

(2013) 10 CAL CK 0006

Calcutta High Court

Case No: W. P. No. 8664 (W) of 2007

Uttam Kumar Dutta

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Oct. 8, 2013

Citation: (2014) LabIC 887

Hon'ble Judges: Sambuddha Chakrabarti, J

Bench: Single Bench

Advocate: Amal Kumar Sen and Mr. Biswadip Ghosh, for the Appellant; Satya Ranjan Kundu, Advocate for Respondent Nos. 3 and 4, for the Respondent

Final Decision: Allowed

Judgement

Dr. Sambuddha Chakrabarti, J.

The question involved in the writ petition, though short, is otherwise of great importance. The petitioner has challenged his order of termination from service issued by the Chairman of the District Primary School Council, Purulia and has prayed for other ancillary reliefs.

2. The facts necessary to appreciate the complexity of the issue may be mentioned in a short compass.

3. The petitioner joined Ghatiwali Primary School in the District of Purulia as an Assistant Teacher on October 26, 1995 and his service was confirmed.

4. Subsequently he received a letter from the Sub Inspector of Schools, Raghunathpur-III circle asking him to submit his academic certificates with the training pass certificate in original to the Chairman of the District Primary School Council, Purulia. The petitioner informed the Chairman of the District Primary School Council, i.e., the respondent no. 3 herein that all his original academic and training certificates had been lost and for that he had lodged a complaint with the Kashipur Police Station. The petitioner says that at the time of appointment in the year 1995

he produced his certificates in original before the respondents. In August, 1998 there was yet another direction from the respondent no. 3 to submit some particulars in connection with his academic and training certificates which the petitioner had duly furnished.

5. The petitioner was subsequently asked to show-cause why disciplinary proceeding should not be initiated against him for non-submission of the original certificates.

6. The petitioner filed a writ petition in the year 1998 which was disposed of by a learned single judge of this court by directing the respondents to complete the enquiry proceeding preferably within a period of three months. It was further directed that if for any reason not attributable to the petitioner the respondents authorities failed to complete the proceeding within the said period he would be entitled to subsistence allowance payable to the teachers placed under suspension. An appeal filed by him against this order was dismissed.

7. The petitioner states that subsequently he had found the original educational certificates and made an application to the authority.

8. On April 28, 2004 the petitioner was asked to explain why he would not be terminated from his service for procuring appointment by producing false certificates. It was mentioned that since on verification it was found that the testimonials submitted by the petitioner did not tally with the records of the Bihar School Examination Board, Patna, he was asked to explain in writing by appearing personally on May 12, 2006 why his service would not be terminated. Since he did not appear on that date he was again asked to appear on May 23, 2006 by the Secretary of the District Primary School Council.

9. The petitioner had given a reply to the said show-cause and he appeared before the Board on the date appointed. By an office memo dated May 31, 2006 the service of the petitioner was terminated on the ground that the appointment obtained by him was vitiated by production of fraudulent marksheets and certificates and in the interest of primary education. The petitioner has challenged this letter of termination by the District Primary School Council in this writ petition.

10. The respondent no. 3 has filed an affidavit-in-opposition denying the allegations made by the petitioner. It has been contended by the said respondent that he had received an information from an "anonymous person" that the petitioner had obtained appointment on the basis of fake marksheets and certificates from the state of Bihar. Therefore, the said respondent had directed the petitioner to submit the documents before him. The District Primary School Council, Purulia forwarded the marksheets and certificates of the petitioner to the Bihar School Examination Board, Patna for verification. In response to the same the Bihar School Examination Board, Patna informed the Primary School Council, Purulia by a letter dated May 20, 2005 that the particulars given by the District Primary School Council in respect of

the petitioner did not tally with the records of the Bihar School Education Board. On the basis of the report of the Bihar School Examination Board a show-cause notice was served upon the petitioner by the District Primary School Council in April, 2006 asking him to appear before the authority on May, 2013. As the petitioner did not turn up on that date by a notice dated May 15, 2006 the petitioner was again directed to appear personally before the Secretary of the District School Council on May 23, 2006 to explain why he would not be terminated from service.

11. It appears from the said affidavit that the petitioner appeared before the District Primary School Council and he was informed that the verification report from the Bihar School Examination Board indicated that the marksheet and the certificates were fake.

12. An enquiry was held by three Assistant Inspector of School on May 12, 2006. The enquiry report and the entire facts were placed before the disciplinary committee of the District Primary School Council which had unanimously resolved to cancel the appointment of the petitioner. It further appears from the said affidavit that pursuant to a First Information Report lodged by the District Primary School Council the petitioner was arrested and a criminal case has been started against him. The said respondent has taken a point that the petitioner should have approached the appeal committee against the order of cancellation of appointment.

13. The petitioner has filed a supplementary affidavit wherein he has mentioned that at no point of time he was informed by the concerned authority that any enquiry committee had been formed or set up to enquire into the charges against the petitioner neither was he ever asked to appear before the said enquiry. He has further alleged that neither the enquiry committee nor the disciplinary committee had ever served the report of the enquiry upon him. Again he has made a grievance that no second show-cause was served by the disciplinary authority and no opportunity of hearing was given to him after the enquiry report was submitted.

14. This very specific assertions by the petitioner have not been denied by the respondents.

15. The whole question thus boils down to whether an order of cancellation of appointment by the District Primary School Council be upheld in the facts and circumstances of the case. From the affidavit-in-opposition as well as from the enquiry report it does not appear that the petitioner was given any opportunity of hearing by the concerned authority. He was never asked to appear before the enquiry committee. All that the authorities did was to ask him to appear before the Secretary of the District Primary School Council and not before the enquiry committee. It is significant to note that after the petitioner's failure to appear before the District Primary School Council on May 2, 2006 he was issued a second letter dated May 15, 2006 to appear before the same authority on May 23, 2006 and it appears from the affidavit-in-opposition that an enquiry was held by three

Assistant Inspectors of Schools on May 12, 2006. It appears from the enquiry report which has been annexed to the affidavit-in-opposition as Annexure R-2 that on March 3, 1998 Mr. Basudeb Acharya, Member of the Parliament from Bankura Parliamentary Constituency had requested the authority of the District Primary School Council to verify the certificate and marksheet of the petitioner as the same was reported to be false. If that be so the assertion made in the affidavit that the information has been received from an "anonymous person" is not the complete disclosure of facts. The report of the enquiry is basically a recital of the facts and the allegations against the petitioner. It never says that the enquiry committee had given the writ petitioner any opportunity of hearing before the said committee. On the contrary the direction upon the petitioner to appear before the disciplinary authority has been mentioned.

16. The enquiry report further states that the petitioner had appeared before the District Primary School Council on May 23 and admitted to have passed the secondary school examination from the Bihar Board in the year 1982 and his examination role code was 2324 and role no. was 218. Thereafter the report records that "On the basis of the above noted facts it is clear" that the petitioner had deceived the authority of the council by showing a fake certificate. How the facts noted in the enquiry report led to such a conclusion is, however, not clear from the report except that the Bihar Board had informed that the roll and the code number did not tally with their records and the petitioner had admitted that he had appeared from the Bihar Board.

17. The impugned office memo does not also refer to the resolution of the disciplinary committee. While passing the order impugned it never occurred to the said respondent that no reliance should be placed upon the report of the enquiry committee inasmuch as the petitioner was never given any opportunity to be present before that committee. Even no notice for that was served upon them.

18. As such this enquiry must be held to have been vitiated by the non-observance of the basic principles of natural justice. One of the fundamental principle of natural justice - nobody should be punished unheard - has been violated in the present case. The right of hearing of an accused covers within its sweep the right to make a proper representation before an authority which is enquiring into any allegation against the said accused. This having been violated in the present case the enquiry must be held to be bad on that ground alone.

19. It may be mentioned that the authority itself had doubt about the import of what was informed to them by the Bihar School Board. In the affidavit-in-opposition in paragraph 7 it has been stated that the Bihar School Examination Board had informed the District Primary School Council that the roll code and number of the petitioner did not tally with the records of the said Board. But in the impugned office memo it has been mentioned that the report received from the Board "proved" that the marksheet and the certificates were not genuine. A certificate or a marksheet

not tallying with the records preserved by an examining body is not the same as alleging that the certificates were fake. If any further conclusion was required to be drawn on the basis of this report it was required to be proved by a competent person representing the Bihar School Examination Board upon notice to the petitioner before the same could be utilized against him. This in turn also necessitated that the petitioner should have been given an opportunity to cross-examine the witness who might be produced to prove this document.

20. Unfortunately nothing of that sort has been done. The petitioner had not been given any copy of the report and behind his back the authorities had used it. Thus in an enquiry where the petitioner has not been called the report has gone against him on the basis of the documents which were never given to him. The document till the end remained an unproved one and as such was not worthy of use at an enquiry.

21. The respondents had committed yet another impropriety in not giving a copy of the enquiry report to the petitioner. The petitioner relies on the case of Hiran Mayee Bhattacharyya case, (2002) 10 SCC 293 . In that case the Supreme Court had held that observance of principles of natural justice includes furnishing the enquiry report to the delinquent. In that case the Supreme Court directed the disciplinary authority to furnish a copy of the enquiry to the appellant and to permit her to submit her representation. But since in the present case this court has found that the enquiry report itself is bad no such direction is required to be passed upon the authority.

22. Therefore, the order impugned in the writ petition as well as the enquiry report filed in this case are set aside and quashed. The petitioner is reinstated in service. The authorities are directed to reinstate him and to allow him to work with immediate effect and to release the salary along with other allowances. It is, however, made clear that the fate of this writ petition shall not prevent the respondents from proceeding afresh against the petitioner on the self-same allegation in accordance with law and upon compliance of the procedural requirements.

23. The writ petition is allowed.

24. There shall, however, be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.