

Mamata Banerjee (Chatterjee) Vs. State of West Bengal and ors.

Mamata Banerjee (Chatterjee) Vs. State of West Bengal and ors.

SooperKanoon Citation : sooperkanoon.com/902894

Court : Kolkata

Decided On : Apr-21-2010

Judge : Dipankar Datta, J.

Acts : [West Bengal Board of Secondary Education Act, 1963](#) - Section 24;
;Management Rules, 1969 - Rule 28, 28(8) and 28(9)

Appeal No. : W.P. 7257 (W) of 2007

Appellant : Mamata Banerjee (Chatterjee)

Respondent : State of West Bengal and ors.

Advocate for Def. : Bhudev Bhattacharjee, Sr. Adv.; Kallol Bose, Adv.; Chame

Advocate for Pet/Ap. : K.K. Moitra, Sr. Adv.; Arup Lahiri;; Samapti Chatterjee

Judgement :

Dipankar Datta, J.

1. The petitioner was the Headmistress of Monimala Girls High School, Asansol (hereafter the school). She has been dismissed from service by an order dated 10.2.2007 issued by the Secretary of the managing committee of the school. Challenge in the present petition is to the order of dismissal.

2. I consider it appropriate to give a composite picture of the facts giving rise to the present petition.
3. The managing committee of the school in its meeting conducted on 4.10.2005 resolved to initiate disciplinary proceedings against the petitioner. Accordingly, charge sheet dated 5.10.2005 was duly served on her. The charges, inter alia, related to neglect of the petitioner (being the ex-officio Joint Secretary of the managing committee of the school) to attend meetings despite being put on notice, non-cooperation with the managing committee, insubordination, behaviour unbecoming of a Headmistress, violation of Management Rules, 1969, acting in a manner detrimental to the interest of the school in general and the students in particular, etc.
4. The charge-sheet was challenged by the petitioner by filing a writ petition before this Court. Since steps to prosecute the writ petition were not taken, it was de-listed. The petitioner subsequently showed no inclination to have the writ petition decided and the same is reportedly pending.
5. The school had, by its letter dated 31.12.2005, forwarded its proposal to initiate disciplinary proceedings against the petitioner for approval of the West Bengal Board of Secondary Education (hereafter the Board). By memo dated 30.6.2006, the Deputy Secretary (Admn.) of the Board conveyed the decision of the committee constituted under Section 24 of the [West Bengal Board of Secondary Education Act, 1963](#) (hereafter the Act) approving the proposal of the school to initiate disciplinary proceedings against the petitioner, provided there is no contrary order of the Hon'ble Court.
6. Since the petitioner had denied and disputed the allegations contained in the charge-sheet by filing a reply dated 12.12.2005, the managing committee of the school in an emergent meeting conducted on 6.5.2006 decided to appoint one Sri K.S. Bhattacharya as the enquiry officer to conduct enquiry. It is the version of the school that decision to appoint Sri Bhattacharya as the enquiry officer was conveyed by the President of the managing committee vide letter dated 14.6.2006 to the petitioner, but she did not receive the same. Per contra, the petitioner's version is that no attempt was made to serve such letter on her.

7. It is the further claim of the school that despite service of notices dated 13.7.2006 and 25.7.2006 issued by the enquiry officer to attend enquiry on 25.7.2006 and 26.7.2006 respectively, the petitioner did not appear before him. The answer of the petitioner appears to be that she was of the impression that appointment of the enquiry officer needs to be approved by the District Inspector of Schools (SE), Burdwan (hereafter the DIOs) and since no approval was accorded by him, the enquiry was non-est. This view I hold on the basis of appreciation of the petitioner's letter dated 25.7.2006 addressed to the DIOs.

8. The enquiry officer appears to have conducted enquiry on 11.7.2006 (1st sitting), 25.7.2006 (2nd and 3rd sittings) and 26.7.2006 (4th and 5th sittings). The 1st sitting on 26.7.2006 i.e. the 4th sitting commenced from 2 p.m. and continued till 4.00 p.m. while the second sitting i.e. the 5th sitting, which commenced from 4.00 p.m. terminated at 5.15 p.m. On 26.7.2006, during the 2nd sitting, 10 (ten) members of the managing committee appeared before the enquiry officer and answered the questions posed by him. The presence of the members has been recorded in the minutes of proceedings drawn up immediately thereafter.

9. The managing committee of the school had convened a meeting on 26.7.2006 itself at 4.30 p.m. The said meeting was attended by 15 (fifteen) members. It appears from the records produced before me on behalf of the school that 10 (ten) members of the managing committee, present in such meeting at 4.30 p.m., were simultaneously present before the enquiry officer on 26.7.2006 between 4 p.m. and 5.15 p.m. when the 5th sitting in all and the 2nd sitting of 26.7.2006 was in progress. The letter received from the Board dated 30.6.2006 referred to above was considered by the members of the managing committee in such meeting. They noted that the Board had approved initiation of disciplinary proceedings against the petitioner under Rule 28 of the Management Rules. Upon meticulous discussion, the members unanimously resolved to issue show cause notice to the petitioner asking her to explain as to why she shall not be dismissed from service within 15 days from date of receipt thereof. It was further resolved to enclose with the said show cause notice attested copy of the resolution adopted by the managing committee on 26.7.2006 together with the Board's letter dated 30.6.2006.

10. The incidents narrated in the preceding two paragraphs are of some relevance and I intend to discuss it in some details at a later stage of this judgment.
11. The consequence of such resolution dated 26.7.2006 was that a notice dated 29.7.2006 was issued by the Secretary of the school asking the petitioner to show cause within 15 (fifteen) days from date of receipt thereof why she shall not be dismissed from service on the basis of the charges framed in the charge sheet dated 5.10.2005.
12. In the meantime, however, on 27.7.2006, the enquiry officer submitted his report holding that all the charges levelled against the petitioner stood established. Immediately thereafter, the Secretary of the school vide letter dated 28.7.2006 sought to forward to the petitioner the report of enquiry submitted by the enquiry officer inviting her comments thereon for consideration by the appropriate authority. The letter was sought to be accompanied by the charge sheet, the enquiry proceedings consisting of twelve pages, findings with reasons and the final report spread over five pages and three pages respectively.
13. Therefore, the position that emerges is that although on the one hand the petitioner was asked vide notice dated 29.7.2006 to show cause why she shall not be dismissed from service (without consideration of the report of enquiry by the managing committee which, as on 26.7.2006, did not even see the light of the day since it was not even made ready by the enquiry officer), vide letter dated 28.7.2006 she was invited to give her comments against the report of the enquiry officer.
14. Admittedly, the enquiry report was not sent to the petitioner by registered post. It was sought to be tendered to her through peon book on 28.7.2006. It is the claim of the school that when tendered through peon book by Sri Krishna Bahadur, peon of the school, the petitioner refused to accept it. Endorsement to this effect was made by the said peon in the peon book. Because of refusal of the petitioner to receive the enquiry report, the same was dispatched to her under certificate of posting on 28.7.2006 itself. The petitioner, it is noted, has denied having refused to accept the enquiry report when tendered by the peon or having received the same by post.

15. The petitioner after receipt of the show cause notice dated 29.7.2006 replied thereto by her letter dated 14.8.2006. According to her, it was issued with motivated purpose of harassing her by-passing all procedural safeguards.

16. Challenging the Board's letter dated 30.6.2006 and the show cause notice dated 29.7.2006, the petitioner had approached the Writ Court once again. By an order dated 1.9.2006, a learned judge of this Court did not see reason to interfere since at that moment 'the entire matter was pending decision before the Board, being the appropriate authority to consider the question of approving the decision of the disciplinary authority to initiate disciplinary proceeding i.e. to issue the second show cause notice proposing punishment.' The writ petition was, accordingly, dismissed.

17. The managing committee of the school conducted a meeting on 25.8.2006 for considering the reply of the petitioner to the show cause notice dated 29.7.2006. It was unanimously resolved that her reply was not acceptable at all. Accordingly, the Secretary of the school by his letter dated 28.8.2006 forwarded all the related documents of the disciplinary proceedings for final approval of dismissal of the petitioner from service to the Secretary of the Board.

18. Even after sending the proposal to dismiss the petitioner from service on finding her explanation to the show cause notice unacceptable, the Secretary of the school appears to have issued a further show cause notice dated 12.10.2006. The petitioner was called upon to reply within 15 (fifteen) days why she shall not be dismissed from service. This notice was again sought to be served through peon book and the petitioner, allegedly, had refused to accept it. The notice was also dispatched under certificate of posting. The petitioner has denied having been approached to accept service through peon book or having received the notice, dispatched under certificate of posting.

19. The school has failed to explain why and under which provision the notice dated 12.10.2006 was issued and sought to be served on the petitioner when admittedly all the records had been forwarded to the Board on 28.8.2006 for its approval..

20. By memo dated 22.1.2007, the Deputy Secretary (Admn.) of the Board conveyed to the school the decision of the committee constituted under Section 24 of the Act, taken in its meeting held on 12.12.2006. The concluding two paragraphs of the letter read as follows:

The committee constituted under Section 24 of the Act finds that the papers submitted by the school authorities are more or less in order in regard to this matter. Further the committee holds that Smt. Banerjee has been offered proper and repeated opportunity of being heard by the enquiry committee of the school but she failed to meet up the requirement of the situation for reasons best known to her. Along with this the committee also takes note of the fact that Smt. Banerjee did not receive the letter for appearing in a hearing before the President of WBBSE nor she appeared in the relevant hearing.

Considering all the aspects of the case, the papers on record, opinion of the enquiry committee, the report of the MC and the indifference of the Headmistress to appear before the enquiry committee to present her the committee constituted under Section 24 approves the proposal of the MC for dismissal of the Headmistress Smt. Mamata Banerjee, provided, there is no contrary order of the Hon'ble Court.

21. It was pursuant to receipt of such communication that final order of dismissal was issued, as referred to above and the petitioner's service terminated.

22. I have heard Mr. Moitra, learned senior advocate for the petitioner, Mr. Bhattacharya, learned senior advocate for the State, Mr. Bose, learned advocate for the Board and Ms. Mazumder, learned advocate for the school.

23. I have perused the records, in original and copy thereof, produced by Ms. Mazumder in terms of earlier direction. The copy records shall be retained with the records.

24. I have no hesitation in my mind to record that disciplinary proceedings conducted against the petitioner were in clear breach of the statutory rule regulating such proceedings viz. Rule 28(8) of the Management Rules and

consequently the order of dismissal based on such disciplinary proceedings is indefensible. The reasons in support of reaching the aforesaid conclusion are discussed below.

25. Rule 28(8) of the Management Rules regulates the procedure for drawing up and conducting disciplinary proceedings to penalize a teacher/staff. The said sub-rule reads as follows:

28(8) Both in aided and unaided Institutions the Committee shall have the power, subject to the prior approval of the board, to remove or dismiss permanent or temporary teachers and other employees. For this purpose the Committee shall first draw up formal proceedings and issue charge-sheet to the teacher or the employee concerned and offer him reasonable facility for defending himself. The teacher or the employee proposed to be proceeded against shall submit his explanation, ordinarily, within a fortnight of the receipt of the charge-sheet. The Committee shall send to the Board all relevant papers including the charge-sheet, explanations submitted by the teacher or the employee concerned and the reasons for which the Committee decides in favour of taking disciplinary action. If the board considers that there are sufficient grounds for taking disciplinary action the Committee shall issue formal notice calling upon the teacher or the employee concerned to show cause, ordinarily within a fortnight why he should not be dismissed or removed from service. The Committee shall, then, send again to the Board all relevant papers including the explanation submitted by the teacher or the employee concerned and the recommendations of the Committee for the action proposed to be taken. So far as the Committee is concerned, the decision of the board shall be final:

Provided that the Board may delegate to any Committee constituted under Section 24 of the Act the powers and functions conferred on the Board by this sub-rule.

26. In a catena of decisions, it has been held by this Court that Rule 28(8) has not been happily drafted. I may only refer to the Division Bench decision of this Court reported in 1997 (2) CLJ 497 Sujit Kumar Das v. West Bengal Board of Secondary Education, in this regard.

27. I may also usefully refer to the Full Bench decision of this Court reported in 1999 (1) CHN 521 Arun Kumar Hait v. State of West Bengal and Ors., wherein Rule 28(8) was put under the judicial scanner and the Court upheld the action of the school concerned in appointing an enquiry officer for conducting enquiry into the charges levelled against the delinquent teacher although Rule 28(8) does not expressly make it obligatory for a school to appoint an enquiry officer. The Court read the requirement of appointment of an independent person to act as an enquiry officer in Rule 28(8) for ensuring a thoroughly fair and impartial enquiry.

28. It would appear that in terms of Rule 28(8), the approval of the Board has to be obtained at two stages. In my reading thereof together with the decisions in Sujit Kumar Das (supra) and Arun Kumar Hait (supra), the first stage of approval is reached when the managing committee of a school (i) commences disciplinary proceedings by issuing charge sheet, (ii) gives opportunity to the charge-sheeted teacher/staff to submit his reply thereto, (iii) holds an enquiry if the delinquent does not admit the charge, giving reasonable opportunity of defence to him, (iv) allows the delinquent opportunity to cross examine the prosecution witnesses and to produce witnesses in defence, (v) gives opportunity to the delinquent to offer his comments if the report of enquiry is adverse, (vi) independently arrives at a conclusion upon consideration of the materials on record regarding the guilt or innocence of the teacher/staff proceeded against, and (vii) then, after recording reasons, proceeds to submit proposal before the Board for initiating disciplinary action i.e. to inflict any of the penalties mentioned in the sub-rule.

29. The Board in terms of the decision of this Court reported in (2009) 4 CAL LT 572 (HC), Sri Maya Shankar Jha v. The State of West Bengal is required to give its decision either approving the proposal of the school intending to take disciplinary action or declining to grant approval based on proper consideration of the materials on record before it. The order of the Board/the committee constituted under Section 24 of the Act either approving the proposal or declining to approve the proposal must be supported with some reasons reflecting application of mind in respect of materials considered and conclusions reached. It is only when the Board approves the proposal of the school upon compliance with the aforesaid

formalities that the school is empowered under the law to initiate steps to take disciplinary action against the delinquent, meaning thereby to issue another notice (the second show cause) calling upon him to explain why the punishment proposed therein shall not be inflicted on him. It is only after the delinquent submits his explanation and the school concludes, recording reasons in support thereof, that the explanation is not satisfactory and hence unacceptable that the proposal of the school to punish the delinquent either by way of dismissal or removal or other penalty as mentioned in Sub-rule 8(a) of Rule 28 must reach the Board along with the related documents for its consideration to grant approval at the second stage. If the Board grants approval to the proposal to inflict punishment and records the reasons therefor and the said decision is conveyed to the school, the stage is reached for issuing the order of punishment. These procedural safeguards have been engrafted to ensure that a teacher/staff is not unnecessarily victimized by the employer school and that penal action that the employer seeks to take, prior to becoming effective, has the sanction of the Board.

30. In the facts of the present case, it is found that the school had sought for approval of the Board to initiate proceedings against the petitioner by letter dated 31.12.2005. The enquiry officer was not even appointed by then; he came to be appointed only after the resolution of the managing committee of the Board adopted on 6.5.2006. The committee constituted under Section 24 of the Act without applying its mind granted approval. Such approval, as has been observed in the order dated 1.9.2006 referred to above, was not at all required as, in His Lordship's words 'the question of approving the proposal would have arisen only after the enquiry was concluded and the enquiry report accompanied by proceedings of the enquiry were sent to the Board.' I share the view.

31. The approval which was required to be obtained from the Board at the first stage indisputably was not obtained. That, to my mind, is a serious defect in the proceedings conducted against the petitioner rendering it absolutely vitiated. It is surprising that the committee constituted under Section 24 of the Act overlooked that the approval from the Board at the first stage was not obtained by the school. Mr. Bose, in his usual fairness, did not support the action of the committee in granting approval at the second stage although approval at the first stage was

lacking. Grant of approval at the second stage without approval at the first stage is a gross jurisdictional error which has persuaded me to interfere despite the fact that the petitioner did not avail the statutory remedy of appeal before the Appeal Committee of the Board.

32. After days of lengthy hearing, Mrs. Mazumder had to concede that the school was confused consequent to the Board's letter dated 30.6.2006 approving the decision of the managing committee to initiate disciplinary proceedings against the petitioner for it felt that the same amounted to grant of approval at the first stage.

33. I could have direct the school to furnish to the Board the enquiry report and other related documents for obtaining approval of the Board at the first stage. However, having perused the minutes prepared by the enquiry officer while conducting enquiry and the other records that have been placed before me, I have noticed that the enquiry proceedings have been conducted in such a manner that the enquiry report itself requires interference by the Court of Writ for setting things right.

34. What I find inexplicable is the presence of 10 (ten) members of the managing committee before the enquiry officer in course of the 5th sitting from 4.00 p.m. to 5.15 p.m. simultaneously when the meeting of the managing committee dated 26.7.2006 was being conducted from 4.30 p.m. In such meeting, as noticed supra, even before the enquiry officer could submit his report to the managing committee, the members decided to issue notice against the petitioner calling upon her to show cause why she shall not be dismissed from service.

35. The enquiry officer recorded in the minutes of the 1st sitting that a separate room had been allotted to him for conducting enquiry. The venue of enquiry appears to be room No. 1, ground floor of the hostel building. The managing committee, it appears, held its meetings in the school premises. The exact venue is not ascertainable. However, past experience in respect of other schools is that meetings of the managing committee are conducted in the school building itself. Every school does not have a hostel like the school. Since there is nothing to the contrary on record, I shall assume that the school building was the venue. It does not appear from the minutes of meeting of the managing committee, conducted on

26.7.2006, that the said 10 (ten) members were intermittently present and shuttled between the school building and the hostel building and/or from one room to the other. The minutes recorded by the enquiry officer do seem to suggest that the said members were present before him right from start to finish. Most certainly, the same set of 10 (ten) members could not have been present at the same time at two different venues for transacting different business. These facts having surfaced in course of hearing on scrutiny of the records, Ms. Mazumder was called upon to explain the presence of the said members simultaneously in the meeting of the managing committee on the one hand and attend proceedings before the enquiry officer on the other. She could not offer any explanation and left the matter to my discretion for drawing inference. In the given facts and circumstances, I have no option but to hold that steps to proceed against the petitioner with the view to take disciplinary action appears to be tainted with gross irregularities warranting interference.

36. It further appears from the records that no presenting officer was appointed. The proceedings of enquiry do not record the questions posed by the enquiry officer to the members of the managing committee, guardians of students and others who appeared before him as witnesses. The proceedings, recorded in a register which was produced before me, do further seem to suggest that the witnesses were either inimical towards the petitioner or tutored and gave vent to their ill-feelings against her in a manner which only people wreaking vengeance would seem to do. One guardian of a student had even come to depose in course of the 1st sitting although the petitioner as well as the said witness had not been called upon to attend. I have also found from the records that the enquiry officer issued general circulars which were displayed on the notice board calling upon the guardians to attend the enquiry. That is not the way to summon witnesses. The enquiry officer ought to have realized that it is for the prosecution to bring before him those witnesses listed in the annexure to the charge sheet for driving home the charges against the delinquent. If name of any witness is not so listed but his presence is considered necessary, the permission of the enquiry officer ought to be obtained by the prosecution on notice to the delinquent. It could be true that the guardians as well as the staff and the members of the managing committee were not at all pleased with the way the petitioner functioned as Headmistress and,

therefore, the school was left with no other alternative but to initiate proceedings against her, nonetheless in my view a quasi-judicial enquiry ought to be conducted in accordance with settled legal principles and not in the manner it was conducted in the present case, which leaves room to conclude that a sense of biased attitude had prevailed over reason.

37. That apart, it seems highly unlikely that more than 100 (hundred) documents which were exhibited in course of enquiry could have been looked into with due application of mind by the enquiry officer after close of enquiry at 5.15 p.m. on 26.7.2006 and a report could be submitted on the following day in print. I do not for a moment suggest that it is an impossible task but considering the antecedents of the enquiry officer that are on record (he is an ex-Inspector of railway schools, ex-Secretary of Eastern Railway Girls' High School, Asansol, and a social worker associated with Red Cross Society) and without meaning any disrespect to him, I find it extremely difficult to accept that the 'findings with reasons' and 'final report' could be prepared overnight and submitted before the Secretary of the school on the day following close of enquiry together with a big broad-sheet tabulating the charges, the reply of the petitioner, the evidence adduced and the findings. All these sufficiently and clearly point towards conducting of enquiry against the petitioner in circumstances liable to be viewed with the deepest suspicion. Everything seems to have been fixed beforehand and the proceedings appear to have been initiated only to complete a mere formality.

38. I am not, however, inclined at this stage to enter into the controversy regarding the attempt of the school to serve the enquiry report on the petitioner and her alleged refusal since sending of the enquiry report to the petitioner on 28.7.2006 appears to be an infructuous exercise regard being had to the fact that the managing committee of the school without granting opportunity to her to persuade it not to act on the enquiry report had already resolved on 26.7.2006 to issue notice on her to explain why she shall not be dismissed from service. In view of the law declared by the Supreme Court in the decision reported in : (1993) 4 SCC 727 Managing Director, ECIL, Hyderabad v. B. Karunakar and Ors., the managing committee was obliged to await the comments of the petitioner against the enquiry report. However, the action of deciding to call upon the petitioner to show cause

why she shall not be dismissed from service and thereafter purporting to furnish the enquiry report to her seeking her comments thereagainst amounts to placing the cart before the horse.

39. I must place on record that initially I was of the view that the earlier writ petition having been dismissed, the points raised by Mr. Moitra in his attempt to demonstrate illegality in the process leading to issuance of the show cause notice dated 29.7.2006 were barred by res judicata. However, on a reading of the order dated 1.9.2006 in between lines over and over again, I am of the firm view that on account of the first day dismissal of the earlier petition, the Court did not have the occasion to examine whether the disciplinary proceedings had been conducted in accordance with law or not and it declined to interfere at that stage because the entire issue was pending before the Board. The Board faltered in overlooking the fact of non-grant of approval at the first stage, thereby making its decision absolutely vulnerable. This strikes at the very root of the final order of penalty and renders it non-est.

40. For the reasons as reflected above, I propose to interfere and I do consider that the present petition is not barred by res judicata or analogous principles.

41. Based on a flawed disciplinary proceedings, no final order can survive. I declare that the order of dismissal is unsustainable in law. The same consequently stands set aside. The enquiry proceedings and all subsequent proceedings till the order of dismissal also stand set aside.

42. The petitioner shall be entitled to reinstatement in service but for the limited purpose of completing the enquiry. The school shall be entitled to place her under suspension and if it chooses to suspend her, that would be in terms of this order and no formal approval of the Board in such case would be required under Rule 28(9)(viiia) of the Management Rules. The petitioner, however, shall be entitled to subsistence allowance in terms of provisions contained in Rule 28(9)(viiia). If the school chooses not to place the petitioner under suspension, she shall be allowed to discharge her duties and perform her functions as Headmistress and shall be entitled to pay and allowances according to law.

43. The school shall appoint an independent person having some experience of conducting domestic enquiry as enquiry officer. Service of Sri Bhattacharya shall not be utilized for such purpose. The petitioner shall be informed of appointment of the enquiry officer as well as dates of holding of enquiry against her by dispatching notices under registered post. She shall be entitled to reasonable opportunity of raising defence. Further proceedings shall be conducted strictly in accordance with the law declared by this Court in Arun Kumar Hait (supra), Sujit Kumar Das (supra) and Maya Shankar Jha (supra) and in the light of the observations made hereinbefore. The petitioner shall co-operate with the enquiry officer and not pray for unnecessary adjournments. Every effort must be made to conclude the enquiry within 6 (six) months from date of appointment of the enquiry officer.

The petitioner shall not be entitled to any back wages. Question of entitlement of back wages would, however, depend on the final result of the disciplinary proceedings to be conducted henceforth in terms of this order.

44. If, however, the petitioner is placed under suspension but the enquiry does not commence within three months from date of receipt of a copy of this order, the order of suspension shall lapse and the petitioner shall be allowed to resume her duty as Headmistress and entitled to service benefits according to law.

45. There shall be no order as to costs.

46. The records, in original, shall be returned to Ms. Mazumder or the learned advocate-on-record for the school by the Assistant Court Officer and a proper receipt be obtained.

47. Urgent photostat certified copy of the judgment and order shall be given to the applicants, if applied for, as early as possible.