

(1998) 06 CAL CK 0023

Calcutta High Court

Case No: Writ Petition No. 4348 (W) of 1995

Durgadas Mukhopadhyay

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: June 6, 1998

Citation: (2000) 2 ILR (Cal) 102

Hon'ble Judges: Satyabrata Sinha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Satyabrata Sinha, J.

The Petitioner who was headmaster of Maharaja Cossimbazar Polytechnic Institute (hereinafter referred to as the said school) has filed this writ application claiming, inter alia, the following reliefs:

(a) A writ of or in the nature of Mandamus commanding the Respondents, each one of them, their servants and/or subordinates to rescind, cancel and/or withdraw the entire disciplinary proceeding including the purported charge sheet dated 3.2.1993, the purported memo No. 9557/G/1 dated 12.5.1994 containing the decision of the appeal Committee, the purported memo No. 24/1261/G dated 12.4.1994: issued by the West Bengal Board of Secondary Education and purported show cause notice dated 7.6.94;

(b) A writ of or in the nature of Mandamus commanding the Respondents, each one of them, their servants, and/or subordinates and/or assigns agents/to forbear from giving any effect or further effect to and/or continuing to act on the basis of the decision taken by West Bengal Board of Secondary Education in the 1st meeting held on 18th January, 1995 by its committee constituted u/s 24 of West Bengal Board of Secondary Education and on the purported decision communicated by the Board by registered post through memo No. 24/15197G/1 dated 22.3.95;

(c) A writ of or in the nature of Mandamus commanding the Respondents, each one of them, their subordinates and/or agents to certify and transmit all relevant records relating to issuance of chargesheet, initiations of disciplinary proceedings, orders passed by the appeal committee of the Board, issuance of second show-cause notice, proposal for grant of approval of order of dismissal and resolution adopted by the Board in its meeting of the Committee constituted u/s 24 of the West Bengal Board of Secondary Act, 1963 (communicated through memo dated 22.3.95) so that conscionable justice may be done to the Petitioners on perused of the records and by quashing the same.

2. Although the case has chequered career but for the purpose of disposal of this case only the following facts are required to be noted.

3. A complaint was made against the authorities of the school for financial and other irregularities, where after an enquiry was held. As the authorities including the Petitioner were not inclined to place documents including books of accounts, the District Inspector of Schools, Calcutta was directed by the Director either to visit the school with adequate police force or direct the Headmaster and the Secretary of the school to attend the office with all records on the date and time to be fixed by him in terms of letter dated March 13, 1992. No grant was also directed to be released in favour of the Schools; pursuant where to requisitions were made and some documents were produced.

4. One Gour Chandra Baidy a was appointed as Administrator of School. Allegedly at the time of taking over of charge the Headmaster or the Secretary were not present although they were requested therefore. A special audit took place wherein allegedly gross irregularities were found indicating misappropriation to the extent of Rs. 85,464.35 P. from salary fund and Rs. 1,59,588.00 from other, fund. A first Information Report was lodged thereafter.

5. On November 14, 1992, the Petitioner was suspended. A writ petition was filed as against the said order of suspension by the Petitioner which was disposed of by Paritosh Mukherjee, J. by an order dated December 22, 1992, granting some time to the Board for granting approval to the order of suspension or disapprove the same. Such approval was granted by the Board on December 23, 1992. The Administrator drew up a proceeding by issuing a charge sheet. The said order was served, however, on the wife of the Petitioner, who, inter alia, pleaded that some time be granted to file the reply as the Petitioner was ailing. In the letter dated February 19, 1993, written by the wife of the Petitioner.

It was further alleged that certain documents had not been produced. The time to file reply was extended for a month; whereafter again the wife of the Petitioner requested to for furnishing copies of this documents. By a letter dated May 12, 1993, the-Administrator-allowed inspection of documents and intimate to him the date of such inspection but the Petitioner requested to supply the document for

preparation of the reply. The said plea was turned down and the Petitioner was asked again to inspection of the document.

6. A date of hearing was fixed on August 27, 1993, at 12 noon wherein the Petitioner was requested to attend but he failed. On August 25, 1993, the Petitioner intimated that he had preferred an appeal before the appeal committee. In the mean time on August 27, 1993, the Administrator passed an order seeking approval for completion of the first stage of the proceeding from the Board and all the documents were forwarded to the Secretary of the Board by the Administrator in terms of his letter dated September 16, 1993. The Administrator also in terms of his letter dated November 17, 1993, gave details in connection with the appeal preferred by the Petitioner.

7. The committee constituted u/s 24 of the West Bengal Board of Secondary Education Act, 1963 approved the first stage of the disciplinary proceeding and the school authority was permitted to issue notice to the Petitioner to show cause as to why punishment as proposed should not be inflicted on him. The school authority was directed to send all papers and documents where with a proposed circular being circular No. 5/607 dated June 21, 1982, was enclosed. A clarification was sought for by the Administrator on April 25, 1994 in view of the pending appeal wherein the decision of the appeal committee passed in Appeal No. 9 of 1993 was communicated to the effect that although the appeal was not maintainable at that stage, the Appellant was given liberty to inspect the document with certain observations. Thereafter on June 7, 1994, a show-cause notice was issued as to why the punishment as proposed should not be imposed. The Petitioner filed such reply on July 15, 1994.

8. At that stage a writ petition was filed by the Petitioner but this Court refused to entertain the said Writ Petition as the proposed order did not receive the approval of the Board. An order dated September 27, 1994, was thereafter passed by the Administrator which was followed by a letter dated October 7, 1994, addressed to the Board seeking its approval. The Petitioner appears to have preferred an appeal against the order dated September 2, 1994, but they said appeal and the application for stay was disposed of on December 6, 1994. On March 22, 1995, the Board communicated the decision of the appropriate committee u/s 24 of the Act approving the proposal for punishment; whereafter, the impugned letter dismissing him from services have been issued.

9. The sole question which has been raised in this application is as to whether in passing the said order the provision of Rule 28(8) of Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969 have been followed.

10. Rule 28(8) of the Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, reads thus:

Rule 28. Power of Committee.

(1)

(8) Both in aided and unaided Institutions the Committee shall have the power, subject to the prior approval of the Board, to remove or dismiss permanent or temporary teachers and other employees. For this purpose the Committee shall first draw up formal proceedings and issue charge-sheet to the teacher or the employee concerned and offer him reasonable facilities for defending himself. The teacher or the employee proposed to be proceeded against shall submit his explanation, ordinarily within a fortnight of the receipt of the charge-sheet. The Committee shall send to the Board all relevant papers including the charge-sheet, explanations submitted by the teacher or the employee concerned and the reasons for which the Committee decides in favour of taking disciplinary action. If the Board considers that there are sufficient grounds for taking disciplinary action the Committee shall issue formal notice calling upon the teacher or the employee concerned to show cause, ordinarily within a fortnight why he should not be dismissed or removed from service. The Committee shall, then, send again to the Board all relevant papers including the explanation submitted by the teacher or the employee concerned and the recommendations of the Committee for the action proposed to be taken. So far as the Committee is concerned, the decision of the Board shall be final:

Provided that the Board may delegate to any Committee constituted u/s 24 of the Act the powers and functions conferred on the Board by this Sub-Rule.

11. The said decision came up for consideration before a division bench of this Court in *Sujit Das v. The West Bengal Board of Secondary Education and Ors.* in that case the division bench, inter alia, held:

A disciplinary proceedings as against a delinquent can be sub-divided into 3 parts in terms of Rule 28(8) of the said Rules. The said Rule provides for drawing up of a formal proceeding and issuance of charge-sheet to the teacher and offering him reasonable facilities for defending himself. The word "formal proceeding" evidently means a proceeding initiated for the purpose of enquiring into the charges against the delinquent employee. In the said proceeding, the delinquent must be offered reasonable facilities for defending himself which, without any shadow of doubt, means that the principles of natural Justice have to be complied with. The Rule of *audi alteram partem* roots in fairness. It entitles the delinquent to have a fair hearing. Charges when drawn up as against a delinquent are required to be proved in a proceedings after offering him reasonable facilities for defending himself. The word "facilities" imports procedural fairness.

Unless the delinquent is provided with the facilities to have inspection and/or take copy of the documents upon which the Committee/Administrator relies upon he cannot file a show cause, nor can the same satisfy the requirements of giving all opportunities to the delinquent Officer to defend himself.

Unless an effective show cause is filed, the question of consideration thereof by the disciplinary authority at the first instance and Section 24 Committee at the second instance for the purpose of grant of approval would not arise.

Moreover, the principles of natural Justice in relation to a domestic enquiry must be held to comprise of two basic elements, i.e. the right to cross-examine the witnesses examined by the Managing Committee or the Administrator and right to examine witness in his favour. He at least is entitled to examine himself and make submissions as regards his defence. Unless, in my considered opinion, the Committee takes recourse to the said formalities, it cannot be said to have offered reasonable facilities for defending to a delinquent.

12. The Court further discussed about the mode and manner in which the Appeal Committee would proceed with the matter relating to grant of approval.

13. In the instance case also the Petitioner had not been granted an opportunity apart from a show cause. It is true that the Petitioner might have been granted an opportunity to inspect the documents, but he wanted copies thereof. Even during pendency of the appeal preferred by him, although was not maintainable, in my view it was necessary for the Administrator to wait for disposal of the appeal but as noticed hereinbefore in the meantime, he had made up his mind and passed the order purported to be on the basis of the special audit report itself. The purported circular letter dated June 21, 1992, is not in consonance with the decision of the division bench of this Court.

14. In any event, the question of inspection of any document after a person is found guilty by the Administrator would be absolutely futile. Supply of copy of document was sought for by the Petitioner for filing a proper reply to charge sheet. If the Petitioner failed to make inspection of the documents, after disposal of the appeal, an ex parte disciplinary proceeding could be held. Before this Court the records have been produced. From the said record; it does not appear that any enquiry was held and any witnesses was examined to prove the charges.

15. Even the Appeal Committee in its order considered only the report of the Special Audit Team it did not take into consideration as to whether any other relevant materials had been placed before the Administrator for the purpose of proving the charges. The report submitted by the Special Audit Team ipso facto was not admissible in evidence. There was nothing to show that the Petitioner had accepted the correctness of the said Report. In fact, he had denied the same in a situation like the present one, particularly when the Petitioner was charged with very serious allegations he ought to have been granted an opportunity to defend himself. It is relevant to note that while approving the proposed order of punishment the committee only relied upon the report of Special Audit Team and observed that keeping in view the reply of the Petitioner which had not been found accepted by the Administrator. the question of grant of further enquiry was not necessary.

16. Specially when there is no such provision in Rule 28 of the Management Rules. In view of Sujit Das the Respondent must be committed to have held an illegality. It had proceeded on a wrong interpretation of a statutory rules which protect the services of a teacher. It is now well known that he who takes the procedural sword must perish with it. The State Government having framed the Management Rules, 1969, in terms whereof procedures were laid down which were required to be complied with before a teacher could be inflicted with the punishment, non-compliance thereof must be held to be wholly illegal.

17. It is a case where there is no enquiry in the eye of law thus, there has been a gross violation of the principles of natural justice.

18. In *Jenson and Nicholson (India) Ltd. and Ors. v. Union of India and Ors.* 1997(3) I.C.C. 621 while interpreting the provision of Section 11A of Securities Exchange Board of India Act, 1973, this Court considered various decisions and stressed upon the requirements of the pre-decisional hearing. It also distinguished the decision of the Supreme Court in [State Bank of Patiala and others Vs. S.K. Sharma](#),

19. In view of the aforementioned authoritative pronouncement the impugned order cannot be sustained which is accordingly set aside and the Administrator is directed to proceed afresh with the enquiry. Keeping in view the fact that there has been a flagrant violation of the principles of natural justice and the requirement of law as laid down under Rule 28(8) of the Management Rules, 1969 the question asking the Petitioner to take recourse to alternative remedy does not arise. This point is also covered by *Johnson and Nicholson (India) Ltd. and Ors.* (Supra).

20. For the reasons aforementioned this writ petition is allowed. The impugned order dated January 12, 1994, is set aside with the directions aforementioned. However, keeping in view the facts and circumstances of this case, the petition may be kept under suspension. As the matter is pending for long time, interest of justice requires that the disciplinary proceeding be concluded at an early date and preferably within a period of 3 months from the date of communication of this order. All arrears subsistence allowance should be paid within 4 weeks. In the facts and circumstances of this case there will be no order as to costs.

21. Writ petition allowed.