supply of relevant documents based on which charges were levelled against her so that a comprehensive reply can be made by the petitioner. Challenging the appeal committee's decision dated 23rd February, 2012 the Managing Committee filed a writ petition being W.P No.6992 (W) of 2011 and the said application was finally disposed of by this Hon'ble Court on 17th August, 2012 directing the Managing Committee of the said school to complete the disciplinary proceedings against the petitioner within 28th September, 2012 and shall communicate the decision to the petitioner by 5th October, 2012. The decision of the appeal committee of the board taken in its meeting dated 30th January, 2012 and communicated vide

memo dated 23rd February, 2012 was set aside by the Hon"ble Court.

7. After the Hon"ble Court's order dated 17th August, 2012 the school authority issued further charge-sheet on 13th September, 2012 against the petitioner containing identical charges as contained in earlier charge-sheet dated 16th February, 2012 thereby asked the petitioner to submit reply within three days.

8. Mr. Bhattacharyya submitted that the petitioner after receiving charge-sheet dated 13th September, 2012 sent a letter on 17th September, 2012 praying for 15 days time in terms of the relevant provisions as contained in the circular issued by the board giving reply to the charge-sheet. The petitioner also pleaded illness for extension of time to give reply to the charge-sheet and also prayed for the supplying of the relevant documents. But without conducting enquiry proceedings by appointing independent enquiry officer and also by giving opportunity of hearing to the petitioner the school authority by the impugned order dated 29th September, 2012 informed the petitioner that her service is no longer required thereby terminating her without completing disciplinary proceedings in terms of Rule 28 Sub-Rule 8 of the management rules.

9. Per contra, Mr. Ekramul Bari, learned Advocate appearing for the school authority submitted that the school authority vide letter dated 13th September, 2012 asked the petitioner to explain why her service should not be terminated for prolong absence from the school since July, 2001 without permission of the Managing Committee. Against that show-cause notice the petitioner vide letter dated 17th September, 2012 sought for some time to give reply. However, time was extended by the Managing Committee till 25th September, 2012 as the Hon"ble High Court in W.P No.6992 (W) of 2012 granted time to the Managing Committee till 28th September, 2012.

Thereafter on 29th September, 2012 the Secretary of the Managing Committee the Secretary of the Managing Committee communicated the decision of the Managing Committee that the petitioner's service is no longer required and the petitioner has been terminated by operation of law in terms of G.O No.1541-Edn (S) dated 15th December, 1997.

Thereafter the Managing Committee vide letter dated 20th December, 2012 forwarded relevant papers before the West Bengal Board thus informing that the service of the petitioner has been terminated as the petitioner remained absent from her service in the school for a period of more than five years at a stage unauthorisedly.

10. Mr. Bari further contended that due to prolong unauthorised absence of the petitioner from her duty for more than five years the school authority as well as the students of the said school suffered a lot. In support of his contention Mr. Bari relied on G.O No. 1541?Edn (S) dated 15.12.1977 which speaks that a permanent employee cannot enjoy leave for more than five years. Therefore, on the basis of that G.O the school authority unanimously resolved the decision that the service of the petitioner is no longer required for the said school vide letter

dated 29th September, 2012.

11. Mr. Bari further submitted that paramount interest of the students should be looked into by the school authority and not the personal interest of a individual teacher.

12. Considering the submissions advanced by the learned Advocates appearing for the respective parties and after perusing the record I find that admittedly the petitioner was an unauthorised absentee for more than five years (approx.) from her duty without showing any cogent reason. I cannot resist but to mention that the petitioner joined in a service to build the citizens of the nation. It is the preliminary duty of the teachers to discharge their duties with sincerity and efficiency for betterment and upliftment of the students but the same is admittedly lacking in this case. However, petitioner is very much interested to get back her service as an assistant teacher but at the same time she was/is too much reluctant to discharge her duty as an assistant teacher of that school. She is only interested regarding her rights thus merely has forgotten regarding her duties and responsibilities towards the school authority as well as the students at large.

13. I also cannot ignore the lapses on the part of the disciplinary authority to hold a complete disciplinary proceedings against the petitioner as per Rule 28 Sub Rule 8 of the Management Rules thus conducting regular disciplinary proceedings against the petitioner after giving an opportunity of hearing to the petitioner to explain her case before the disciplinary authority. Therefore, in my considered view the impugned decision dated 29th September, 2012 issued by the Secretary, Neturia Girls' High (H.S) School, Dist-Purulia cannot be sustained in the eye of law.

14. Accordingly the impugned decision dated 29th September, 2012 issued by the Secretary, Neturia Girls High (H.S) School , Purulia is hereby quashed and set aside.

15. I direct the Managing Committee to conduct the disciplinary proceedings denovo as per Rule 28 Sub-Rule 8 of the management rules and complete the entire proceedings within 8 weeks from the date of communication of this order.

16. With these directions this writ petition is disposed of without any order as to costs.

17. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties after fulfilling all the formalities.