

(2011) 02 CAL CK 0057
In the Calcutta High Court
Case No : Writ Petition No. 13253 (W) of 2003

Sri Gurupada Mandal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-02-2011

Acts Referred:

West Bengal Board of Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001 — Rule 10, 8, 9, 9(2), 9(3)

Citation : (2011) 2 CHN 295

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Jayanta Kumar Das and Sujit Bhunia, for the Appellant; Tulsidas Maity, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

Dipankar Datta, J.—The Petitioner was an Assistant Teacher in Pichhabani Primary School (hereafter the said school) under Contain-II Circle, within the jurisdiction of the Purba Medinipur District Primary School Council (hereafter the said Council). He is aggrieved because the Chairman of the said Council by order contained in Memo dated August 13, 2003 has dismissed him from service for the following reasons:

- a) That he has failed to submit the original Mark Sheet and certificate in Spite of offering several scope to submit.
- b) That it is seen from the original service book he has passed school final Examination in the year 1965 but from the Mark Sheet of Bihar Secondary Examination Board, Patna it is Seen that he has passed Madhyamik Examination in the year 1975.
- c) That in spite of sending several letters for attending the office he could not present himself before the chairman of the them (sic then) Midnapur District Primary School Council. He has disobeyed the order of the chairman.

2. The Petitioner claims that he was selected for appointment as Assistant Teacher in primary schools within the jurisdiction of undivided Midnapore District Primary School Council (hereafter MDPSC) in the year 1979 and appointed in the said school against a permanent vacancy on April 17, 1980. Since then, he had been performing his duty sincerely, honestly and with dedication, yet, his service was not confirmed immediately after expiry of the period of probation. Long 19 years after the Petitioner had joined as an Assistant Teacher, the Chairman of the Adhoc Committee of the MDPSC, vide memo dated December 27, 1999, confirmed him in service w.e.f. June 9, 1984 (the date following completion of two years" service).

3. It is the positive case of the Petitioner that on July 23, 1999, while travelling on a bus from Pichhabani to Contai, he lost a folio bag containing the original records relating to his service "including original mark sheet, admit card and certificate of Madhyamik Pariksha as well as one original Deed of Family property". Despite vigorous search, the said documents could not be retrieved. Consequently, a written complaint was lodged with the Officer-in-Charge, Contai Police Station on the same date, being G.D. Entry No. 813 dated July 23, 1999. However, the police also could not trace the documents and the Petitioner lost all hope of retrieving the same.

4. It is the Petitioner's further case that some designing persons of the locality, bearing grudge against him on account of political rivalry, created undue pressure upon the President of the MDPSC for compelling him to produce the original mark sheet, admit card, etc. on learning that the Petitioner had lost the same. The President duly obliged them and vide memo dated July 5, 2000 asked the Petitioner to submit the original records before him. The Petitioner having lost the original records, the same could not be produced. This led to issuance of a further notice dated October 31, 2000.

5. Since the Petitioner had passed the school final examination conducted by the Bihar Vidyalaya Pariksha Samity (hereafter the BVPS), he had to approach the authority in Bihar and, accordingly, had deputed a person to obtain duplicate records. However, the same could not be collected on time, which resulted in further notices being issued including an order suspending him from service dated March 22, 2001.

6. The Petitioner had moved this Court in its writ jurisdiction by filing W.P. No. 1518 (W) of 2002. A learned Judge of this Court disposed it of on February 22, 2002. The MDPSC was directed to release both current and arrear subsistence allowance due and payable to him. In so far as the other questions raised in the writ petition were concerned, no decision was given at that stage and the Petitioner was granted liberty to appear before the Chairman of the MDPSC on March 12, 2002.

7. It is also claimed by the Petitioner that on March 12, 2002, he appeared before the Chairman, MDPSC and produced copies of the mark sheet, admit card

and other documents for verification. He then asked the Petitioner to produce the original documents on March 19, 2002. It was ultimately on March 19, 2002 that the Petitioner again personally appeared before the Chairman and submitted the mark sheet of Madhyamik Pariksha issued by BVPS, the migration certificate, the school leaving certificate and the schedule caste certificate, in original. The said documents were received on March 19, 2002 itself in the office of the MDPSC and an endorsement was made acknowledging receipt thereof by the Head Assistant, being Annexure "P-14" to the petition.

8. In the background of the aforesaid facts, the impugned order of dismissal was issued and communicated to the Petitioner.

9. Mr. Das, learned advocate representing the Petitioner, contended that the Chairman of the said Council acted in excess of jurisdiction in dismissing the Petitioner from service without conducting any enquiry, as required in terms of the provisions contained in the West Bengal Board of Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001 (hereafter the 2001 Rules). Referring to Rule 9 thereof, he contended that no order of dismissal could be passed without holding a proper enquiry into the conduct of the Petitioner. The manner and procedure for holding enquiry had been spelt out in Rule 9, which was given a complete go-bye. The Petitioner having been dismissed from service without enquiry, he prayed for a writ of certiorari to quash the order of dismissal and for a writ of mandamus on the Respondents to calculate and pay to the Petitioner all service benefits that he would have otherwise enjoyed if he had not been suspended together with retiral benefits since he was due to retire shortly.

10. Mr. Maity, learned advocate representing the said Council, contended that the Petitioner was dismissed from service immediately after the district of Midnapore was divided and the records relevant for a decision on the present controversy could be traced out after vigorous search resulting in belated filing of counter affidavit to the writ petition. According to him, it could be gathered from the relevant records that the Petitioner obtained appointment as Assistant Teacher in the said school by representing that he had qualified in the Madhyamik Pariksha of 1965 conducted by the West Bengal Board of School Education (hereafter the WBBSE). However, a complaint was received by the MDPSC that the pass certificate the Petitioner had produced while securing employment was a forged one. As such he had been called upon to produce the original documents and testimonials in support of his educational qualifications. Instead, the Petitioner had produced documents showing that he had qualified in the school final examination in 1975 conducted by the BVPS without having Bengali and Mathematics as combination subjects. Not having studied Bengali and Mathematics, the school final examination passed by the Petitioner could not be treated as equivalent to the Madhyamik Pariksha conducted by the WBBSE and, therefore, the Petitioner could not have secured employment as Assistant Teacher on the basis of the pass certificate issued by the BVPS. The Petitioner

conveniently set up a plea of losing his original documents and testimonials, having received the scent that the MDPSC was contemplating penal action against him for securing employment by producing forged pass certificate. It was contended that the Petitioner had practiced fraud on the MDPSC and, therefore, in exercise of equity jurisdiction, the writ court ought not to come to his aid and grant relief as claimed by him. He, accordingly, prayed for dismissal of the writ petition.

11. Though the State and its officers were represented at the time of admission hearing of this petition and also before me on June 22, 2010, none appeared when it was finally considered.

12. I have heard learned advocates for the appearing parties. Considering the facts and circumstances as noticed hereinabove, it is difficult to uphold the contention of Mr.

Maity that the Petitioner having practiced fraud, he is not entitled to relief in equity.

Assuming that what he says is correct, the Petitioner could not have been penalised without holding a proper domestic enquiry in accordance with the 2001 Rules.

13. Rules 8, 9 and 10 of the 2001 Rules provide as under:

8. Penalties.- The following penalties may, for good and sufficient reasons, be imposed on a teacher, namely:

(a) censure;

(b) withholding of increments or promotion;

(c) removal from service which shall not be a disqualification for future employment;

(d) dismissal from service which shall be a disqualification for future employment as a teacher.

9. Procedure for imposing penalties.-

(1) No order imposing any of the aforesaid penalties shall be made without proper enquiry by an enquiring authority to be appointed by the disciplinary authority.

(2) No order imposing any of the penalties provided in these rules shall be made without service a "show-cause notice" to the teacher and giving him an opportunity of being heard.

(3) Upon completion of the enquiry to be made by an enquiring authority appointed by the disciplinary authority, a report shall be prepared containing the following documents:

- (a) the articles of charge in the form as may be prescribed by the State Government and the statement of imputations of misconduct or misbehaviour.
 - (b) The defence of the teacher, if any, in respect of each article of charge,
 - (c) An assessment of the evidence in respect of each article of charge, and
 - (d) The finding of the enquiring authority on each article of charge and reasons thereof.
- (4) A report on the findings of the enquiring authority shall be submitted to the disciplinary authority.

10. Actions to be taken by the disciplinary authority.

- (1) The disciplinary authority shall consider the report of the enquiring authority and record its findings on each charge.
- (2) If the Disciplinary Authority having regard to its findings on the charges, is of the opinion that any of the penalties mentioned in Rule 8, may be imposed, it shall pass appropriate orders with a copy to the teacher concerned.

14. That a teacher while securing employment had practiced fraud on the appointing authority is no doubt a very serious offence calling for stern action. But merely on the basis of an allegation, no penal action can be taken. The rules provide for the procedure to be followed by the disciplinary authority in order to take penal action. The procedural safeguards, in the present case, have been honoured in the breach. If indeed the original service book of the Petitioner indicated that he had passed Madhyamik Pariksha in 1965 but he had produced a forged pass certificate, there was sufficient ground to proceed against him departmentally. That apart, failure to submit original mark sheet and certificate in spite of alleged extension of scope to submit the same being one of the grounds of dismissal does not appear to be tenable in view of the document being Annexure "P-14" to the petition, which was never taken note of. Also, if the Petitioner had disobeyed the order of the Chairman, that was also good reason to proceed against him departmentally for insubordination. Why charge-sheet against the Petitioner was not issued and enquiry into his conduct not conducted, have not been explained. The rules do not empower the disciplinary authority to take penal action only on the basis of the show cause notice. Sub-rules (2) and (3) of Rule 9, read together, makes it imperative for the disciplinary authority to issue charge-sheet in the event it is tentatively decided to impose any of the penalties mentioned in Rule 8. There can thus be no doubt that the Petitioner has been dismissed from service contrary to the procedure prescribed in the rules. The impugned order of dismissal from service is liable to be set aside only on this ground. It is ordered accordingly.

15. In normal circumstances, upon an order of punishment being set aside for non-adherence to the statutory rules, direction for conducting enquiry from the stage the irregularity occurred ought to follow. The Petitioner was on the verge of

retirement on the date hearing of this petition was concluded. The writ petition was admitted by an order dated September 26, 2003 passed by a learned Judge of this Court in the presence of the learned advocate for the said Council. Despite direction for exchange of affidavits, no counter affidavit from the side of the said Council was filed. The writ petition was listed for final hearing before me in June and July, 2010. None appeared for the said Council. It was only after further notice was served in terms of order passed by the Court that Mr. Maity entered appearance on September 14, 2010 and sought for extension of time to file such affidavit. The said Council is responsible for the delay in disposal of this petition. At this distant point of time, I do not consider it prudent to grant liberty to the Respondents to proceed from the stage the irregularity occurred in the process of dismissing the Petitioner from service.

16. For the reasons aforesaid, this petition stands allowed. The Petitioner shall be treated to be "on duty" from the date of his suspension till date of retirement from service and entitled to all the financial benefits had he been in actual service. The Respondents are now directed to release arrear financial benefits as well as retirement benefits, computed according to law, as early as possible but not later than six months from date of receipt of a copy of this order.

17. There shall be no order for costs.

Urgent Photostat certified copy of the order, if applied for, be given to the parties at an early date.