
(2014) 03 CAL CK 0102
In the Calcutta High Court
Case No : W.P. 16636(W) of 2009

Tanmoy Biswas

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 03 CAL CK 0102

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Shamim-Ul-Bari, Advocate for the Appellant; M.K. Goswami and Mr. Md. Zakir Hossain for the State, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Tapabrata Chakraborty, J.—Upon emerging to be successful in the selection process, the petitioner was engaged in the post of additional para teacher at Pranta Pally High School (hereinafter referred to as the said school) and such engagement stood fortified through an agreement dated 21st December, 2005 amongst the said school authorities and the petitioner. Subsequent thereto, the petitioner's engagement was further renewed by an agreement dated 30th December, 2006. The petitioner alleges that during the subsistence of such engagement, he was disallowed to continue with his services on and from the month of November, 2007 and the school authorities without any resolution and without giving any opportunity of hearing, abruptly discontinued the engagement of the petitioner and that too without any notice. Complaining about such forcible action of the school authorities, the petitioner made repeated representations to the appropriate authorities including the respondent No. 2 herein. As the authorities did not enquire into the said complaints, the petitioner was constrained to prefer this petition under Article 226 of the Constitution of India.

2. This writ petition was admitted and the parties were directed to exchange their affidavits. In spite of such direction, neither the State authorities nor the

school authorities had filed any affidavit-in-opposition.

3. Mr. Shamim-ul-Bari, learned advocate appearing for the petitioner submits that the guidelines towards engagement of para teacher categorically provides that for terminating a para teacher, a resolution is first required to be adopted by the Managing Committee of the school proposing an order of punishment against the delinquent and that such proposal is to be forwarded to the concerned Panchayat Samity through the Block Development Officer and that pursuant thereto, an enquiry is required to be directed and ultimately a decision is to be adopted by the concerned Sthayee Committee of the Panchayat Samity and in the event, thereafter, the proposal of the school is approved, the managing committee of the said school can issue the order of punishment against the delinquent.

4. Mr. Bari, submits that no proposal whatsoever was adopted by the managing committee of the said school and that no order was communicated to the petitioner and that no opportunity of hearing was also granted to the petitioner and that the petitioner was illegally denied to continue with his service and such action of the authorities is derogatory to the principles of natural justice and the guidelines issued by the Government.

5. Mr. Bari draws the attention of this Court to the supplementary affidavits sworn by some of the staffs of the said school, wherein they had categorically stated that the petitioner was granted no opportunity of hearing and he was illegally denied to continue with his service.

6. Mr. Bari also draws the attention of this Court to a memorandum dated 30.06.2008 and the contents of the same reveal that the Special Secretary to the Hon"ble Governor of the West Bengal had forwarded a complaint of the petitioner to the Principal Secretary to the Government of West Bengal, School Education Department with a request to take appropriate action. Mr. Bari submits that till date, the concerned authorities had taken no steps whatsoever pertaining to the petitioner"s grievance as ventilated by a representation dated 17.06.2008.

7. Mr. Goswami, learned advocate appearing for the state authorities, in his usual fairness, submits that as the guideline provides for a procedure towards the adoption of order of punishment, the authorities ought to have followed the said guidelines and ought to have granted an opportunity of hearing to the petitioner prior to adoption of any order of termination.

8. Surprisingly, in spite of categorical direction to file affidavit, the school authorities did not file any affidavit-in-opposition controverting the allegations made by the petitioner.

9. Upon hearing the submissions of the learned advocates of the respective parties and upon considering the materials on record, I am of the opinion that no useful purpose will be served by keeping the writ petition pending and that the matter needs to be relegated to the respondent No. 2 for scrutiny of the facts as

narrated by the petitioner in the writ petition.

10. As per the Government guidelines, a procedure towards the termination of service of a para teacher had been laid down and nothing had been brought on record by the school authorities to show that the said guidelines had been followed prior to discontinuance of the engagement of the petitioner and that the school authorities had also granted no opportunity of hearing to the petitioner prior to such discontinuance of his engagement.

11. In such circumstances, I direct the respondent No. 2 herein to consider the petitioner's representation dated 26.11.2007 upon calling for all relevant records from the school authorities and upon granting an opportunity of hearing to the petitioner and the said school authorities and to pass a reasoned order in accordance with law and to communicate the same to the petitioner.

12. The entire exercise should be concluded within a period of eight weeks from the date of communication of this order.

13. Needless to observe, in the event, it is ascertained by the said respondent No. 2 upon consideration of the petitioner's representation that the school authorities had not complied with the guidelines laid down by the Government prior to discontinuance of the petitioner's engagement, necessary follow up steps should be taken by the respondents without any further delay.

14. The writ petition is, accordingly, disposed of.

15. There shall be no order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties at an early date.