

(1998) 11 CAL CK 0012
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction Original Side W.P. No. 2104 of 1998
with A.S.T. No. 1901 of 1998

Sri Ashutosh Sengupta

APPELLANT

Vs

West Bengal Board of Secondary Education and Others

 Smt. Kalyani Mondal Vs The State of West Bengal Ors.

RESPONDENT

Date of Decision : 16-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal Board of Secondary Education Act, 1963 — Section 24

Citation : (1999) 1 CALLT 298 : (1999) 82 FLR 335

Hon'ble Judges : Mahemmad Haheeb Shams Ansari, J

Bench : Single Bench

Judgement

The Court:

1. As the subject matter of consideration in both the writ petitioners is an order dated 18.9.98, both the writ petitions, with the consent of the learned counsel for either parties have been taken up analogously and are being disposed of by this common judgment.

2. W.P. No. 2104 of 1998 is filed by the Managing Committee of the School in question, questioning the order being Memo. No. 24/9163/G dated 18.9.98 being annexure "F" to the writ application, passed by the Committee constituted u/s 24 of the West Bengal Board of Secondary Education Act, 1963 for dealing with the case relating to the disciplinary proceedings against teachers and non-teaching employees of the recognised Non-Government Institutions (Aided and Unaided) of the Management Rules. By the Impugned order, the action of the Managing Committee placing the respondent No. 7, Headmistress under suspension has not been approved.

3. A.S.T. No. 1901 of 1998 is filed by Smt. Kalyani Mondal, Headmistress of the school in question. The relief claimed in the above writ petition is for issue of a writ in the nature of mandamus upon the respondent school authority to allow

the petitioner to Join the school and discharge duties in the capacity of Headmistress in the event of disapproval of her suspension by the section 24 (sic) Committee of the West Bengal Board of Secondary Education. The order dated 18.9.98 being memo. No. 24/91G3/S passed by the section 24 (sic) Committee, disapproving suspension has been annexed to the writ petition being annexure "G".

4. It would be appropriate to take up the writ petition No. 2104/98 first as it deals with the validity of the order dated 18.9.98. Depending upon the result thereof, the writ application being A.S.T. No. 1901/98 can be decided consequentially.

5. Brief facts of the case alone need to be stated, they are: that certain charges have been framed against the Headmistress of the school in question by the Managing Committee and a disciplinary enquiry has been Initiated to enquire into the said charges. By a resolution adopted at the meeting of the Managing Committee held on 16.5.98 a resolution was adopted to take disciplinary action against the Headmistress and that she should be suspended with Immediate effect. The said order was communicated on 18.5.98 (annexure "B/1") and the same was forwarded to the Board for approval as required under Rule 28 (9) (viiia) within 7 (seven) days stipulated therein. The Managing Committee as also the Headmistress were requested to appear for hearing before the Committee constituted u/s 24 of the Act and, thereafter, the decision of the Committee was communicated to the respective parties, the order of suspension of the Managing Committee was not approved by the said Committee constituted u/s 24.

6. It must also be stated here that meanwhile an appeal dated 10.6.98 was filed by the Headmistress before the appeal committee constituted u/s 24 of the Act having the Jurisdiction to hear the appeals against any orders adversely affecting teachers.

7. Mr. Arun Kr. Sarkar, learned senior counsel appearing on behalf of the Managing Committee, assailing the Impugned order rejecting the approval of the order of suspension contended that all the requirements stipulated in Rule 28(8) of the Management Rules have been complied with and the Managing Committee in exercise of the power vested in it placed the Headmistress under suspension for valid reasons pending the enquiry into charges levelled against her which are of serious nature and the said order of suspension should and ought to have been approved. Non-approval of the same is contrary to law besides the same not being a speaking order. inasmuch as no reasons have been stated therein for not approving the order of suspension.

8. A perusal of the Rule 28 (9) (viiia) read with the impugned order would show that the impugned order is passed as an administrative function in exercise of the power conferred upon the repository of the power.

9. A purely administrative act or function is distinguishable from a quasi judicial function in that in the latter, there is an obligation express or implied to adopt a

judicial approach to the question to be decided whereas, there is no such obligation in the case of purely administrative function.

10. It is trite law that an administrative act may affect the rights of the petitioner but it does not decide the right with any finality.

11. Administrative authority acting as quasi judicial authority is required to comply with the principles of natural justice. It is well settled that if the function is quasi judicial, reasons must be stated in the order to make it valid and the same must have been passed affording an opportunity of hearing to the parties.

12. There is a consensus of judicial opinion that the doctrine of natural justice is applicable only to Judicial and quasi Judicial proceeding and not to purely administrative proceedings. That is not to say that a statutory authority exercising function which is not quasi judicial but an administrative one "has not to observe the rules of fair play." A public authority as in the instant case is required at all times to act fairly, justly, reasonably and Impartially.

13. It is equally well settled that the doctrine of natural Justice has been applied also to purely administrative proceedings which involve civil consequences.

14. Judged in the light of the above principles and keeping in view the provisions contained in Rule 28 (9) (viiia) as also the purport of the impugned order, it has to be observed that no rights of the petitioner have been decided with any finality, nor has the petitioner been subjected to any adverse civil consequences by the impugned order. The impugned order has thus to be construed as a purely administrative act.

15. As to the requirement to state reasons, suffice it to note that the same has been raised to pedestal of a basis principle of natural Justice. This requirement would apply not only to quasi Judicial function but would extend to all administrative decisions which would effect civil rights of individuals.

16. The contention of the learned counsel for the petitioner as noted above, are relevant and would have merited consideration, If the impugned order was one passed by the statutory authority in exercise of a quasi judicial function, or an administration function having civil consequence.

17. The impugned order cannot also be branded as ultra-vires on the ground of violation of principles of natural Justice or on ground that no reasons have been stated therein. The Rule in question viz., Rule 28 (9) (viiia) does not impose any such condition upon the repository of the power either to give a prior hearing or to state reasons. Unless, the statute requires that an administrative action can be taken only after hearing the parties or cast an obligation to state reasons, the administrative act cannot be said to be ultra-vires.

18. In the Instant case, the petitioners in the respective writ petitions were afforded an opportunity of hearing before the passing of the impugned order. The contention of Mr. Arun Kr. Sarkar, learned counsel for the petitioner that having

so afforded an opportunity and after having heard the respective parties, it was incumbent upon the authority in question to have stated the reasons in the impugned order, cannot be sustained. Where the function is purely an administrative, nothing more than a right to make a representation before final action may be called for.

19. For the reasons aforestated, it must be held that the impugned order of the Committee is not vitiated, warranting interference by the writ court. The writ petition No. 9104/98 is liable to be dismissed and is accordingly dismissed but in the circumstances without costs.

20. Consequently, the writ application being A.S.T. No. 1901/98 is liable to be disposed of with a direction to the respondent school authorities to comply with the order of the Committee constituted u/s 24 and as communicated by letter dated 18.9.98, permitting the petitioner to Join in service and paying her the salary as per law without any deduction. Writ petition being A.S.T. No. 1901/98 is accordingly so disposed of but without any order as to costs.

21. Petition disposed of