(2009) 08 CAL CK 0009

Calcutta High Court

Case No: F.M.A. No. 513 of 2005

Shukla Ghosal		APPELLANT
	Vs	
Principal, Park English School and Another		RESPONDENT

Date of Decision: Aug. 7, 2009

Acts Referred:

- Constitution of India, 1950 - Article 12, 21A, 226, 32

Hon'ble Judges: Md. Abdul Ghani, J; Kalyan Jyoti Sengupta, J

Bench: Division Bench

Advocate: Subir Bhattacharyya, for the Appellant; Samir Chakraborty and Mr. S.R. Baid for the Respondents No. 1 and 2, for the Respondent

Judgement

1. This appeal is against the judgment and order dated 11th September, 2002, by which the learned trial Judge has refused to grant relief of reinstatement. Fact of the case is as follows:

The appellant before us was appointed by the school authority as an Assistant Teacher with effect from 14th April, 1998 in Grade-A. Here appointment was on probationary basis for a period of one year with an option for extension of the same for a maximum period of six months. It appears that the said letter of appointment was issued pursuant to the decision taken by the Board of Governors of the said school. However, such appointment letter was issued by the Principal. By another letter dated 12th, April, 1999, the probationary period was extended for a period of six months from date. Before expiry of the extended period of six months, the petitioner''s (appellant before us) services was terminated with effect from July, 1999 by a letter of termination dated 29th June, 1999. The said letter of termination was protested by the appellant/petitioner through her learned Lawyer. Thereafter, the aforesaid termination was challenged before the learned trial Judge.

2. From the affidavit in opposition filed before the learned trial Judge it appears that at the time of termination, the appellant/petitioner is said to have received all her dues, signing on a receipt.

3. On the aforesaid background of the case, the matter was heard on various points by the learned trial Judge. One of the points was that writ jurisdiction was not amenable in a matter of this nature and such issue was decided in favour of the writ petitioner. The learned trial Judge also found that the provisions of the Code of Regulations for Anglo-Indian and Other Listed Schools 1993 (hereinafter referred to as the said Regulation) was not adhered to while serving the letter of termination. Ultimately, the learned trial Judge held that an employment of this nature, which is a personal one, cannot be protected by passing an order of reinstatement. The learned trial Judge having found that three months'' notice was not given, directed to make payment of adequate amount; in lieu of three months'' salary, in addition to what had been paid at the time of termination, along with interest.

4. Learned counsel for the appellant submits that the order of termination is bad as this has been issued in flagrant violation of Regulation 21(e) and 23 of the said Regulation. Moreover, this decision of termination was not taken by the Board of Governors, but by the Principal, who has no authority to issue any letter of termination. To elaborate his argument, he submits that the extension was granted without giving prior one month time before the end of probationary period and it will appear from the document itself that extension was granted only two days before ending of the first period of probation of one year. Therefore, if it was not done then the teacher would be deemed to have been confirmed in the employment. Naturally, his client is entitled to get all protection as provided in regulation 23 of the said Regulation which provides for service of three months'' prior notice or three months'' salary in lieu thereof and also disclose the reasons for termination. According to him, the aforesaid provision is a mandatory one and there is no scope of departure from the same.

5. Dr. Chakraborty, learned senior counsel appearing for the school authority contends that since his client has not filed any cross objection in this matter, so he is legally handicapped to advance any further argument on other issues which have been decided against his client. As such, he does not wish to advance any argument on that score. However, he submits that under no circumstances, the order of reinstatement can be passed. The appellant is, at the highest, entitled to get damages if it is held that the order of termination is illegal and contrary to law. He also contends that the aforesaid regulation has got no statutory force and the same cannot be said to be affording any legal right to the appellant to get reinstatement. In this connection, Dr. Chakraborty has placed reliance on a decision of Supreme Court reported in K.C. Sharma Vs. Delhi Stock Exchange and Others,

6. Dr. Chakraboriy further submits that of course the provisions of the said regulation are the guidelines and the same has been followed by the school

authority. He, therefore, submits that whatever relief has been granted by the learned trial Judge, the same is adequate and no further relief is required to be granted.

7. We have heard respective contentions of learned counsels for the parties and have noted the findings of the learned trial Judge, who had taken a great pain to discuss all the issues in various ways. The learned trial Judge has been pleased to hold that the writ petition is maintainable. We endorse this view also as the judgment of Hon''ble Supreme Court referred in the judgment of learned trial Judge is squarely applicable. We can do no better than to reiterate slightly the principle of amenability of writ jurisdiction, in a matter of this nature.

8. The school concerned is no doubt discharging duty which has got the element of public one; as imparting of education is an essential to the society and children of each and every member of the society as a matter have right to get education, and this has become the part of fundamental right, as guaranteed under Article 21A of the Constitution. In modern society education has become foundation of livelihood as such in that sense it is one of the facets of right to life. The writ jurisdiction under Article 226, unlike Article 32, has got the pervading authority as it extends not only to the State but also to other authorities. According to us, this school falls within the category of other authorities, because of nature of public duty being discharged.

9. To cite an example, CESC Limited is a company. It is neither a statutory body nor a State within the meaning of Article 12 of the Constitution of India. Still, as it discharge the public duty by supplying electric energy, which is an essential one to the society; so in this context it has been held to be an other authority to invoke the jurisdiction under Article 226 of the Constitution.

10. Moreover, the said regulation issued by the Governor of West Bengal, has been framed to regulate the Anglo-Indian schools and other schools, hence it has been cast duty thereunder to discharge amongst other recruitment and termination of teaching staff. Taking aforesaid aspect together, we hold that the writ petition is maintainable, as against the school, as rightly held by he learned trial Judge.

11. Maintainability of a writ petition is one thing and to enforce the justiciable right in the writ petition is another thing and it has to be examined whether the appellant has been able to make any justiciable cause before the learned trial Judge or not.

12. The allegation was that the order of termination was in violation of regulation 23. To examine this aspect, one has to has examine what was the status of the appellant, at the time of termination, as the appellant was appointed as a probationary teacher for one year and it will appear from the letter of appointment. Therefore, we appropriately quote language of the letter of appointment:

"Thank you for your application dated 12.11.97 for the post of an Assistant Teacher (Bengali) in our Senior School and your subsequent interview on 16th Feb. ''98 with

members of the Governing Body.

I am pleased to inform you that the Board of Governors has appointed you as Assistant Teacher from 14th April ''98 in Grade A of the scale: Rs.1100-40-1260-50-1510-60-1870-75-2245-100.

Basic Salary Rs. 1,100.00

Cost of Living Allowance Rs. 1,500.00

Medical Allowance Rs. 200.00

Conveyance Allowance Rs. 100.00

Rs. 2,900.00

You are entitled to Provident Fund and Gratuity benefits from the date of your appointment.

You will be on probation for one year. This probation may be extended to a maximum period of six months. On your resignation/termination, one calendar month''s notice will be required on either side during the probationary period or one month''s salary in lieu thereof without any reason being assigned by either party."

13. From the language of the letter of appointment it is, thus, clear that appointment was made by the Board of Governors. The rules relating to the management of the school has not been brought before us nor it was placed before the learned trial Judge. Therefore, we do not know whether the Principal has any authority to issue any letter of termination or not. General principle rule of service jurisprudence is that the appointing authority normally issues the letter of termination unless it is otherwise provided or delegated to any other person. We do not find any such situation on fact here.

14. But before we discuss this matter further, as we have already observed, the status of the appellant/petitioner at the time of termination has to be determined in the context of regulation 21(e) of the said regulation. Factually, the letter of extension was issued only two days before the expiry of one year probation. Regulation 21(e) of the said regulation provides as follows:

Ordinarily, a teacher appointed against a permanent vacancy will be placed on probation for one year from the date of appointment and such probation may be extended by NOT MORE than one year thereafter. In all cases of teachers appointed on probation, a letter terminating the service or extending the period of probation, as the case may be, shall be served to him/her, one month before the end of the probationary period failing which, the teacher will be deemed to be confirmed in that appointment".

15. Thus, it is clear that if extension is not granted within the period as above, the petitioner is deemed to have been confirmed teacher. The order of extension was, therefore, not in strict requirement of the said regulation. We, old that the appellant/petitioner was deemed to have been a confirmed teacher. Regulation 23 of the said regulation affords some protection against termination of a confirmed teacher. The said regulation 23 is set out hereunder.

"Termination of appointment of confirmed staff -

The service of a confirmed member of staff may be terminated with three months notice on either side or by the payment of three months'' salary, by either party in lieu of notice with adequate reasons being assigned by either party, provided that in the case of termination of the service of a confirmed member of staff by a school, the school shall pay the member an amount calculated bat the rate of half a month''s salary for each completed year of service up to a maximum of 10 months'' salary in addition to Provident Fund and Gratuity as accrued."

16. We have seen the letter of termination and it appears therefrom that no reason has been disclosed which is mandatory and further three months'' notice nor salary of three months was paid to the appellant/petitioner. But at the time of serving the letter of termination, certain amount was paid, which is short of three months'' salary. We, therefore, hold that the letter of termination was not valid and lawful and indeed the learned trial Judge has also held so and precisely for this reason, the learned trial Judge provided further payment with interest in addition to what has been paid earlier. It appears that the said amount, in terms of court''s order has been received by the appellant/petitioner, without prejudice.

17. It appears that the appellant/petitioner has received some amount as full and final settlement at the time of issuance of termination letter. According to us, as rightly contended by the learned counsel for the appellant, there cannot be any waiver or estoppel against the statutory protection, for in a situation of this nature, one had no option but to accept the aforesaid amount. It is a question of livelihood and if livelihood is taken away without due process of law that amount to deprivation of life. So, the protection as provided in the said regulation has got some sort of sustenance and it ensures some extent, enforcement of fundamental right, as guaranteed under the Constitution. It is settled law that there cannot be any waiver or estoppel against the provisions of fundamental right, as has been held in the case of Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, .

18. Therefore, the aforesaid payment and receipt thereof by the appellant/petitioner, according to us, does not debar the appellant from agitating this point. The act and conduct of the appellant would suggest that the said amount was not received without any reservation; otherwise there would have been no challenge against the said termination. There is no mention in the writ petition that

any amount has been received by the petitioner. However, the factum of receiving of some amount by the petitioner has been disclosed in the affidavit in opposition filed before the learned trial Judge. In the affidavit in reply, a point has been taken that few lines have been added after her signature. This statement and averment, however, could have been refuted by filing a further affidavit, but it was not done so.

19. Considering all the aspects of the matter, we declare and hold that the order of termination was not lawful, as rightly held by the learned trial Judge. But terms of employment of this nature does not afford any right of reinstatement, as it is available in case of civil servant, and even stretching the said provisions of regulation 23. Hence, the appellant/petitioner cannot get back the employment. At the highest, she is entitled to get damages.

20. Writ Court at this stage is unable to quantify the damages, for all these years, the appellant/petitioner might have earned some amount and what amount has been earned, is not before us. We do not have the scientific mechanism to adjudicate this amount.

21. At this stage, without prejudice to the rights and contentions, Dr. Chakraborty suggests that he will try to persuade his client, in order to bring a settlement in this matter by making further payment. So, he suggests that to settle this dispute, once for all, the matter should be placed as "To Be Mentioned" on 14th August, 2009 and in the meantime, he will try to persuade his client to offer further amount and if it is acceptable to the appellant, then the matter can be resolved finally.

22. We appreciate Dr. Chakraborty''s suggestion and we record that it is a suggestion of a learned Lawyer qua Officer of this Court and not as a learned lawyer of the litigant.

This appeal is, therefore, otherwise disposed of. However, the matter will appear once again on 14th August, 2009 as marked "To Be Mentioned", for the aforesaid purpose.