

In Re: Chandidas Ghosh

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Court : Kolkata

Decided On : May-10-1982

Reported in : AIR1982Cal305,86CWN803

Judge : B.C. Ray, J.

Acts : [West Bengal Board of Secondary Education Act, 1963](#) - Sections 24, 28(2) and 28(8); ;West Bengal Board of Secondary Education (Amendment) Act, 1979

Appellant : In Re: Chandidas Ghosh

Advocate for Def. : A.P. Sircar and ;A.N. Banerjee, Advs.

Advocate for Pet/Ap. : H. Chakraborty and ;H. Barua, Advs.;J.K. Banerjee, Adv.

Disposition : Petition allowed

Judgement :

ORDER

B.C. Ray, J.

1. A short question though, of course, of point of law is involved in this application namely whether the approval that has been accorded by the president of the West Bengal Board of Secondary Education as communicated by the letter of the Secretary of the Board of Secondary Education on 19-8-81 to the Secretary, Managing Committee of Uttar Fulsara Jr. High School in the District of 24

Parganas for terminating the service of the petitioner who is the headmaster of the said school is in accordance with law and is sustainable.

2. Mr. Sircar, learned Advocate appearing on behalf of the West Bengal Board of Secondary Education, has in his usual frankness candidly placed before this Court the records of the Board including the order passed by the president of the Board on 4-8-81'. It appears from the said order that the President of the Board after considering the relevant papers including the explanation submitted by the teacher and also the recommendation of the committee proposing the action to be taken against the petitioner, the delinquent employee, the President passed an order to the effect that as all the steps have been taken by the managing committee of the school in accordance with the procedure prescribed by Rule 28 (8) of the Rules for Management of Non-Government Institutions (Aided and Unaided), 1969 the President therefore approves of the proposed action of the committee to pass the order of termination of the petitioner from service as proposed by them. It has been further stated that this matter will be in due time reported to the meeting of the Board. This order was made on 4-8-81. Thereafter on a misappreciation of the provisions of the Act and the Rules this matter was placed in the meeting of the committee which was constituted by the Board u/s. 24 of the West Bengal Secondary Education Act, 1963 to whom the Board delegated its power and functions conferred on it by Rule 28 (8) instead of placing the matter before the meeting of the Board as required under the provisions of Section 28 (2) as substituted by Section 16 (2) of the Act of 1979. Therefore this step taken by the President of the Board by placing the matter before the committee constituted under Section 24 of the Act is not in accordance with law. The real position in law is that the power to accord approval of the disciplinary proceedings that are initiated against a teacher of a school under the West Bengal Board of Secondary Education is vested in the Board i.e. the Board of Secondary Education, West Bengal. This has been clearly provided for in Rule 28 (8) of the Rules for Management of Non-Govt. Institutions (Aided and Unaided), 1969 as amended in 1979. The Board may either exercise this power itself or it may delegate it to any committee constituted under the provisions of Section 24 of the said Act. Section 24, as I have stated hereinbefore, clearly confers power on the Board with the approval of the State Govt. to constitute such other committee as the Board may

think fit and the Board with the approval of the State Govt. may delegate to any such committee any of its powers or functions including the power conferred by Rule 28 (8) of the said Rules. Therefore if a committee has been vested with the power of the Board conferred on it under Rule 28 (8) of the Rules by the Board then in that case such committee is quite competent to consider the papers of the relevant proceedings initiated by the managing committee of the school against members of the teaching and non-teaching staff and can accord the approval. This is one way of exercising the power conferred by Rule 28 (8) of the said Rules. In case where the Board has not for some reason or other been able to exercise this power either by itself or through a committee constituted with the approval of the State Govt. by delegating its power to the committee the President has been empowered under Section 28 of the said Act to exercise the powers of the Board in case there is an emergency or in other words to meet an emergent situation and in that case immediately after exercise of such power of the Board the President shall have to place a full report before the Board of the action taken by him stating the reasons therefor. These are the two modes or ways provided in the Act and the Rules laid down thereunder for exercising the powers of the Board. There is no other third method for exercising such power as conferred by Rule 28 (8) of the said Rules. In this case as I have stated hereinbefore that the president after exercising his emergency powers u/s. 28 (2) of the said Act has instead of placing the matter with his report stating the reasons for the exercise of such power before the next meeting of the Board has placed the matter before a committee constituted under Section 24 of the said Act to which power of the Board has been delegated under proviso to Sub-rule (8) of Rule 28 of the said Rules. Therefore this is not in accordance with the provisions of the said rules and as such it cannot be sustained. This might have been due to a mis-apprehension or misconception of the legal position with regard to this matter.

3. In these circumstances it is just and proper to quash and set aside the order of the President of the Board dated 4-8-1381' and to direct the Board since a committee has been constituted according to the provisions of Section 24 and powers of the Board under Rule 28 (8) have been delegated to that committee to place all the relevant papers and also the proposed action against the delinquent employee i.e. the petitioner before that committee which will consider and dispose

of the same by either granting or refusing to grant or accord approval for taking the action proposed against the petitioner in accordance with the provisions of Rule 28 (8) of the Rules. It is also directed since the matter is pending for a long time that the committee will consider and dispose of the matter as early as possible preferably within a period of eight weeks from today.

4. Let a writ of certiorari be issued directing the respondents to set aside and/ or cancel the impugned order of the President dated 4-8-81 as communicated by the letter of the Secretary dated 19-8-81 and to reconsider the matter as directed hereinbefore. The application is therefore allowed to the extent indicated above without any order as to costs. L/A for State may take a plain copy of this order as prayed for.

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