

Haleshwar Mahato Vs State of West Bengal and Others

Writ Petition No. 15522 (W) of 2013

Court: Calcutta High Court

Date of Decision: July 9, 2013

Citation: (2013) 3 WBLR 774

Hon'ble Judges: Biswanath Somadder, J

Bench: Single Bench

Advocate: Piyush Chaturvedi, Saikat Banerjee and Ardhendun Sekhar Biswas, for the Appellant; Rita Patra for the State and Kalyan Kumar Chakraborty for the Council, for the Respondent

Judgement

Biswanath Samadder, J.

The petitioner is a primary school teacher. He was teaching in Indra Bhusan Baman Kumar Free Primary School,

situated in the district of Uttar Dinajpur. At one point of time, a criminal case was lodged against him with Raiganj Police Station, being Case No.

166/2005, dated 23rd May, 2005. A sessions case was later started and charge was framed against the petitioner and two other co-accused

under Sections 302/34 of the Indian Penal Code. By a judgment and order dated 18th May, 2012, passed by the learned Additional District and

Sessions Judge, Fast Track (1st) Court, Raiganj, Uttar Dinajpur, the petitioner and two other accused were found not guilty in respect of

committing offence punishable under Sections 302/34 of the Indian Penal Code, 1860 and were acquitted u/s 235(1) of the Code of Criminal

Procedure. The petitioner had been placed under deemed suspension upon initiation of the criminal case, which was later revoked by the

Chairman, District Primary School Council, Uttar Dinajpur, in terms of his memo dated 30th July, 2012. The petitioner was, thereafter, even

promoted as a Head Teacher of Kothgram Free Primary School, in terms of a subsequent memo dated 19th December, 2012, issued by the

Chairman, District Primary School Council, Uttar Dinajpur. He has since been functioning as a Head Teacher of the Primary School, as mentioned

hereinabove.

2. The petitioner has now approached this Court challenging the memo dated 17th April, 2013, issued by the Chairman, District Primary School

Council, Uttar Dinajpur, whereby it was ordered that the period of absence of the petitioner was to be treated as period spent on suspension, as

per Rule 13 of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001.

3. The question that has been posed before this Court is whether the petitioner, having been honourably acquitted by a competent Court of law,

was to be treated as absent during the period spent on suspension, or not.

4. A report in the form of an affidavit was earlier directed to be filed on behalf of the District Primary School Council, Uttar Dinajpur, which has

since been filed. Perusing the said report, it appears that the Council has merely reiterated the contents of the memo dated 17th April, 2013, and

the provisions of Rule 13 of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001. In sub-

paragraph (e) of paragraph 2 of the report, it has been further stated as follows:

(e) That under the Rule 13(a) in that case it is specifically said that the petitioner would have been entitled that amount if he had not been

suspended. But in that case the petitioner suspended with the allegation of criminal offence u/s 302 of the Indian Penal Code and so the prayer for

quashing the impugned order dated 17.4.2013 passed by the respondent authorities and to pay the petitioner with his full pay. and other

allowances which he was in receipt of prior to his suspension is not sustainable under any statute.

5. It appears from the above, that the Council has sought to distinguish the case of the petitioner on the basis of the gravity of offence alleged to

have been committed by him, only in order to justify the reason why the Council has not allowed full pay and other allowances, which he was

otherwise entitled to. It is to be now decided as to whether the gravity of an alleged offence committed by a teacher can be considered as a

yardstick for the purpose of granting him/her full pay and other allowance, once he/she has been honourably acquitted by a competent Court of

law.

6. In order to find an answer, one may carefully look into Rule 13 of the West Bengal Primary Education (Conduct of Service of Teachers of

Primary Schools) Rules, 2001 which has quoted hereinbelow, in its entirety;

13. Pay and allowances on reinstatement.--When the suspension of a teacher is held to have been unjustifiable or not wholly justifiable, or when a

teacher who has been dismissed, removed or suspended is reinstated, the disciplinary or appellate authority may grant to him for the period of his

absence from duty-

(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed, removed or suspended, and by an

order to be separately recorded, any other allowance of which he was in receipt of prior to his dismissal, removal, or suspension, or

(b) if otherwise, such proportion of pay and allowance as the disciplinary, appellate authority may deem fit.

In a case falling under clause (a), the period of absence from duty shall be treated as a period spent on duty. In a case falling under clause (b), the

period may be treated as on duty or leave but it shall not be so treated unless the disciplinary or appellate authority directs accordingly.

The period of absence shall where it is neither treated as on duty nor leave, be treated as a period spent on suspension.

7. A plain reading of the above quoted Rule makes it clear that there is no scope for the concerned respondent authority to discriminate against a

teacher merely because he/she was charged in respect of an offence, which may be considered grave. All that the Rule provides for is that in the

event the concerned teacher is honourably acquitted, the full pay to which he/she would have been entitled, had he/she not been dismissed or

removed or suspended, together with any other allowance of which he/she was in receipt of, prior to his/her dismissal or removal or suspension,

may be granted to him/her by the disciplinary authority or appellate authority for the period of his/her absence from duty. Although the word "may

has been used in Rule 13, which is generally considered as a discretion given to the disciplinary or appellate authority for grant of full pay to the

teacher who has been reinstated after being dismissed or removed or suspended, such discretion, necessarily, has to be exercised fairly and in

consonance with the spirit of Rule 13, since the Rule-maker has consciously favoured a reinstated teacher, upon he/she being honourably acquitted

by a competent Court of law. If such discretion is not used fairly, but whimsically and arbitrarily-as has been done in the instant case--it gives rise

to an element of discrimination, which is impermissible in a case where a statutory authority is involved, which is supposed to decide such issues on

the basic touchstone of fairness and fair-play.

8. A point that has been raised by the learned Advocate for the Council in respect of Rule 13 having a provision for a statutory appeal before an

appellate authority, cannot hold much water, since this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, can

interfere in such matters, even when there are provisions of alternative remedy. In the facts of the instant case, as observed hereinbefore, it is

palpably evident that the petitioner has been unduly discriminated by the concerned Council, simply because he was charged under Sections

302/34 of the Indian Penal Code. The District Primary School Council, Uttar Dinajpur, forgot to take into consideration the essential fact that the

petitioner was later honourably acquitted by a competent Court of law. Once he was acquitted, it became wholly inconsequential whether the

charge against the petitioner was grave or light, for the purpose of getting full pay, which he would have been otherwise entitled to, had he not been

suspended from service on the basis of the deeming provision, as provided in the service Rule applicable in the case of the petitioner.

9. For reasons stated above, the impugned memo dated 17th April, 2013, issued by the Chairman, District Primary School Council, Uttar

Dinajpur, is liable to be set aside and is accordingly set aside. The petitioner shall not be treated as absent during the period spent on suspension

and shall be paid his full pay and other allowances as admissible in terms of Rule 13 of the West Bengal Primary Education (Conduct of Service of

Teachers of Primary Schools) Rules, 2001, by the District Primary School Council, Uttar Dinajpur, as expeditiously as possible, preferably within

a period of a fortnight, but not later than three weeks from the date of communication of a photostat certified copy of this order. The writ petition

stands disposed of accordingly.