

(2013) 04 CAL CK 0048
In the Calcutta High Court
Case No : Writ Petition No. 14854 (W) of 2006

Sri. Goutam Basu

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 138 FLR 871 : (2013) LLR 938

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Arunava Ghosh and Mr. Goutam Chakraborty, for the Appellant; Tapabrata Chakraborty and Mr. A. Basu for the Respondent Nos. 4, 5 and 6, Mr. P.S. Bhattacharya for the Respondent Nos. 7, 8 and 9, Mr. Pinaki Dhole for the State and Mr. B. Bhattacharjee and Ms. Reshmi Ghosh for the University, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—Challenge is to the order of dismissal of the writ petitioner from his service as Head Clerk of Charuchandra Evening College now known as Naba Balygunge Mahavidalaya. The petitioner was the Head Clerk of the said college. He was served with a charge sheet containing six articles of charge, such as, neglect of performing duties, habitual absence, violation of the orders of the superior, unwillingness to perform the duties allotted to him, dereliction of duty, etc. The petitioner denied the articles of charge by filing an appropriate written statement. Thereafter, an enquiry was held. The Enquiry Officer found him guilty of misconduct. Accordingly, the petitioner was dismissed from service. Being aggrieved, this application has been preferred.

2. Now, the question is whether the order of dismissal as awarded as penalty to the petitioner is sustainable.

3. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the charge sheet was duly served upon the

petitioner containing six articles of charge, statement of imputation in support of the articles charge, etc. The petitioner was asked to submit his statement of defence against the articles of charge and accordingly, the petitioner submitted his statement of defence against each and every article of charge denying the allegations leveled against him.

4. While the enquiry was being conducted, it is found from the materials on record that various documents were marked exhibit on behalf of the prosecution and the petitioner was asked to give an explanation to these documents. The Enquiry Committee itself put the questions to the petitioner asking answers or explanations about the materials marked exhibits in support of the prosecution in the departmental proceedings. Alternatively, it could be stated that during the course of enquiry, the petitioner was confronted with the documents and he was asked to answer on those documents. In fact, on the basis of such answers given by the petitioner and the exhibited documents, the Enquiry Committee found him guilty of misconduct and accordingly, the Governing Body passed the order of dismissal from service.

5. It may be noted herein that though there is a provision for appeal against the order of dismissal, the petitioner did not choose to prefer an appeal challenging the findings of the Enquiry Committee. So, in order to entertain the application under Article 226 of the Constitution of India, the scope is very much limited to the extent that this Court is to see only whether the decision making process was correctly adopted giving adequate opportunities to the delinquent for cross-examination of the prosecution witnesses. It is also to be seen if the basic principles of natural justice have been followed in the departmental proceedings.

6. Mr. Arunava Ghosh, learned Advocate appearing for the petitioner, has contended that while holding a departmental enquiry, an adequate opportunity should be given to the delinquent to cross-examine the witnesses. Not only that he should be allowed to adduce evidence in support of his defence including the examination of himself, if he desires to do so. In support of his contention Mr. Ghosh relying on the decision of *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, particularly paragraph no. 4 has described the basic principles to be followed in the departmental proceedings. In the instant case, nothing has been done but simply the petitioner was cross-examined and he was asked to give answers to those questions, i.e., confrontation with the documents tendered by the prosecution. This is not permissible.

7. Mr. Ghosh has also contended that even if a document is marked exhibit, the contents will not go automatically and in support of his contention he has relied on the decision of *Bengal Coal Co. Ltd., Girimint Colliery v. Sew Pujan Harijan* reported in 1983 LAB IC 1285. He has submitted that the contents of the document are to be proved beside marking the document as exhibit. So, the evidence as tendered by the prosecution against the petitioner should not be accepted.

8. Mr. P.S. Bhattacharya, learned Advocate appearing for the respondent nos. 7, 8 & 9, has referred to the decisions of State of U.P. and Another Vs. Man Mohan Nath Sinha and Another, , General Manager (P), The General Manager (P) Punjab and Sind Bank and Others Vs. Daya Singh, and H.B. Gandhi, Excise & Taxation Officer-cum-Assessing Authority, H. B. Gandhi v. Gopi Nath and Sons thus, he has contended that while dealing with an application under Article 226 of the Constitution of India, the High Court cannot re-appraise the evidence on record but has to be confined to the decision making process. The petitioner could not offer an explanation as asked for. The High Court does not sit on the judgment on merits under Article 226 of the Constitution. It is not open to the High Court to re-appreciate and re-appraise, the evidence laid before the Enquiry Officer and examine the findings recorded by the Enquiry Officer as a Court of appeal and reach its own conclusion. This is not an appeal against the decision. So, the writ petition should be dismissed.

9. Mr. P.S. Bhattacharya has also referred to the supplementary affidavit and has contended that 66 documents were relied in the departmental proceedings, which would prove the guilty of the petitioner.

10. He has also contended that since there is a scope to avail the alternative remedy, i.e., by preferring an appeal, the petitioner did not choose to prefer an appeal, but, this writ application. When an alternative efficacious remedy is available that should have been adopted by the petitioner.

11. Mr. Bhattacharya has contended, inter alia, misconduct that the petitioner absented himself from duties for 252 days in between May 10, 2002 and August 2004 and thus, it had shown that there was a dereliction of duty and so, the petitioner is guilty of misconduct. So, the Enquiry Committee has rightly held the petitioner guilty of misconduct and appropriate punishment has been rightly passed.

12. Mr. Tapabrata Chakraborty, learned Advocate appearing for the College Authority, has referred to the Calcutta University Act of 1979 and thus, he has submitted that the materials on record such as Annexure P-10 to P-14 show that all the documents upon which the prosecution relies and every kind of opportunities were rendered to the petitioner to show natural justice. So, a fair procedure was adopted in the departmental proceedings.

13. Mr. Chakraborty has also drawn my attention to the letter of the petitioner dated June 30, 2004 appearing at page no. 199 wherein he had stated that he was not willing to perform his duties on security reasons during examination period and this is nothing but a lame excuse not to perform his duties. He has also drawn my attention to the order dated May 8, 2002 of the learned Judge of this Court in W.P. No. 14984(W) of 2001 with W.P. No. 4739(W) of 2002 wherein liberty was given to the respondents to initiate departmental proceedings against the petitioner for willful absence, if any, w.e.f. August 27, 2001 and to regulate the other leave taken by the petitioner. This shows the conduct of the petitioner.

All the steps of the departmental proceedings were duly followed. So the directions of the decision of *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, have been followed in the instant case. There is no scope of interference with the order of dismissal.

14. Mr. Chakraborty has also contended that the delinquent prayed for copy of several documents, such as, letters of Principal, letter from the students, Attendance Register, letter of the Teacher-in-charge, etc. and the copy of all documents have been supplied to the petitioner and so, fair opportunities were given to the petitioner by the Enquiry Committee. The petitioner was duly confronted with the documents tendered by the prosecution and so, the petitioner got enough opportunity to give explanations to the said documents. So, a fair trial had been adopted. There is no illegality in the impugned order.

15. Relying on the decision of *R.S. Saini Vs. State of Punjab and Others*, , Mr. Chakraborty has contended that in the instant case, several opportunities were given to the petitioner and so, his contention that he was not given enough opportunity of further hearing, is not sustainable at all. So, appropriate orders may be passed.

16. Mr. Chakraborty has referred to the decisions of H.B. Gandhi (*supra*) reported in *H. B. Gandhi v. Gopi Nath and Sons Om Prakash Vs. State of Punjab and Others*, *L and T Komatsu Ltd. Vs. N. Udayakumar*, and thus, he has submitted that since the unauthorised absence of the petitioner has been proved in the departmental proceedings, it will not be proper to interfere with such findings in exercising the jurisdiction under Article 226 of the Constitution.

17. Mr. Pinaki Dhole, learned Advocate appearing for the State and Mr. B. Bhattacharjee, learned Advocate appearing for the respondent university have also supported the contention of Mr. Tapabrata Chakraborty and Mr. P.S. Bhattacharya.

18. Having due regard to the submissions of the learned Advocates of both the sides and on perusal of the materials on record, I find that the petitioner filed writ cases, such as, W.P. No. 14984(W) of 2001, W.P. No. 4739(W) of 2002 and W.P. No. 13165(W) of 2004 previously when the College Authority started departmental proceedings/enquiries against him for his misconduct.

19. So far as the W.P. No. 14984(W) of 2001 filed by the petitioner is concerned, I find that the case was filed when the Enquiry Committee started enquiry against his misconduct and by the order dated May 8, 2002, the learned Single Judge of this Hon'ble Court, inter alia, quashed the order dated February 15, 2002 whereby the service of the petitioner was dispensed with and thereby giving liberty to the concerned College Authority to initiate disciplinary proceedings against the petitioner again.

20. Anyway, while dealing with the departmental proceedings, the Enquiry Committee, in my view, committed mistakes by simply confronting the petitioner

with the documents tendered on behalf of the prosecution. I do not find any Presenting Officer was appointed to present the case on behalf of the prosecution. As per materials on record, the Enquiry Committee confronted the petitioner with the documents and asked the petitioner to give answers to those questions and this was the way of taking the materials/evidence on behalf of the prosecution. During the course of the departmental proceedings the Enquiry Committee is expected to behave in an unbiased manner, i.e., the Enquiry Committee is to take all the evidence tendered by the prosecution presented by the Presenting Officer and then to allow the petitioner to cross-examine the witnesses produced by the prosecution etc. The Enquiry Committee cannot act as the Presenting Officer. So, the recourse adopted by the Enquiry Committee proves the biasness on the part of the Enquiry Committee.

21. In Course of the hearing of the departmental proceedings, the petitioner had taken the plea that the subject matter of the charges was also the subject matter of the pending writ petition being W.P. No. 13165(W) of 2004. The Enquiry Committee had also observed that the documents produced by the petitioner and exhibited did not answer the charges all. These findings might not include all the essential ingredients of fair trial. Such the procedure adopted by the Enquiry Committee, in my view, cannot be supported.

22. It is better if the Appointing Authority of the petitioner appoints a Presenting Officer on behalf of the prosecution to conduct the departmental proceedings and then the evidence of the witnesses upon which the prosecution relies is recorded and then an opportunity is given to the petitioner to cross-examine the witnesses. Thereafter, an appropriate opportunity should be given to the petitioner to adduce defence evidence, if any. He may mark documents as exhibit on his behalf, if he desires to do so.

23. Thereafter, upon hearing both the sides over the materials/evidence on record, the Enquiry Committee is to come to a definite conclusion and then to forward the same to the Appointing Authority for passing appropriate orders in accordance with law.

24. All these facts are procedural aspects of the matter and according to the decisions of State of Uttar Pradesh & anr. (supra), General Manager (P), Punjab & Sind Bank & ors. (supra), H.B. Gandhi, Excise & Taxation Officer-cum-Assessing Authority, Karnal & ors. (supra), I am of the view that in entertaining an application under Article 226 of the Constitution of India, this Court is empowered to review the decision making process and not the decision itself. So, this Court is competent to set aside the decision of the Enquiry Committee on the ground that the decision making process is wrong. In consequence, the order of dismissal is liable to be set aside.

25. So far as marking of documents as contended by Mr. Ghosh, I am of the view that if the documents are marked exhibits upon duly proved, the contents will automatically go and contents need not be proved separately, unless the same

are related to the opinion of an expert who is specially skilled in the matter. Since, I have decided to set aside the order of dismissal and to direct for holding the enquiry afresh by the Enquiry Committee, the entire matter, i.e., dealing with the departmental proceedings, should be left with the Enquiry Committee. The order of dismissal is not sustainable. The application succeeds.

26. So, the order of dismissal dated April 18, 2006 of the petitioner from service and the consequent resolution of the respondent authorities passed thereon stand set aside and quashed.

27. Since the matter is pending for a considerable period, the respondent College Authority is directed to appoint a Presenting Officer at once to present the case on behalf of the prosecution. The Enquiry Committee is directed to proceed with the departmental proceedings afresh from the stage of filing the written statement by the petitioner against the articles of charge in the manner indicated above. The Enquiry Committee shall complete the departmental proceedings within six months from the first date of fixing the date of recording evidence. If necessary, the Enquiry Committee shall hold the enquiry on day-to-day basis and shall not grant any adjournment to either of the parties except in extreme emergent cases.

28. The other prayers as made in the writ petition are hereby refused and such prayers shall be dealt with by the respondents consequent upon such judgment and order in accordance with law.

29. Interim order, if any, is hereby vacated.

30. The application is allowed to the extent indicated above.

31. There will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.