Tapas Ranjan Bandopadhyay Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Aug. 23, 2001

Acts Referred: Burdwan University Act, 1981 â€" Section 21, 49, 50
Burdwan University Ordinances, 1984 â€" Ordinance 6
Constitution of India, 1950 â€" Article 226
West Bengal Services (Classification, Control and Appeal) Rules, 1971 â€" Rule 10

Citation: (2002) 1 CALLT 10

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Advocate: Saktinath Mukherjee, Saptangsu Basu and Soumik Muknerjee, for the Appellant; N.C. Bhatacharjee, for the Respondent

Final Decision: Dismissed

Judgement

A. Lala, J.
The petitioner is a lecturer in the Department of Metallurgical, Engineering College, Durgapur. Like other lecturers, the

petitioner was engaged for paper setting, University examination works, examining of answer scripts, scrutiny etc in the said Department both in

postgraduate and undergraduate level. According to the petitioner on 10th April, 1997 the authority concerned asked him to submit his option

regarding his appointment as paper setter and Examiner of the session 1996-97 for Bachelor of Engineering Examination of the University of

Burdwan. According, further to the petitioner, if he is willing to accept such appointment he will put the signature in the prescribed manner

Indicated in the counter foil of the letter of appointment and submit the same before the authority as a token of acceptance of such appointment.

The petitioner, by his letter dated 21st April, 1997 sought for some information about syllabus from the authority to enable him to exercise such

option. One professor R.N. Roy, Head Examiner of the paper setting addressed a letter to one Dr. P.V. Rama Rao, Teacher in Charge of the

Examination of the University of Burdwan requesting him to send clarifications on paper setting and examining on such basis. The petitioner did not

receive any reply. As a result whereof he was unable to exercise his option.

2. On 23rd July, 1997, after about three months from the letter of the petitioner, such teacher in charge withdrew the offer of appointment as

aforesaid dated 10th April, 1997 with the concurrence of the Vice Chancellor of the University of Burdwan. Surprisingly, on 6th August 1998, the

Principal of the College put the petitioner under suspension on contemplation of disciplinary proceeding. On 8h August, 1998 a memorandum of

Chargesheet had been issued by the principal incorporating therein that due to non-performance of duties of paper setter and Examiner he had

been held up for the disciplinary proceeding. One-man Enquiry Committee was formed wherein one Dr. S.P. Ghosh had been appointed as

Enquiring Authority and one Professor H.K. Dey Sarkar had been appointed as presenting officer.

3. According to the petitioner. One-man Enquiry Committee proceeded with the enquiry de hors the settled principles of law i.e. without due

compliance of natural justice, fair play and submitted a report to the Principal of the College. In turn, the Principal directed the petitioner to submit

a written statement of defence. Such written statement by way of defence was submitted. The petitioner took the aforesaid points therein. He had

further contended that the disciplinary proceeding is void ab-initio. He specified that the appointment of paper setter and Examiner etc. Is not

mandatory but optional subject to acceptance of the incumbent. Therefore, the guilty of non-performance of duties cannot arise at all. However,

order of punishment was passed by the principal imposing penalty withholding next five increments of pay with cumulative effect. Standing

Committee (Management) prescribed to impose punishment only in case of non-performance of the duties prescribed under the condition of

service. He has brought notice of this Court as regards Clause 13(xii)(b) of the bye-laws of the Regional Engineering College. Durgapur approved

on 29th December, 1981. According to him, as per clause 12(xvi) of the Memorandum of Association of the Regional Engineering College

(Durgapur) Society the bye-laws only can be amended with the prior approval of the Central Government or the State Government as the case

may be. He has contended that there is no power of delegation of authority of the Principal to hold disciplinary enquiry against the petitioner

without approval of the Central Government or the State Government The petitioner further submitted that after filing the written statement of

defence the proposed framing of the bye-laws as sought for by the authorities before the State Government has been refused by their letter dated

31st March, 1997. As such all the amendments carried out by the authorities either in the bye-laws or in the Memorandum of the Association of

the said Society in totality is a nullity in the eye of law as such any action in terms of the same cannot be sustainable. However, ultimately, an appeal

was preferred on which the Principal Secretary, Department of Higher Education and Chairman, Standing Committee(Management), Regional

Engineering College, Durgapur was pleased to uphold the order of imposing punishment but reduced the quantum of punishment from five to two

increments with cumulative effect.

4. According to the College Authority, Rule of University of Burdwan was adopted by the said College by Resolution No. 90.9 of 90th meeting of

the Board of Governors held on 7th September, 1993. The petitioner being a lecturer of the affiliated College under the University is bound by the

Rules and Regulations of the University. Thus, non-performance of duty as paper setter or Examiner is highly irregular which tantamounts to

derelection of duty. It is mandatory by way of amendment Issued in exercise of power conferred by section 50 read with sections 49 and 21 of the

Burdwan University, Act, 1981. Once the offer of appointment of Paper Setter and Examiner is made to set the questions on the entire syllabus

Irrespective of the fact whether a portion of the syllabus in a particular College is covered or not it is his responsibility to cover the syllabus. The

academic schedule is always available with concerned department as well as academic section of the College. He did not collect the academic

schedule. It proves his lack of sincerity in performing the duties. Thus, the disciplinary proceeding initiated by the Principal of the College cannot be

turned invalid. It is also denied that there is not power of delegation empowering the Principal to act as disciplinary authority. Clause 15(11) and

Clause 15(iii) of Memorandum of Association empowers the Board of Governors to authorise the principal to take disciplinary action against an

employee.

5. According to Mr. Saktinath Mukerjee, learned senior counsel appearing in support of the petitioner, the dictionarcal meaning of the word

''option'' is freedom of action or choice. Bye-laws dated 29th December, 1981 has yet to take the approval of the State as available from the

Memorandum No. 172-Edn.(T) on 31st March/3rd April, 1997 issued by Assistant Secretary of Government of West Bengal. Therefore, bye-

laws has no face value and any action in connection thereto is a nullity.

6. That apart the misconduct. If any, can be construed on the basis of the guidelines given by the Supreme Court of India as reported in State of

Punjab and Others Vs. Ram Singh Ex. Constable, in its paragraph 6. The word ''misconduct'' though not capable of precise definition, or reflection

receives its connotation, from the context, the delinquency in its performance and its effect in the discipline and the nature of the duty. It may

involve moral turpitude, improper or wrong behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or

code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden

quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the terms occurs, being the scope

of the statute and the public purpose it seeks to serve.

7. According to the petitioner in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., in its paragraph 22 says that where the

misconduct when proved entails penal consequences. It is obligatory on the employee to specify and if necessary, define it with precision and

accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct.

8. Therefore, Memorandum of Charges as well as the entire proceeding cannot be held good. The very particular charge levelled against the

petitioner that he did not perform the duty or refused to do so has no basis whatsoever. Hence, the charges cannot stand at all. That apart, no

material in support of such charge have been supplied to the petitioner. See the ratio of Surath Chandra Chakrabarty Vs. State of West Bengal,

whereunder it was held that the whole object of furnishing the statement of allegations is to give all the necessary particulars in detail which would

satisfy the requirement of giving a reasonable opportunity to put up defence. Ultimately, the enquiry proceeding was completed by holding that the

disciplinary power vested in the Principal of the College by the Board of Governor in the 90th meeting held on 9th January, 1998 should have been

effective on and from the date on which the resolution was to be confirmed that is on 10th July, 1998, in the absence of any stipulation to the

contrary the natural implication of the said resolution would not have retrospective effect having any bearing on earlier matters. That apart, the

Principal of the College, in accepting the recommendation of the Disciplinary Committee, considered the matter in a cryptic manner and imposed

the penalty to the effect of withholding next five increments of pay with cumulative effect by an order dated 18th January, 1999. According to Mr.

Mukherjee case of natural justice cannot be subserved by way of consideration of the matter in such mechanical manner.

9. He has cited a judgment reported in The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others, from its paragraphs 15 and 16.

The word "consider" postulates that the authority concerned has thought over the matter deliberately and with care and it has been found

necessary, as a result of such thinking, to pass the order. It is, therefore, manifest that careful thinking or due application of mind regarding the

necessity to obtain and examine the documents in question is sine qua non for the making of the order. If the impugned order were to show that

there has been no careful thinking or proper application of mind as to the necessary of obtaining and examining the documents specified in the

order, the essential requisite to the making of the order would be held to be nonexistent. The necessary corollary of what has been observed above

is that mind is to be applied with regard to the necessity to obtain and examine the documents mentioned in the order.

10. He further cited The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, to strengthen his earlier

submission by saying that the word ''consider'' connotes that there should be active application of mind by the Disciplinary Authority after

considering the entire circumstances of the case in order to decide the nature of extent of the penalty to be imposed on the delinquent employee.

11. Further, according to him, although the petitioner has made an appeal and by such order of appeal dated 7th May, 1999 punishment was

reduced to withhold two increments with cumulative effect instead of five cannot dispense with the stigma as given in the career of service of

lecturer of an institution.

12. He further contended that in Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, it was held that on appeal does not cure

infirmity of law in its application in the original order. He wanted to say that since the order cannot be prevailed on the basis of the unapproved

rules and regulations and passed in violation of natural justice Appellate Authority is not the forum although the petitioner has invoked the same for

the purpose of redressal. It is as good as insufficiency which can be cured by resort to an appeal. But if natural justice is violated at the first stage

right of appeal is not so much a true right to appeal as a corrected initial hearing.

13. Mr. Narayan Bhattacharyya started his argument by saying that interference of the educational discipline has to be taken into account very

seriously. The appointment letter for the purpose of paper setting or examining the answer scripts issued by the Controller of Examinations of

University of Burdwan cannot be said to be an option for an ''appointment'' in true sense. According to him. It is a mandatory duty of a lecturer of

the College to be followed on the basis of communication made by the University of Burdwan under which the College is running. He further

submitted that the Burdwan University, by the pen of the Chancellor of the University being the then Governor of West Bengal, made certain

amendments in the rules of appointment and terms and conditions of the service of the lecturers of affiliated Colleges other than Government

Colleges under the Burdwan University Ordinances, 1984 which are as follows;

In the said Ordinances, in University Ordinance 6 (T.A.C.)-

(1) for paragraph (2) substitute the following paragraph :-

(2) The Teacher of a College shall effectively co-operate and assist, whenever required, in carrying out the functions relating to the educational

responsibilities of the College (such as, assisting in appraising the applications for admission, advising or counselling the students and assisting in

University and College examinations including supervision thereof).

Explanation.-- The expression ""shall effectively Co-operate and assist"" in relation to University examinations shall, for the purpose of this

Ordinance, mean to include compulsory and effective participation of Teachers, including principals, of all afiliated colleges in all matters relating to

such examinations if and when their services are requisitioned by the University for any purpose relating to such examinations; (2) in paragraph (4),

for Clause (h), substitute the following clause :-

(h) to evaluate answercripts of students for any examination conducted by th Colleges and the University"".

Sd/- Sd/-

Secretary to the Chancellor, K.V. Raghnatha Reddy

Burdwan University. 26.12.94

Chancellor

Burdwan University.

Resolution No. 90.9 of the 90th meeting of the Board of Governors held on 7.9.93.

RESOLVED that the University Old. 6 (T.A.C.) as amended and approved by the University of Burdwan be made applicable for Regional

Engineering College, Durgapur and strict compliance of the same be observed;

14. Therefore, the expression in the counterpart providing for willingness to accept the appointments is made for an exceptional circumstances not

generally applicable. That apart, by the resolution the College has accepted such Ordinance and by virtue of the power of delegation by the Board

to the Principal he is the appropriate authority for taking the steps in this regard. Hence, it cannot be said that the Principal had no power for

passing an order in approving the disciplinary action as contended by any Disciplinary Committee. Moreover, such order has been tested by the

Principal Secretary, Department of Higher Education and Chairman, Standing Committee (Management). Regional Engineering College, Durgapur,

accepting minimising the quantum of punishment and approved the order of punishment passed hereunder. Such order is so nominal that it cannot

be interfered with by the Court. He further submitted that the writ Court cannot interfere in respect of the finding of a Fact Finding Authority unless

it appears bad from the face of it. Apparently, no challenge was made as against the charge-sheet but only against the disciplinary proceedings and

appeal. However, probe is the mental process of the Authority to which the writ Court cannot interfere as regards correctness of such finding.

15. He has relied upon Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, and submitted that the High Court in cases of

departmental enquiries and the findings recorded therein, does not exercise the powers of Appellate Court/Authority. The jurisdiction of the High

Court in such cases is very limited, for instance, where it is found that the domestic enquiry is vitiated because of non-observance of principles of

natural justice, denial of reasonable opportunity, findings are based on no evidence and/or the punishment is totally disproportionate to the proved

misconduct of the employee. There is no such case as has been made out herein excepting making some vague submissions as regards the

disciplinary proceedings.

16. From a judgment reported in Ram Chander Vs. Union of India (UOI) and Others, I find that the stage at which the Government servant gets

reasonable opportunity of showing cause against the action proposed to be taken in regard to him i.e. an opportunity to exonerate himself from the

charge by saying that the evidence adduced at the enquiry is not worthy of credence or that the charges proved against him is not of such a

character as to the merit for which extreme penalty of dismissal or removal or reduction in rank can be passed and that any lesser punishment

ought to have been sufficient in this case, is at the stage of the hearing of departmental appeal. Such being the legal position, it is of utmost

importance after the Forty Second Amendment as interpreted by the majority of the Judges in Union of India and Another Vs. Tulsiram Patel and

Others, that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with

the contentions raised by him in the appeal. An objective consideration is possible only if the delinquent servant is heard and given a chance to

satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a

personal hearing should be given.

17. However, in 1995(6) SCC 750 (Union of India and Anr. v. B.C. Chaturuedi) it was held that judicial review is not an appeal from a decision

but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and

not to ensure that the conclusion which the Authority reaches is necessarily correct in the eye of law. When an enquiry is made only question will

be whether the rules of natural justice are being complied with or not. Whether the findings of conclusion are based on some evidence so that the

Authority entrusted with the power to hold on enquiry has jurisdictional power and Authority to reach a finding of fact or conclusion.

18. It appears from Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, that the Supreme Court held that no misplaced sympathy

will be shown to the delinquent employee.

19. I find from Union of India (UOI) and Others Vs. Upendra Singh, that Court has no jurisdiction to look into the truth of the charges or into the

correctness of finding recorded by the Disciplinary Authority or the Appellate Authority as the case may be. The only function of the Court is one

of judicial review parameters of which are repeatedly laid down by the Courts. The purpose of judicial review is to ensure that the individual

receives fair treatment and not to ensure that the Authority, after according fair treatment, reaches on-a-matter which is authorised by the law to

decide the conclusion which is correct in the eyes of the Court. It is not an appeal from the decision. Yet the ratio of Anil Kumar Vs. Presiding

Officer and Others, where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the

principles of natural justice, minimum expectation is that the report must be a reasoned one. The Court, then, may not enter into the adequecy or

sufficiency of evidence.

20. In Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., a five Judges" Bench of the Court held that copy of the enquiry report has

been furnished to the delinquent employee whether he asked for it or not. Whether he is working in a governmental, non-governmental, private or

public sector, even in a case of minor punishment, and non-furnishing the same is violation of the principles of natural justice.

21. Upon going to submissions as made by the parties and the ratio of the judgments placed before this Court by the respective counsels of both

the parties to come to an appropriate conclusion, I find that the matter is not required to be interfered with by the Court in the manner as proposed

by the petitioner herein. There are the reasons for saying so. The petitioner has certain duties to the College. Similarly, such College has certain

duties towards the University. Therefore, directly or indirectly a lecturer of a College under the University has some legal or moral obligation of

duties towards students. This is the fundamental structure of duty of such class of people towards the society. Their prime duties are to build up the

students. Paper setting or examining a student on the part of the College or on the part of the University has to be performing duty on the part of a

lecturer of the College. Since the very right of such lecturer to invoke the writ jurisdiction of the Court occurred from the affiliation of the College

with the University being a Governmental authority the counter part of the same being duty by him towards it cannot be said to be non est in the

eye of law. The very document has two parts. One is foil part which says ""you have been appointed"" and other part is counterfoil part which says

.....willing to accept the appointments ....."". According to me, the option to show willingness in accepting the appointments is not an usual

offer restricted to the petitioner alone which can be visualised from the plain reading of the same. By the first part of the Office Memorandum dated

10th April, 1997 appointment as a Paper Setter or examiner has already been given to the concerned lecturer. Therefore, contract is concluded so

far the University of Burdwan is concerned. But the counterpart is made for the purpose of showing an unwillingness in accepting such

appointments in case of contingency Which is an exception applicable to all but not rule of such appointments. Had it been the appointment alone

without incorporating willingness of acceptance for the exceptional circumstances, if would have been violation of principles of natural justice. Not

being so I cannot hold that the same is bad at all. To show respect by the University to the lecturers calling their acceptance cannot be regarded as

their claim. It is desire of the University through the College to the lecturers. In any event, 10th April, 1997 is a date of appointment and the last

date of giving reply is 22nd April, 1997. The petitioner has made an enquiry of the syllabus on 21st April, 1997 just one day before expiry of the

date. If such lecturer is so serious in knowing the syllabus of paper setting or examining the subject he would have shown his anxiety immediately

after receiving such letter of appointment without waiting till 21st April. 1997. This gives a doubt in the mind of the Court about the genuineness of

the petitioner''s conduct, which is a prima consideration of equitable justice. If such act is an contingency the same cannot arise only one day before

the expiry of the period so that it can be applied on that day. It can be presumed that the lecturer wanted extension of time of paper setting which

ultimately affect the carrier of the students. This is contrary to effective and strict compliance of legal necessity. Hence, the order of punishment

cannot also be regarded as disproportionate. That apart, the question as to the very existence of the proceedings as per Rule 10 of West Bengal

Service (C.C.A:) Rules read with sub Clause XI (B) of Clause 13 of bye-laws of the College as amended from time to time was existing. The

Board of governors held on 7th September, 1993 resolution No. 90.9 accepted it for strict compliance of the substituted provisions to include

compulsory and effective participation when requisitioned by the University in relation to examinations. Adaptation of such resolution by the

College means such type of services are to be consorted as service of the College. Memorandum No. 172 Ed., (F) dated 31st March, 1997/3rd

April, 1997 cannot be said to be refusal of approval of bye-laws of the College but re-appraisement of certain benefits as per the need of the day.

The Petitioner was directed to examine by framing charges by the appropriate Authority of the College in respect of non-performance of duties as

paper Setter or Examiner and since those are incorporated as part of the duties for way of strict compliance by the College and since the refusal

without any contingent situation is available the same is nothing but refusal of service. In such circumstances, I find that the petitioner availed all

opportunities of defence either before the enquiring authority or before the principal and when he lost to achieve the goal even as to the stage of

Appeal he invoked the writ jurisdiction of the Court to re-appraise the same. I am not sitting in Court of appeal from such appellate order.

Therefore, I have no occasion to interfere with the same. All the cited cases are to be fact oriented. Violation of principle of natural justice cannot

be an illusory state of affairs. It should be borne from substantial justice but not from technicalities of a summary procedure. This judicial review

does not see any irregularity. We should forget any mind set about an industry and think that the dispute is of an institution whereunder future of

many students are involved which is the prime consideration. Therefore, strict compliance of time period is necessary to regain the glory of the

State about educational value. On the other hand, one cannot take advantage of the situation at the costs of the students. Therefore, taking into

totality of the circumstances, I hold that balance of convenience does not permit this Court to pass an order in favour of the petitioner.

Therefore, the writ petition stands dismissed. Interim order, if any, stands vacated. No order is passed as to costs.

22. Let an urgent xeroxed certified copy of this judgment, if applied for, be given to the learned Advocates for the parties within two weeks from

the date of putting the requisites.