

(2011) 08 CAL CK 0137
In the Calcutta High Court

Case No : Writ Petition No. 6776 (W) of 2011 and 12698 (W) of 2011

Susanta Chatterjee

APPELLANT

Vs

The State of West Bengal and Others
 Satyabharati
Vidyapith and Another Vs The West Bengal Board of
Secondary Education and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

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

Citation : (2011) 08 CAL CK 0137

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : A.S. Roy, B. Sheikh, A.K. Singh and Bimal Dutta, in W.P. No. 6776 W of 2011 and Billwadwal Bhattacharya and Tanmoy Chakraborty, in W.P. No. 6776 W of 2011, for the Appellant; Billwadwal Bhattacharya and Tanmoy Chakraborty, in W.P. No. 12698 (W) of 2011 and A.S. Roy, B. Sheikh A.K. Singh and Bimal Dutta, in W.P. No. 12698 (W) of 2011 and Sadananda Ganguly and Tarun Kr. Chatterjee, in W.P. No. 6776 (W) of 2011 and Sadhan Roy Chowdhury, D. Trivedi, in W.P. No. 12698 (W) of 2011 For State, for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—Since both these writ petitions are interrelated to each other, both the writ petitions have been taken up for hearing analogously. First of such writ petitions, being W.P. No. 6776 (W) of 2011, was filed by a suspended non-teaching staff of Satyabharati Vidyapith in the District of North 24 Parganas. The legality of the suspension order, by which the said non-teaching staff was placed under suspension in contemplation of a disciplinary proceeding, is under challenge in the said writ petition at the instance of the said suspended non-teaching staff. It is contended by him that the charges, for which he was placed under suspension by the present Managing Committee of the said school, were identical to the charges which were brought against him earlier by the Administrator of the said school. But on receipt of the Petitioner's reply to the said charges, the Administrator exonerated the Petitioner from those charges and withdrew the charges framed against the Petitioner by his letter dated 23rd

August, 2010. It is, thus, contended that when he has already been exonerated by the Administrator of the said school, the present Managing Committee cannot suspend him once again by bringing identical charges against him.

2. Be that as it may; fact remains that during the pendency of this writ petition the impugned order of suspension was disapproved by the Committee constituted u/s 24 of the West Bengal Board of Secondary Education Act, 1963 as the said Committee was of the view that the presence of the Petitioner in school will not affect the independent enquiry to be initiated against him by the school authority. The Board's decision for disapproval of the order of suspension was communicated to the school authority by the Board vide its letter dated 20th may, 2011 during the pendency of this writ petition.

3. The other writ petition being W.P. No. 12698(W) of 2011 was filed by the school authority challenging the Board's decision for disapproval of the order of suspension of the said non-teaching staff. The said non-teaching staff has been impleaded as Respondent No. 8 in the said writ petition. The said Respondent is also contesting the said writ petition.

4. Since the order of suspension has been disapproved by the Board, the cause of action on which the first writ petition was founded has now become extinct and the reliefs which the Petitioner claimed in the said writ petition have practically become infructuous as the relief which the Petitioner, in fact, sought for in the said writ petition, was granted to him by the Board by disapproving the order of suspension during the pendency of the writ petition. The said writ petition is, thus, disposed of as the same has now become infructuous with this observation that this order will not preclude him from supporting the said decision of the Board which is impugned in the other writ petition filed by the school authority as mentioned above.

5. Now, let me consider the merit of the second writ petition in the facts of the instant case.

6. The Respondent No. 8 was placed under suspension at a point of time when the disciplinary proceeding was not initiated against him. The said Respondent was placed under suspension as the school authority wanted to initiate a disciplinary proceeding against him on the following charges:

- (i) Behaviour of the said clerk is unbecoming for the institution;
- (ii) Defalcation of school fund;
- (iii) Dereliction of duties;

7. Since defalcation of school fund was one of the charges against the Respondent No. 8, this Court is of the view that if the said Respondent is allowed to join his service, he will get access to the official records of the said institution and if he gets access to such school's record, chances of tampering the official records and/or destroying the evidence relating to the charge of defalcation of

the suspended employee, cannot be avoided. Thus, this Court cannot agree with the conclusion of the Board to the effect that his presence in the school may not affect independent enquiry to be initiated against him. In my view, allowing such an employee against whom a disciplinary proceeding is contemplated on the charge of defalcation of the school fund amongst others, will be prejudicial to the enquiry to be initiated by the school authority against such an employee for the reason as recorded above.

8. Fact remains that a disciplinary proceeding has already been initiated by the school authority against the said Respondent No. 8. Charge-sheet containing memorandum of charges has also been supplied to the said Respondent inviting him to reply to the said charges within a stipulated period. Despite receipt of the said charge sheet, the said Respondent has not yet submitted any reply to the said charge sheet.

9. Since the disciplinary proceeding has already been initiated, it is normally expected by everybody that such disciplinary proceeding should be concluded at an early date. However, cooperation from each side is necessary for early conclusion of the disciplinary proceeding. Thus, this Court holds that justice will be sub-served if the disciplinary proceeding is expedited and the Board's decision to disapprove the order of suspension passed by the school authority against the Respondent No. 8 is kept in abeyance for a reasonable period within which the school authority should conclude the disciplinary proceeding.

10. This Court is informed that the documents on which the school authority wants to rely upon in course of the disciplinary proceeding have already been supplied to the Respondent No. 8 along with the charge sheet. In the event, the school authority wants to rely upon any other document apart from those documents which have already been supplied to the Respondent No. 8 along with the charge sheet, the school authority is required to supply those documents to the Respondent No. 8 positively within a period of two weeks from date and the said Respondent No. 8 is, thus, directed to submit his reply to the said charge sheet within two weeks from the date of service of such documents upon the Respondent No. 8. In the event, the school authority is of the view that No. further document will be relied upon by the school authority in course of the disciplinary proceeding, then the school authority will intimate the Respondent No. 8 about their said decision and in such case the Respondent No. 8 is required to submit his reply to the said charge sheet within two weeks from the date of receiving such intimation from the school authority. If on consideration of the Petitioner's reply, the school authority decides not to pursue the said disciplinary proceeding, the school authority should abandon the said proceeding and permit the Petitioner to join his service immediately. If on the contrary, after considering the reply, the school authority decides to proceed further with the said disciplinary proceeding, the school authority will have to appoint an Enquiry Officer and a Presenting Officer immediately thereafter. The entire exercise, in this regard, should be completed within two weeks from the date of receipt of

the reply from the Respondent No. 8 and the enquiry should be concluded within three months from the date of appointment of such Enquiry Officer and/or Presenting Officer by the school authority. After holding such enquiry, the school authority is again required to consider the enquiry report and thereafter will take a decision as to whether the school authority will proceed with the said disciplinary proceeding against the Respondent No. 8. Such decision should be taken within two weeks from the date of submission of the enquiry report to the school authority. In the event, the school authority decides to proceed further, the school authority will send all the requisite papers to the Board seeking its approval at the first stage of the disciplinary proceeding. The Board is also directed to take ultimate decision on the issue regarding grant of approval at the first stage of such disciplinary proceeding within four weeks from the date of receipt of such papers from the school and if the Board ultimately grants approval to the first stage of the disciplinary proceeding, then the school authority should be intimated about such Board's approval immediately thereafter so that the subsequent stages of the disciplinary proceeding can be concluded both by the school authority as well as by the Board as early as possible but not later than two months thereafter.

11. It is further directed that the Board's decision to disapprove the order of suspension passed by the school authority against the Respondent No. 8 will be kept in abeyance so long as the enquiry proceeding will continue provided, however, the Petitioner is paid regularly his subsistence allowance as per rules during the period of his suspension and all arrears subsistence allowance as per rules, if there be any, is paid to him within two weeks from date. It is made clear that, in the event, such enquiry proceeding cannot be concluded within the period as aforesaid or the admissible subsistence allowance, as per rules, is not paid to him, the decision of the school authority to keep the Respondent No. 8 under suspension will stand automatically lifted and he will be allowed to resume his normal studies in terms of the Board's decision which is impugned in this writ petition. The school authority may review its decision as to continuation of the said suspension order during the pendency of the disciplinary proceeding after submission of the enquiry report to the school authority.

12. The writ petition is, thus, disposed of with the above observations.

13. Both the writ petitions are, thus, disposed of.

14. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.