86 CWN 575

Calcutta High Court

Case No: C. R. 2921 (W) of 1975

Radheshyam Senapati		APPELLANT
	Vs	
W. B. Board Oe Secondary Education		RESPONDENT

Date of Decision: March 15, 1983

Acts Referred:

- West Bengal Board Of Secondary Education Act, 1963 - Section 22, 27

Citation: 86 CWN 575

Hon'ble Judges: B.C. Ray, J

Bench: Single Bench

Advocate: S.B. Bhunia, for the Appellant;Harashit Chakraborty, for the Respondent

Judgement

B.C. Ray, J.

This Rule is by the approved teacher whose service has been terminated against the order made by the Appeal Committee of the West Bengal Board of Secondary Education made on 14.1.75 on the ground that the impugned order of the Appeal Committee is illegal and bad being in contravention of the provisions laid down by the statute and the statutory rules. The short fact of the case is that the petitioner was appointed as an Assistant Teacher in Tentulia Sarang N.N. High School on 1.7.65 in a permanent vacancy by the managing committee of the school. The letter of appointment was annexed as annexure "A" to the writ application. His appointment was approved by the District Inspector of Schools, Secondary Education, Midnapore (respondent No. 5) as evident from letter of approval dated 4.12.67 annexed as annexure B to the writ application. Thereafter the petitioner worked in the school upto 19.9.69. It has been pleaded in the petition that due to his illness he was bed ridden and could not go to school from 22.9.69. to 25.9.69 when a letter was received by him from the headmaster of the said school asking him to give an explanation why he remained absent from the school without giving any information to the school authorities. It has been pleaded that the petitioner sent a registered letter dated 26.9.69 explaining has cause of absence along with a medical

certificate and this was duly received by the headmaster as evident from the acknowledgment receipt on 29.9.69. He has also intimated that he will resume his duties on and from 29. 9. 69. It has been pleaded further that on 29.9.69 when the petitioner went to the school to resume his duties he was prevented by the headmaster of the said school on the plea that he did not receive any reply to the letter dated 24.9.69. The petitioner thereafter brought the matter to the notice of the Secretary of the said school about the refusal of the head master to permit him to join the institution but no reply was received by him from the President as well as the Secretary of the said school. The headmaster all on a sudden declared closure of the school on 14.10.69 though the school was scheduled to be closed on 17.10.69 on account of Puja Vacation. Being baffled in his attempt to get redress either from the Secretary or from the President of the Managing Committee of the School the petitioner made two applications on 28.10.69 and 4.11.69 before the respondent no. 5, the District Inspector of Schools, Secondary Education, Midnapore, stating all the facts and praying for redress. Having received no reply the petitioner was compelled to prefer an appeal on 9.3.70 before the Appeal Committee of the Board praying for his reinstatement and payment of arrear salary since March, 1979. This appeal has been disposed of by order dated 14.1.75 holding that though the formalities were not observed by the school athorities in dismissing the petitioner from service and the procedure adopted was irregular still it was directed that the cause of justice would be better served if gratuity amounting to three months'' pay in lieu of reinstatement was paid to the petitioner. Aggrieved by this order of the Appeal Committee the instant writ application was moved before this Court on 3.2.75 whereon the instant Rule was issued but no interim order was made.

2. Mr. S. B. Bhunia, learned Advocate appearing on behalf of the petitioner, has advanced a three-fold submission before this Court. His first submission is that the impugned order by the Appeal Committee is on the face of it illegal and as such it is liable to be quashed and set aside inasmuch as the Appeal Committee held that the service of the petitioner was terminated and in fact he was removed from his service as he was not appointed for a fixed period. It was further held that in such cases it was necessary on the part of the managing committee to issue a charge sheet against him and consider his reply but these formalities were not observed while dismissing him from service. It has been next contended by Mr. Bhunia that the procedure prescribed by the Appeal Regulations particularly regulations 6 and 7(1) (b) have not been complied with and as such the decision of the Appeal Committee is not sustainable. It has been thirdly submitted that rule 28 of the Rules framed for Management of Recognised Non Government Institutions (Aided and Unaided) 1969 as amended lay down the procedure to be adopted in the matter of removing or dismissing a permanent or temporary teacher of a school under the Board. This procedure is imperative to be complied with and as there has been a non compliance with this mandatory procedure prescribed by the statutory rules the impugned order of dismissal or removal from service or termination from service whatever may be is wholly illegal and unwarranted and as such the order of the Appeal Committee is liable to be quashed and set aside on this ground also. Mr.

Bhunia has cited some decisions at the Bar in support of his aforesaid submissions.

3. Mr. Harashit Chakraborty, learned Advocate appearing on behalf of the reconstituted managing committee of the school, has submitted that the provisions of rule 28(8) cannot be invoked in this case as it is a case of neither dismissal nor removal from service. It is at best a case of termination of service and in support of this submission Mr. Chakraborty has cited an unreported decision of this Court in C. R. No. 1549 (W) of 1972. It has been next submitted by Mr. Chakraborty that regulation 7(1) (b) is not necessary to be complied with in the instant case and the decision in 79 C. W. N. 39 and 1979 (1) C.L.J. 387 do not apply to the facts of this case in view of the decision reported in 1975 (1) C.L.J, at page 295. It has been lastly submitted by referring to regulation 9(1) (b) (ii) that the order made by the Appeal Committee directing payment of three months'' salary as gratuity is not bad as it is quite in accordance with the provisions of regulation 9 of the Appeal Regulations framed under sub section 2 of sec. 27 read with sub-section 3 of section 22 of the West Bengal Board of Secondary Education Act, 1963.

4. The petitioner as appears from the appointment letter and the letter of approval to his appointment in the substantive post of Assistant Teacher as evident from annexure A and annexure B respectively to the writ application was a confirmed assistant teacher duly appointed by the managing committee of the school. There is also no iota of doubt that the petitioner was appointed against a permanent vacancy. It is also not disputed that no order either of termination or of dismissal or of removal of the petitioner from permanent service has ever been served on the petitioner.

The petitioner''s grievance is that he has not been allowed to resume his duties on 29.9.69 after his recovery from illness by the headmaster of the school as well as by the President and Secretary of the managing committee of the school and he had not been paid his emoluments since then. This Court asked Mr. Chakraborty to produce the order passed, if any, by the managing committee of the school terminating, dismissing or removing the petitioner from service. Mr. Chakraborty however could not produce any such order. The question is whether the service of a permanent employee can be done away with without conforming to the procedure prescribed by rule 28(8) of the Rules for Management of Recognised Non Government. Institutions (Aided and Unaided) 1969. On a perusal of the provisions of the rules I am constrained to hold that it is imperative on the part of the disciplinary authority, here the managing committee of the school to observe the procedure prescribed in rule 23 (8) before doing away with the service of a permanent assistant teacher as the petitioner is.

5. The argument tried to be advanced on behalf of the managing committee of the school by Mr. Chakraborty is that as in rule 28(8) the words appear ''to remove or dismiss'' and not the word ''terminate'' it means in case of termination this mandatory procedure is not required to be observed. I am unable to accept this submission at all inasmuch as in my opinion the acceptance of such an argument will render the entire provisions couched in rule 28(8) meaningless and the purpose of framing such a rule giving a protection to the

employee against arbitrary action of the managing committee which is the disciplinary authority to do away with the service of a permanent and temporary teacher will be entirely thrown to the wind and will be frustrated. Therefore, I am unable to accept this contention tried to be advanced on behalf of the managing committee by Mr. Chakraborty.

6. In this connection Mr. Chakraborty has cited before this court an unreported decision rendered in C. R. 1549 (W) 72. In that case a teacher was appointed against a deputation vacancy for a limited period and after the expiry of that period it was extended from time to time and it was provided that the extension will continue till the roll strength of the school justified the petitioner''s continuance in the school. Subsequently as the roll strength fell the petitioner''s service was terminated. It was challenged in a writ application before this court on behalf of the petitioner that the Appeal Committee which dismissed the appeal preferred by the petitioner acted illegally in making such order inasmuch as the resolution adopted at a meeting of the school committee wherein the petitioner''s service was done away with was not in compliance with the statutory requirements of rules 16 and 17. It was held by Amiya Kumar Mukherjee, J. that the resolution was bad as the resolution was adopted at a special meeting which requires to be convened on the requisition of four members and after giving seven days'' notice. But the instant meeting wherein the impugned resolution was made did not precede by requisition of four members to hold such a meeting nor a seven days'' notice was given but only two days'' notice was given. It was therefore held that the decision made by the Appeal Committe was not proper. It was at the same time observed by His Lordship that rule 28(8) has got no application inasmuch as it is not a case of dismissal from service. Mr. Chakraborty has tried to point out an observation made by the learned Judge to the effect that when a disciplinary proceeding was taken against a teacher and that teacher is dismissed or removed from service permanent or temporary prior approval of the Board as required under rule 28(8) had to be taken. Relying on this Mr. Chakraborty tried to contend that in case of termination rule 28(8) is not required to be complied with. I have already held that this submission cannot be accepted. Moreover the learned Judge did not make any such specific observation. Furthermore the observation that has been made by the learned Judge is in my opinion an obiter dictum. This decision, therefore, has got no application to the facts of this case. Therefore I hold that the order of the Appeal Committee which held that there has been a termination of the petitioner''s service and there was no obligation on the part of the managing committee to issue charge sheet against him and consider his reply was entirely in error in holding that non observance of such mandatory formalities rendered the dismissal from service of the petitioner merely irregular. This finding of the Appeal Committee is, in my opinion, wholly unsustainable and as such I set aside this finding of the Appeal Committee. I also set aside the finding that the cause of justice would be better served if gratuity amounting to three months'' pay in lieu of reinstatement was paid to him as I have already held that there was no compliance with the mandatory procedure prescribed by rule 28(8) of the Rules mentioned hereinbefore in the matter of initiation of disciplinary proceedings by the managing committee while

terminating and or dismissing or removing the service of a substantially appointed assistant teacher who has acquired a status after his appointment being approved substantively by respondent no. 6, the District Inspector of Schools, Secondary Education, Midnapore.

7. Before concluding it is pertinent to consider the other submissions made on behalf of the petitioner viz. non compliance of the procedure prescribed by rule 6 and rule 7 (1) (b) of the Appeal Regulations laying down the manner of hearing and deciding appeals. Undoubtedly as appears from the averments made in the writ petition as well as the affidavits filed on behalf of the parties that the mandatory provisions of regulation 7 (1) (b) viz. after the Secretary of the. Board placed all the records of the case with or without the comments of the managing committee and explanation of the appellant did not make any decision whether further enquiry was necessary or not. This decision of the appeal committee is a must as has been held in the case of Radharaman Das Vs. Appeal Committee of The West Bengal Board of Secondary Education and Others, by A. K. De J. It was held that when an appeal was placed before the committee under Appeal Regulation 7(1), the first stage of the hearing of the appeal is for the appeal committee to decide whether a further inquiry is necessary or not. If the Appeal Committee decides that no further inquiry is needed then the records must be placed again before the appeal committee. If the Appeal Committee without first deciding whether a further inquiry is necessary or not proceeds to decide the appeal on the merits, it exercises its jurisdiction illegally and with material irregularity and its order is liable to be set aside. This decision has been relied upon and affirmed in a subsequent decision in 1979(1) C.L.J. 387 Dr. Tarapada Roy & Ors. v. West Bengal Board of Secondary Education & Ors. Mr. Chakraborty however cited a decision in 1975(1) C.L.J. 295. This decision does not apply as the facts of that case is entirely different from the facts of the present case. It was held that the decision in Radharaman Das Vs. Appeal Committee of The West Bengal Board of Secondary Education and Others, was not applicable to the instant case as in that case the headmaster was not dismissed nor there was any disciplinary proceeding and there was no enquiry. The allegation was that he was forced to resign under duress. On a conspectus of the above decision I am also of the opinion that the order of the Appeal Committee is also bad as it did not comply with the procedure prescribed by regulation 7(1) (b) of the Appeal Regulations.

8. For the reasons aforesaid this Rule succeeds and is made absolute. Let a writ of certiorary issue directing the Appeal Committee of the Board to quash, cancel and set aside the order made by them on 14.1.75 as forwarded under memo no. 356/G/1. Let a Writ of Mandamus issue commanding the Appeal Committee of the Board to rehear the appeal in accordance with law and in the light of the observations made hereinbefore giving the parties reasonable opportunity of hearing.

The Appeal Committee is further directed to rehear the Appeal as early as possible preferably within a period of six weeks from today.

There will be no order for costs Rule made absolute.