

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Aug-12-2016

Judge : Shivakant Prasad

Appellant : Appellant

Respondent : Respondent

Judgement :

IN THE HIGH COURT AT CALCUTTA CONSTITUTIONAL WRIT JURISDICTION ORIGINAL SIDE Present: The Honble Justice Shivakant Prasad W.P.No.984 of 2015 Vinod Kumar Tiwari -Vs.- The State of West Bengal & ORS.For the petitioner : Mr.Sunil Kumar Chakraborty For the Respondent Nos.4, 6 & 7 : Mr.Kishore Dutta Mr.T.M.Siddiqui Mr.S.Siddiqui Mr.Azim Md.Sabir For the Respondent Nos.2 & 3 : MRS.Arunima Lala Heard on : 28.07.2016 C.A.V.on : 28.07.2016 Judgment on : 12.08.2016 SHIVAKANT PRASAD, J.

The petitioner has challenged the suspension order from the post of Assistant Teacher in Saifee Gonden Jubilee English Public School, Kolkata with effect from 04.9.

2013 followed by a showcause notice culminating in dismissal of the petitioner from the said post on 06.8.2014.

Chronological events leading to the instant application is that the writ petitioners initial appointment on probation as a Commerce Teacher in XI and XII Classes

under CISC (Council for the Indian School Certificate Examination) on 13.02.1995 in Saifee Golden Jubilee English Public School, Kolkata (hereinafter referred to as the said School) ultimately culminated in the confirmation of the service of the petitioner as a permanent teacher in Accounts and Commerce subjects in the said School on 30.04.1997.

The petitioner left no stone unturned to impart education to students with utmost devotion and dedication drawing appreciation from many a corner and elevating himself to be an examiner in ISC (Indian School Certificate Examination). Examination, 2009, Examination for centralized marking of script of ISC 2010 and 2011.

The said School is recognized dually by the West Bengal Board of Secondary Education up to Class X level only and the Classes X, are also affiliated to the Council for Indian School Certificate Examination and Classes XI and XII are only affiliated to the Council for Indian School Examination, with due recognition of the Education Department, Government of West Bengal as a listed School under the Code of Anglo Indian Education vide Memo No.S/611 dated 08.12.1978 and Memo No.666-Edn(S)/35-39/77 dated 04/-6.09.1980 issued by the Secretary, West Bengal Board of Secondary Education and Deputy Secretary, Education Department, Government of West Bengal and that in tripartite agreements dated 20.8.1986 and 07.07.1987 it was held that the management of the said School will follow the service conditions as prescribed by WBBSE applicable to the teachers governed by WBBSE Act.

The petitioner asked the School Authority as to why his provident fund was not deducted and deposited from the date of his appointment in the said School on 13.02.1995 instead of his date of confirmation on 30.04.1997 and as he insisted of his date of confirmation on 30.04.1997 and as he insisted on the School Authority on deducting enhanced Employees Contribution to provident fund admissible as per law and pointed out their unjust and illegal way of running the School, issuing unlawful notices, charging exorbitant fees from the students of minority community etc., the authority of the said School without amending their wrongs turned hostile against the petitioner so much so that on 04.09.2013 at their instigation the

petitioner was assaulted and threatened with dire consequences by a student of the School namely Ajmal Farid Ismail and his outsider associates at a bye lane close to the School premises succumbing the petitioner to serious injuries for which the petitioner rushed to Calcutta Medical College and Hospital for treatment and lodged a complaint before Park Street Police Station which gave rise to GR No.4268/13 now being pending in the Court of learned 9th Metropolitan Magistrate Court at Kolkata.

The petitioner received a purported order of suspension against the petitioner suspending the petitioner from the service of Assistant Teacher in that School with effect from 05.09.2013 and against the said order of suspension the petitioner preferred an appeal before the Appellate Authority of the West Bengal Board and the Appellate Authority held that the order of suspension has no force at all for not being approved by the Board and by its order dated 10.04.2014 directed the respondent School authority to withdraw the order of suspension and to reinstate the petitioner immediately.

The said School thereafter filed a writ application being WP No.12046(W) of 2014 impleading the petitioner as Respondent No.10 before this Honble Court challenging the said order of Appellate Authority and by an order dated 22.04.2014 Single Bench of this Honble Court was pleased to quash the order dated 10.04.2014 passed by the Appellate Authority of the West Bengal Board of Secondary Education disposing of the said writ petition with an observation This Order will not stand in the way of taking steps against the respondent No.10 in accordance with law so far as the order of suspension under reference is concerned. In the wake of such a situation the petitioner preferred an appeal challenging the order of his suspension before the Chief Executive and Secretary of the Council for Indian School Certificate Examinations on 28.04.2014 but through a letter dated 23.05.2014 the Chief Executive and Secretary of the Council for the Indian School Certificate Examinations returned the appeal on the ground that the Council does not have jurisdiction to decide the appeal preferred by the petitioner.

The petitioner in a state of utter dismay and despair finding no other alternative preferred two writ applications before this Honble Court being W.P.No.476(W) of 2014 and W.P.No.517(W) of 2014 but both the writ petitioners were dismissed for technical reasons.

The petitioner then preferred an appeal before the Chairman and MIC, Education (S.E.and H.E.).State Board for Anglo-Indian Education, West Bengal on 23.06.2014 challenging the order of suspension and requested for the formation of an Arbitration Committee as per Section 24(f) of the Code of Regulations for AngloIndian and other listed Schools, 1993 (the said Appeal was numbered as 10N512013 but no justice has been meted out to the petitioner as yet.

The issues raised before this Court is as to whether the writ in the nature of mandamus commanding the respondent authority mainly the respondent Nos.4, 5, 6 and 7 can be issued against them in the context of the case of the petitioner.

The petitioner moved this writ petition inter alia on the grounds that the petitioners suspension and the initiation of Disciplinary Proceedings against the petitioner is void ab initio as nowhere in the order of suspension there is a mention of provision of Rules to be exercised.

In spite of the petitioners prayer in his Supplementary Statement of Defence dated 06.03.2014 the same has not been provided to the petitioner making the entire process to be a gross abuse of law and liable to be set aside for the sake of fair play and justice.

It is contended that the petitioners suspension from the service of the Commerce Teacher in Class-XI and XII of the said listed School under the Code of Anglo Indian Education is bad in law as it has not been done as per the provisions of Regulation 25 of the Code of Regulations for Anglo Indian and other listed Schools, 1993.

It is also contended that the entire Disciplinary Proceedings against the petitioner inflicting the major penalty of dismissal of the petitioners service is bad in law inasmuch as it is not in conformity with the Regulation 24 of the Code of

Regulations for Anglo Indian and other listed Schools, 1993.

The administrative and academic head i.e.the Principal of the said School has only the authority as per the statute to suspend and frame charges against a staff and as per the statute he is the persona designate upon whom this power is vested and not to any other person or persons but so far the petitioners case is concerned such power has been illegally exercised by a stranger who is not at all armed with such an authority and, therefore, the entire proceedings against the petitioner is liable to be quashed.

It is further submitted that even assuming but not admitting that the suspension and the Disciplinary Proceedings initiated against the petitioner has been done by the appropriate authority still it smacks of gross illegality and/or irregularity inasmuch as no approval of the competent authority was obtained and by not supplying all documents and the Service Rules and by not granting time to the petitioner the Enquiry Officer passed the ex parte report violating the principles of natural justice.

Admittedly, the petitioner was appointed on 13.02.1995 by the respondent School as a commerce teacher whose service was confirmed on 30.4.1997.

On 04.9.2013 an order of suspension against the petitioner was issued on usual terms for subsistence allowance.

The Deputy Secretary (West Bengal Board of Secondary Education) by its Memo No.26/G/1(Appeal) dated 11.4.2014 forwarded decision of the Appeal Committee of the Board taken on 10.4.2014 addressed to the Secretary of the respondent School which reflects that the officer in power under Section 50(i)(b) proviso of the West Bengal Board of Secondary Education Act, 1963 allowed the appeal being No.12/13 preferred by withdrawing the order of suspension against the writ petitioner by the School Authority and directed the School Authority to reinstate the appellant in the School immediately with the observation that the School is under the Board and it has to abide by the norms to the Management Rules but the School Authority did not seek approval from the Board as required under Management Rules 28(9)(vii)(a) with further findings that the order of suspension

has no force at all.

The said order of the Board was assailed by the respondent School in W.P.No.12046(W) of 2014 in which the present writ petitioner was arraigned as respondent No.10 which was disposed of with a finding that West Bengal Board of Secondary Education had no jurisdiction in accordance with law to pass the impugned order withdrawing the suspension order passed by the School Authority and the same was quashed and the said order cannot stand in the way of taking steps in accordance with law so far as the order of suspension under reference was concerned.

The Chief Executive and Secretary of Council for the Indian School Certificate Examination by its letter dated May 23, 2014 informed the writ petitioner to the following effect: The rules and regulations of schools affiliated to the West Bengal Board of Secondary Education and those of the Council are different.

Under the rules and regulations of the Council an appeal from an order passed by any school affiliated to the Council does not lie to the Council.

In case a school has an appellate forum and appeal may be preferred thereto, if so advised.

In the event the School does not have any appellate Forum, you may take steps, if you so desire in accordance with law. It reflects from the show cause notice dated 17.10.2013 that allegations of misconduct have been levelled against the petitioner.

According to the Authority of the School, petitioner had failed to perform his duty as a teacher and that both the students and their parents as well as the Management Committee of the School made allegations for not taking classes as required by the School curriculum and instead spending time doing unnecessary things during class hours and accordingly, the School Authority proposed for appropriate disciplinary action against the petitioner.

The said show cause notice was replied by the petitioner on 24.10.2013 wherein he appealed that there was no logical reason to keep him suspended or to take

disciplinary action against him.

On 3rd January, 2014 the School Authority framed 13 Nos. of Article of Charges and framed charges thereof communicating the same to the petitioner calling upon him to face disciplinary action.

Statement of defence was submitted by the petitioner and the School Authority in compliance of principle of natural justice supplied all the documents relied upon in the charge-sheet to the petitioner to be used for the disciplinary proceeding.

The departmental proceeding was conducted by Sufian Aktak Khan, Enquiry Officer appointed by the School Authority and the petitioner requested the Enquiry Officer by his letter dated 14.5.2014 to refrain himself from proceeding ex parte against the petitioner and prayed for six weeks adjournment as he wanted an equal opportunity for participation.

The Enquiry Officer by his letter dated 15th May, 2014 fixed the date on 20th May, 2014 at 3.00 P.M. for the enquiry intimating that due to his absence on 14.5.2014, the enquiry was being conducted ex parte.

The School Authority by its letter dated 21st July, 2014 gave a notice to the petitioner intimating that Enquiry Officer completed the enquiry on all the charges levelled against him and the report was submitted on 17.7.2014 and before taking a final decision on the basis of findings of the Enquiry Officer, a copy of the said enquiry report was forwarded to the petitioner for his perusal and he was requested to submit further the statement of defence if any to the Authority of the School within seven days from the date of receipt otherwise Management of the School would take final decision in the matter after giving due consideration to the findings of Enquiry Officer as well as the statement of defence.

Instead of submitting the reply to the said notice of the Authority of the School, the petitioner wrote to the Managing Committee of the School on 25.7.2014 to take note of the statement of defence in its proper form and in appropriate manner in accordance with law and prayed before the Authority to follow the principle of natural justice equally and fair play by supplying material supporting documents

and to refrain from any adverse decision in the matter without giving him an equal and fair opportunity who served the institution on and from 14.02.1995 till date.

School Authority by its letter dated 6th August, 2014 intimated its decision with the order of dismissal of the petitioner from the post of teacher of the respondent School with immediate effect on the count that the management after giving due consideration to the letter dated 25.7.2014 of the petitioner vis-a-vis the enquiry report concluded that he had not advanced any defence to refute the charges levelled against him and that his continuance in the service would be detrimental to the interest of the School.

It is contended on behalf of the petitioner that he had prayed for defence assistance by employment of a lawyer but his prayer was not considered.

It is a principle of law that where a party had the right to appear in person at an administrative hearing, he might also have the right to be represented by a lawyer or by a spokesman of his own choice.

In *Pett.V.Greyhound Racing Association Limited*, LORD DENNING, M.R.observed- Once it is seen that a man has the right to appear by an agent, then I see no reason why that agent should not be a lawyer.

It is not everyman who has the ability to defend himself on his own.

He cannot bring out the points in his own favour or the weakness in the other side.

He may be tongue -tied or nervous, confused or wanting in intelligence.

He cannot examine or cross-examine witness.

We see it every day....If, justice is to be done, he ought to have the help or someone to speak for him.

And who better than a lawyer who has been trained for the task?.

I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth.

He also has a right to speak by counsel or solicitor. But the record reveals that the petitioner did not appear thereafter.

It would appear that he was given opportunity even at the stage of proposing punishment after enquiry that the same was not duly challenged before the authority.

It is axiomatic from the petition itself that the order of dismissal has not been challenged in this writ application, however, writ Court can modify the relief if available to the petitioner in the interest of justice, but it reflects from the materials on record that the petitioner did not participate in the proceeding of enquiry inspite of opportunity given to him.

The statement of defence submitted by the petitioner appears to have been considered by the Enquiry Officer and so also by the competent authority who ultimately issued the order of dismissal.

This Court does not find any statutory rule to enforce the respondent school authority of an Anglo Indian School to enforce such rules against them by setting aside the order of dismissal as I find that the principle of natural justice was adhered to by the respondent authorities by providing reasonable opportunity to the petitioner and for that reason, writ application is liable to be dismissed as no writ of mandamus can be issued against the School Authority moreso, the report of the Enquiry Officer reflects that the petitioner himself admitted certain charges levelled against him.

However, the School Authority may reconsider the case of the petitioner for his reinstatement on sympathetic ground for admittedly having rendered his services to the institution by imparting education to students for about 18 years bearing in mind that charges levelled against the petitioner are in substance minor charges and for that the School Authority may consider the punishment awarded against him afresh.

Thus, this writ application is disposed of, however, without any order as to costs.

Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SHIVAKANT PRASAD, J.)

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