

(2011) 03 CAL CK 0026
In the Calcutta High Court

Case No : A.S.T.A. 24 of 2011 in A.S.T. 26 of 2011 and W.P. 23673 (W) of 2010

The Managing Committee Kamartore High School and Another APPELLANT
Vs

Debendra Nath Ghosh and Others RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Citation : (2011) 2 CALLT 176 : (2011) 2 CHN 936

Hon'ble Judges : Prabhat Kumar Dey, J; Amit Talukdar, J

Bench : Division Bench

Advocate : Partha Sarathi Bhattacharyya and Raju Bhattacharya, for the Appellant; Ekramul Bari and Samanta, for State, for the Respondent

Final Decision : Allowed

Judgement

Amit Talukdar, J.—Action taken by the Managing Committee of the school (the Appellant) on 23/11/2010, asking the Respondent No. 7 to make over the responsibility of the Teacher-in-Charge in favour of Shri Mahabir Prasad Jain has formed the subject matter before the Hon'ble Trial Court in connection with W.P. No. 23673(W) of 2010. It was on the premises that the same was done in an ex parte fashion without giving an opportunity of hearing and without following the relevant rules.

2. Shri Bhattacharya, who has assailed the order of the Hon'ble Single Judge passed on 08/12/2010 in this Appeal, has mainly submitted since the Respondent No. 7 was simply Teacher-in-Charge, he did not have any indefeasible right on the said post. He was found guilty of some irregularities, for which the Managing Committee has absolved him from the said responsibility and put in Shri Mahabir Prasad Jain in his place. According to Shri Bhattacharya, neither this can be termed as removal or suspension so as to attract the procedures as known to Rule 28 of the Management Rules.

3. Shri Bhattacharya has placed before us in minute details, the entire aspect of the issue relating to the appointment of the Respondent No. 7 and his

subsequent change to the post of Assistant Teacher. He has shown from Page 64 of the Stay Petition that notice of the meeting was duly received by him but as he did not attend unanimous resolution was taken keeping in mind his past conduct.

4. He also referred to Page 62 and 63 of the Stay Petition to show how the Respondent No. 7 functioned as the Teacher-in-Charge when Registers, documents and various accounts of the expenditure were asked for but he, declined to part with the same.

5. Justifying the order of the Managing Committee Shri Bhattacharya has also shown from paragraph 48 to 50 that the appointment of the Respondent No. 7 by the previous Managing Committee on 25/03/2006 has been found to be absolutely illegal by the District Inspector of Schools (Respondent No. 4). He also submitted that order of the writ Court cannot be upheld more so when Shri M.P. Jain was not a party made by him.

6. Shri Bari for the Respondent No. 7 was of the view that with the change of the Managing Committee, all the trouble arose. Respondent No. 7 was a founder teacher and he had worked for several years and after improving his qualification, he would be completing 10 years of service in April 2011. As such, there was no difficulty for him to continue in the post as he has fulfilled all the requirements.

7. According to Shri Bari, in the event, as submitted by Shri Bhattacharya, there were allegations against Respondent No. 7, why no proceeding was initiated against him by the Managing Committee and without following the regulations he was removed from the post, which was absolutely illegal.

8. Shri Bari submitted that since there was no relief claimed against Shri Mahabir Prasad Jain, he was not made a necessary party.

9. Referring to the finding of the Respondent No. 4 to the effect that the previous Managing Committee's appointment of the Respondent No. 7 was highly illegal, Shri Bari submitted that the same is subject matter in another Writ Application.

10. He has prayed for dismissing the Appeal.

11. On the other hand Shri Samanta for the State Respondent contended before us that any Managing Committee resolution should be with the prior approval of the Board; otherwise, it would be illegal.

12. Shri Samanta further submitted that in the absence of any charge sheet or disciplinary proceeding, the removal of the Respondent No. 7 from his post cannot be approved. He also submitted that the resolution communicated through the Secretary cannot be taken as the view of the entire Managing Committee but it can simply be termed as individual opinion of the Secretary concerned.

13. He submitted that in the absence of proof of the allegations against

Respondent No. 7 and that too without giving him an opportunity of hearing the decision taken by the Managing Committee was improper.

14. Even though the matter was heard at great length with lengthy submissions being made both by Shri Bhattacharya and Shri Bari as well as Shri Samanta, we feel that the issue involved here can be put in a very narrow sphere. It has to be short and simple.

15. It is the admitted position that the Respondent No. 7 was functioning as a Teacher-in-Charge. It is also to be noticed that one, Md. Aftabuddin, who was senior than Respondent No. 7, did not figure as the Teacher-in-Charge by the previous Managing Committee, although it should have been so.

16. Be that as it may, we feel there is substance in the submission of Shri Bhattacharya to the effect that the Managing Committee after having found some allegations, has withdrawn the powers of Teacher-in-Charge from Respondent No. 7 and had inducted Mahabir Prasad Jain. It may be the opinion of the Managing Committee not to proceed against the Respondent No. 7 even if there were some allegations. Nothing more can be read into the same so as to impute any intention.

17. The post of a Teacher-in-Charge is not a substantive post. It is simply a stop-gap arrangement till such time a regular Headmaster is either appointed or recruited. A person working as a Teacher-in-Charge cannot have any indefeasible right to continue in the said post. Rightly, the District Inspector of Schools (Respondent No. 4) has found that the appointment given by the earlier Managing Committee on 25/03/2006 -

....is very much illegal as the Managing Committee has no power to recommended any body to a specific teaching post avoiding the concerned School Service Commission." (SEE: Memo No. 635/ 1(3)/089-L.S./2007-ISL at Page 50 of the Stay Petition).

18. We have carefully considered the entire materials. It has been borne out from the same that Respondent No. 7 was working as a Teacher-in-Charge. It has also found that one Md. Aftabuddin, another Assistant Teacher, was senior to Respondent No. 7. Although, Shri Bari has submitted that both, Respondent No. 7 and Md. Aftabuddin were approved by the District Inspector on 31/05/2004, as such one cannot be said to be senior to the other which we find, has no substance.

19. Shri Bari has submitted that the resolution was illegal as no notice was served upon him, which we find is not correct as pointed out by Shri Bhattacharya. The said point before the Writ Court has to be accordingly dealt with. As the Managing Committee was within its capacity to have shifted Respondent No. 7 from his duties as Teacher-in-Charge, which does not entail an order of punishment or removal of service or even suspension question of following Rule 28 of the Management Rules does not, at all arise. It was a

temporary assignment and withdrawal of the same would not result in affectation of the right or pay and allowances of the Respondent No. 7, who remains as Assistant Teacher.

20. Accordingly, we find no merit in the argument of Shri Bari, while on the other hand we accept the contentions raised by Shri Bhattacharya.

21. Since we had gone into the preliminary issue of the matter, we have not entered into the other of the matter. Likewise the decisions referred at the Bar are also not required for discussion.

22. The Appeal was heard by us for several hours. The decision that we have arrived at, would leave nothing left, both in the Appeal as well as in the Writ Petition. The interim order passed therein stand set aside.

23. Accordingly, by way of withdrawing the Writ Petition, we would simultaneously dispose of the same along with the Appeal by way of affirming the order passed by the Managing Committee on 23/11/2010.

24. Appeal stands allowed. No order as to costs.

P.K. Dey, J.-I agree.

Later:

After this judgment was pronounced in Court in presence of counsel of either side, a prayer for stay was made. The same was opposed on behalf of the Appellants.

In our view, since our decision is on the basis of the settled position which we have discussed hereinabove and furthermore in the event stay is granted then the delay which has occasioned on account of the dispute with regard to the shifting of the teacher in charge would not be in higher interest of the Institution.

Accordingly, the prayer for stay is refused.