

(1970) 07 CAL CK 0019
In the Calcutta High Court

Subodh Chandra Dewan

APPELLANT

Vs

Managing Committee, Belgachia Mahatma Aswini Datta
Vidyapith, Belgachia and Others

RESPONDENT

Date of Decision : 02-07-1970

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F
West Bengal Board Of Secondary Education Act, 1963 — Section 2, 2(d)

Citation : 75 CWN 21

Hon'ble Judges : Prodyot Kumar Banerjee, J

Bench : Single Bench

Advocate : Harashit Chdkraborty, for the Appellant;

Final Decision : Dismissed

Judgement

Prodyot Kumar Banerjee, J.—The petitioner in this application is a Headmaster of Belgachia Mahatma Aswini Dutta High School. He joined the said School on 1st November, 1965, as an Assistant Teacher. He was promoted to the Assistant Headmaster on 1st of February, 1966 and was further promoted on 1st April, 1966 as Officiating Headmaster. With effect from 29th June, 1966 the petitioner was working as a Headmaster in this School. On 1st February, 1967 the School was upgraded as a High School and the petitioner became Headmaster of the said School. It is alleged that his appointment was duly approved by the District Inspector of Schools, Howrah. It is further alleged that the Managing Committee of the School was reconstituted in 1968 and the Managing Committee was started functioning with effect from 21st September, 1968. The Secretary of the Managing Committee, it is alleged that in collusion with the respondent No. 2, was functioning improperly. The teachers were not being paid their full salaries and to the said illegalities it is alleged that the petitioner raised objection whereupon the respondents Nos. 2 and 3 became very much annoyed with the petitioner. It is further alleged that the petitioner was sick and could not attend classes with effect from 13th September, 1969 and resumed his duty on 28th

February, 1970. The petitioner was preparing for the M.A. Examination for 1969 and the M.A. Examination began on and from 30th February, 1970 and the petitioner applied for leave with effect from 29th February, 1970 to 30th March, 1970 for the purpose of appearing in the Examination. The M.A. Examination continued up to 26th March, 1970 and the petitioner thereupon filed another application for extension of the leave. It appears that the petitioner received a letter from the Secretary of the School on 2nd March, 1970 enclosing a copy of the resolution stating that the petitioner was removed from the post of Headmaster and was reverted to the post of Assistant Teacher without giving any charge-sheet, without asking him any explanation and without giving the petitioner an opportunity of being heard. Against the said order of demotion, the petitioner moved this application challenging the resolution dated 22nd February, 1970. The parties to this application are, respondent No. 1 is a Managing Committee of the School and respondents Nos. 2 to 12 are stated to be members of the Managing Committee, respondents Nos. 13 and 14 are District Inspector of Schools and West Bengal Board of Secondary Education. It may be stated straightway that neither the District Inspector of the School nor the West Bengal Board of Secondary Education had passed any order against the petitioner. The petitioner's challenge is against the resolution passed by the Managing Committee of the School and therefore in order to set aside the resolution the petitioner prayed for a writ for cancelling or withdrawing the said resolution. If the relief is to be granted to the petitioner as claimed, a writ will have to be issued to the Managing Committee of the School. A writ cannot be issued in the facts of this case on the West Bengal Board of Secondary Education or on the District Inspector of School because the impugned resolution was not passed by the Board or by the District Inspector of the School. The point, therefore, arises whether a writ can issue against the Managing Committee of the School. Mr. Chakraborty on behalf of the petitioner contended that the Managing Committee is a statutory body and as such writ may issue against it as the resolution reverting the petitioner was passed without the prior approval of the Board of Secondary Education. Mr. Chakraborty further contended that in any school (aided or unaided) the powers of the Committee in so far as the disciplinary proceeding is concerned against the teacher either temporary or permanent and the other employees are to be found in rule 28(8) of the Rules framed for the management of recognised non-Government Institution (aided or un-aided, 1969). It is stated that the power of demotion cannot be passed without giving the petitioner an opportunity of showing cause. It is further stated that the case of the petitioner is not one of removal or dismissal by the Managing Committee but is a demotion. If it is demotion, it does not appear to me that the Rule 28(8) has any application in the facts of this case. The next point argued by Mr. Chakraborty is that a writ lies against the Managing Committee of the School because in the submission of Mr. Chakraborty, the Managing Committee is a statutory body. He referred to me the unreported decision being Civil Rule No. 204 (W) of 1967 decided on 27th February, 1968 wherein D. Basu J. made an observation as follows : "This much is clear, however, that this fact of the

petitioners preferring appeal to the appeal committee would not bar the jurisdiction of this Court inasmuch as it is not that verbal order which is the subject-matter of complaint in this proceeding under Article 226 of the Constitution but a written resolution passed by the Managing Committee of the School which was the statutory authority to discharge the teachers."

2. Mr. Chakraborty on the basis of the said decision sought to argue that the Managing Committee of the School is a statutory body and as such writ may go against the Managing Committee. He referred to Section 2(d) of the West Bengal Board of Secondary Education Act of 1963 which defines the said Committee. Section 2(d) of the said Act runs as follows : " "Managing Committee" used in reference to an Institution includes Governor or Governing Body of such an Institution."" The Rule framed under the said Act also defines "Committee" under Rule 2 sub-rule (c). "Committee" means "Managing Committee" as defined in clause (d) of Section 2 of the said Act. It appears further as Mr. Chakraborty contended that under Rule 28(8) the power of dismissal or removal of the employees or teachers of the School is subject to prior approval of the Board. Therefore in so far as those powers are concerned, the Managing Committee's powers are limited under the statutory limitation and if it is found that the Managing Committee exceeds or acts beyond the limitation, then in the submission of Mr. Chakraborty, this court has jurisdiction to issue a writ on the Managing Committee. Mr. Chakraborty referred to me the case reported in B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others, as also against University and Syndicate) in order to show that writ lies against the State Medical Faculty. He also referred to 56 CWN 278 Deepa Pal v. University of Calcutta to show that the writ lies against the university.

3. There can be no dispute that a writ lies against the statutory bodies such as State Medical Faculty which are created by the State Medical Faculty Act or Calcutta University a statutory body under the Calcutta University Act or against Municipal Com-missioners of Municipalities governed by the Bengal Municipal Act and the said statutory bodies are to be guided by the statutory provisions contained in the Act under which the bodies were created. It has been held now by the Supreme Court that a writ does not go against a company. In a case reported in The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, , it has been held that a writ lies against a statutory corporation if the said corporation is created by the Act itself. But it does not lie against a company which is incorporated under the Companies Act. In cases reported in 62 CWN 384 Manmatha Nath Naiya v. Secretary, Diamond Harbour H. E. School and ors., and Amarendra Chandra Vs. Narendra Kumar Basu and Others, , Sardar Jaswant Singh Vs. Board of Secondary Education and Others, , it was held that no writ lies against the Managing Committee of the School but Mr. Chakraborty argued that those cases were decided on the provisions of the School Codes which had no statutory force. However, it is argued by Mr. Chakraborty that as under West Bengal Board of Secondary Education Act, 1963, the statutory rules have been framed; and if there are violations of those statutory rules, a writ may go against

the respondents who may be members of the Managing Committee or the Managing Committee itself.

4. In my opinion, the Managing Committee is not a statutory body and it was not brought into existence by a statute but the Act only defines the term "Managing Committee". If by such definition, a Managing Committee becomes a statutory body, then by the same reasoning a company incorporated under the Indian Companies Act could have been a statutory body and a writ would have lain against the company, but I have already said that the Supreme Court as well as this Court have held that no writ can go against a company or registered society vide *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, .

5. The Managing Committee has been defined in the West Bengal Board of Secondary Education Act of 1963 for the purpose of the interpretation of the said word used in the body of the Act. By such definition Managing Committee could not be said to be either a body corporate or a statutory body. The Managing Committee is a Committee of private individuals and by the definition of the Managing Committee in the statute the said private individuals do not per se become a statutory body. Moreover, under the statutory rules 28(8) if there is a violation of the said rules there may be that the order of dismissal may be wrongful and for that purpose it is open to the appellant either to prefer an appeal as provided in the statute itself or to sue for damages for wrongful dismissal. In any case, in my opinion writ does not lie. Mr. Chakraborty, however, argued that under Rule 28(8), it is incumbent on the part of the respondent Managing Committee before passing of any order of removal, or termination of service of a teacher or employee that they would take approval of the Board and without such approval no order of termination of removal can be passed. Therefore, Mr. Chakraborty argued that if an order of termination is made without the approval of the Board, the Managing Committee has failed to comply with the statutory rules and therefore the order must be set aside. In a writ proceeding, in my opinion, for an issuance of a writ against an authority it must be a statutory body and that the statutory body must have acted contrary to the statutory rules or regulation. If any one of these elements is absent, a writ cannot issue. It has been held by this Court that no writ lies against the sponsored college (1962 Cal. 420) or against a private college (*Sanjib Kumar Chowdhury Vs. Principal, St. Paul's College and Others*,) or against a sponsored or aided institution (1963 Cal. 169). Mr. Chakraborty relied upon the case reported in 71 CWN 216 *Lilabati v. State*. In the said case a writ was issued on the President of the Board of Secondary Education - quashing the approval given by him and the respondent No. 1 was restrained from giving effect to the impugned order of termination. In the case reported in 70 CWN 571 *Baidya Nath Bose v. Sudha Roy*, does not support the petitioner's contention. Moreover the said order was passed In a Second Appeal which arises out of a suit against the order of dismissal. Take for instance a case coming u/s 25F of the Industrial Disputes Act. If for instance a company dismisses an employee coming within the meaning of Section 25F without following the limitation of the said section, is it

open to a dismissed employee to move for a writ application for setting aside the order of dismissal ? In my opinion the answer is clearly "no" because it is for the dismissed employee to take proceeding under the said statute and not to come straightway to the Court for a writ. In my opinion, in the case coming within the mischief of rule 28 (8) of the Rules the dismissed teacher or employee cannot straightway come to the Court for a writ. It is incumbent on his part to file an appeal and if he fails there he certainly can move against the order which may be passed by the Appeal Committee of the Board and if it is found that the Appeal Committee was wrong, a writ may issue against the appeal committee for quashing the order passed by it. The Appeal Committee is a tribunal and certiorari will lie and in consequence thereof writ of mandamus may lie against the Board for the appropriate relief to the petitioner. In that view of the matter, I am of opinion, that no writ lies against the Managing Committee for quashing the order of reversion passed on the petitioner and this application fails and is rejected.