

(2011) 05 CAL CK 0086

Calcutta High Court

Case No: Writ Petition No. 24237 (W) of 2010 with W.P. No. 1549 (W) of 2011

Soma Majumder

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: May 11, 2011

Acts Referred:

- West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001 - Rule 7, 7(1), 8, 9, 9(1)
- West Bengal Primary Education Act, 1973 - Section 100, 2

Citation: (2011) 4 CHN 438

Hon'ble Judges: Biswanath Somadder, J

Bench: Single Bench

Advocate: Lakahmi Gupta, Subir Sanyal, Kallol Bose, Biswabrato Basu Mallick, T. M. Siddique, Suvadip Bhattacharjee, Sanat Kumar Das, for the Appellant; Sumit Panja, Taraprasad Haider for the Council and Saikat Banerjee for the State, for the Respondent

Judgement

Biswanath Somadder, J.

Both the writ petitions are taken up for consideration together.

2. The writ petitioner participated in the recruitment process initiated by the District Primary School Council, Jalpaiguri, for the post of assistant primary teacher. After being successfully empanelled, her name was approved and consequently by an office memo dated 27th July, 2010, issued by the Chairman of the District Primary School Council, Jalpaiguri, she was appointed as an assistant teacher of Krishi Bagan Additional Primary School, under Sadar West Circle, in the District of Jalpaiguri. She joined service in the said school on 2nd August, 2010. After serving the school for a little over a month, she was served with a copy of a letter dated 9th September, 2010, issued by the Secretary, District Primary School Council, Jalpaiguri, addressed to the Head Teacher/ Head Mistress of the school. The text of the said letter is reproduced herein-below:

With reference to the above, this is to inform you that I have been directed to instruct you not to allow St. Soma Majumdar, D/O Sri Shib Prasad Majumder to join as Primary Teacher in Krishi Bagan Addl. Primary School, under Sadar West Circle. In case she has already joined in the school, her service is kept suspended with immediate effect till further order.

3. The order of suspension of her service, as contained in the above letter, was challenged by the writ petitioner in W.P. 24237 (W) of 2010.

4. After considering the submissions made on behalf of the parties and taking into consideration that the writ petitioner was already issued a show-cause notice consequent upon the issuance of the order of suspension of her service and since such show-cause notice dated 27th December, 2010, was a subject-matter of challenge in a subsequent writ petition filed by her, being W.P. 1549 (W) of 2011, this Court did not pass any ad interim order in the earlier writ petition and instead directed both the writ petitions to be heard together.

5. The learned Senior Advocate for the writ petitioner submits that the order of suspension, as appearing from the letter dated 9th September, 2010, is de hors the provisions of the Rules governing suspension of a primacy school teacher. According to him, Rule 7 of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001, (hereinafter, referred to as the said Rules) governs the conditions required for placing a teacher under suspension by a Primary School Council. He draws this Court's attention to sub-rule (1) (a) of Rule 7 of the said Rules, which reads as under-

7. Suspension.-(1) A Primary School Council may place a teacher under suspension-

(a) where an inquiry under sub-rule (1) of Rule 9 of these rules against him is contemplated by the Primary School Council or such an inquiry is pending;

6. He submits that when a teacher is placed under suspension under the aforesaid sub-rule, it can only be done where an inquiry under sub-rule (1) of Rule 9 against the teacher was contemplated by the Primacy School Council or when such an inquiry was pending. He then draws this Court's attention to Rule 9 of the said Rules and submits that the scope of enquiry under the said Rule presupposes a charge of misconduct or misbehaviour against the teacher. He submits that upon completion of the inquiry, a report was required to be prepared containing certain documents as provided under Rule 9 (iii) which includes articles of charge and the statement of imputation of misconduct or misbehaviour against the teacher. He refers to the show-cause notice issued against his client and submits that even on the face of it there is nothing contained therein which would reveal any allegation of misconduct or misbehaviour against the writ petitioner. Even if the allegations as made out in the show-cause notice against the writ petitioner are proved to be true the same does not amount to any misconduct or misbehaviour on

her part in order to attract the penalties as provided under Rule 8 of the said Rules. He also submits that for the purpose of treating an order of suspension to be valid and in accordance with the said Rules, the enquiry under sub-rule (1) of Rule 9 has to be confined to an act of misconduct or misbehaviour on the part of the concerned teacher. The subsequent show-cause notice dated 27th December, 2010, would go to show that it relates to a period prior to issuance of the appointment letter dated 9th September, 2010, in favour of the writ petitioner by the Chairman, District Primary School Council, Jalpaiguri and has therefore, nothing to do with any kind of misconduct or misbehaviour on the part of the writ petitioner after joining service and during the course of her employment as an assistant teacher. In the instant case, the show-cause notice issued against the writ petitioner does not even contemplate imposition of any penalty as provided under Rule 8 of the said rules. The show-cause notice dated 27th December, 2010, instead, contemplates disciplinary action without any disciplinary angle attached to it. Thus, there is no scope for any action to be taken by the disciplinary authority in accordance with Rule 10 of the said Rules. He further submits that immediately on appointment, the writ petitioner is governed by the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001, and even if there was any allegation against the writ petitioner relating to a period prior to her joining service, the said Rules cannot be attracted since it would have no manner of application at all. The enquiry, as contemplated in the show-cause notice dated 27th December, 2010, has nothing to do with the writ petitioner. If at all, the allegations are directed against the examiner/invigilator. Even if such allegations are found to be true and correct, the same cannot be construed as misconduct or misbehaviour on the part the writ petitioner as it does not relate to her service period. Referring to Rule 10 of the West Bengal Primary School Teachers' Recruitment Rules, 2001, he submits that the Director of School Education, West Bengal or his authorised officer, prior to granting approval of the panel prepared by the Council, has to be satisfied that the rules and procedures had been followed and only then approve the panel. If, in the opinion of the Director of the School Education, there were defects and mistakes in the panel in observing the rules and the procedures, such defects and mistakes were to be pointed out and the Council had to rectify the defects and mistakes and to submit the panel to the Director with correction for final approval. He submits that in the fact situation of the case approval of the panel containing the name of the writ petitioner was duly accorded by the Director of School Education in conformity with Rule 10 of the Recruitment Rules and it was not open for the Council to subsequently initiate proceedings against the writ petitioner consequent upon her joining services on the basis of certain allegations which could very well have been brought to the notice of the Director prior to his granting approval in respect of the panel containing the name of the writ petitioner.

7. Finally, he submits that of the show-cause notice does not disclose misconduct, it is fit to be quashed. In this regard he has referred to the following judgments :-

(i) [State of West Bengal and Others Vs. Swapan Kumar Guha and Others,](#)

(ii) [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), and

(iii) 1993(1) Cal LJ 505,

8. On the other hand, learned Advocate representing the District Primary School Council, Jalpaiguri, submits that both the writ petitions are based on the West Bengal Primary Education(Conduct of Service of Tesehers of Primary Schools) Rules, 2001. He Submits, however, the said Rules have not been, invoked. Both the order of suspension as well as the show-cause notice have no connection with the provisions of the said Rules.

According to him Rule 7 of the said rules has not been applied. The language of the order of suspension makes this position clear. The enquiry which is being conducted is not to find out the misconduct or misbehavior committed by the writ petitioner for the purpose of imposition of any penalties provided under Rule 8 and as such, there is no question of application of the Rule 10 of the said Rules. He submits that the order of suspension was passed upon invocation of the inherent power of the Council taking its relationship with the writ petitioner as a master-servant relationship.

9. According to the learned Advocate for the Council, the authority is making an enquiry to find out the truth, as to whether the prima facie findings of the Expert Committee against 423 empanelled candidates who have been selected in a highly illegal and improper manner, makes them eligible to teach the students or not. If, on enquiry, it appears that the complaints are true, then 423 empanelled teachers are not eligible to teach the students. Only eligible candidates could be appointed as teachers. In this regard, he refers to Rule 11 of the Recruitment Rules. He also submits that on enquiry conducted by the Expert Committee, prima facie, large scale irregularities regarding selection of teachers have been unearthed.

10. The learned Advocate for the Council also strenuously contends that the purpose of moving the two writ petitions is to frustrate and/or stall the enquiry being conducted based on several complaints of various illegalities and malpractices. As a test case, the two writ petitions have been filed in a calculated manner and if the writ petitioner is granted any relief, then enquiry against all 423 candidates would be frustrated and will come to an end. According to him, 2100 candidates have been examined. Show-cause notices have been issued to 423 empanelled candidates against whom appointment letters have been issued. Complaints have been received against all those candidates. Suspension letters have been issued to 15 candidates who have joined their posts and the writ petitioner is one such. Under Rule 23 of the West Bengal Primary School Teachers' Recruitment Rules, 2001, the petitioner is not a confirmed teacher. She participated in the enquiry without any protest. If any relief is granted to the writ petitioner, selecting the best available teachers through open competition will be frustrated and students will suffer from appointment of undeserved and unqualified teachers. He finally submits that an enquiry is a must. According to him, the provisions of section 100 of the West Bengal Primary Education Act, 1973, gives full power for an enquiry to be conducted and the enquiry team is not a disciplinary authority as described under Rule 2(d) of the Conduct

Rules. The enquiry is being conducted in accordance with section 100 of the West Bengal Primary Education Act, 1973, which ought not to be stalled at this stage. The writ petitions are liable to be dismissed in view of such enquiry. During the course of his submission he relied on [Dr. Bool Chand Vs. The Chancellor, Kurukshetra University](#), to submit that one who has power to appoint has a power to dismiss. He also relied on [V.P. Gidroniya Vs. The State of Madhya Pradesh and Another](#), to submit that the employee may merely be forbidden from discharging his duties during pendency of an enquiry, which act is also called suspension. However, in such a case the workman/employee would be entitled to his wages during that period. Likewise, in instant case, the writ petitioner was entitled to her salary throughout the period her duty remains suspended.

11. After considering the submissions made on behalf of the parties, it appears that the only issue that comes up for consideration in the facts of the instant case is whether the order of suspension dated 9th September, 2010, and the subsequent show-cause notice dated 27th December, 2010, were issued against, the writ petitioner by the District Primary School Council, Jalpaiguri, de hors the rules as applicable in case of teachers appointed by a Primary School Council.

12. The word "teacher" has been statutorily described under the West Bengal Primary Education Act, 1973. Section 2 (xxia) of the West Bengal Primary Education Act, 1973, describes a teacher as "a person who holds the teaching post in a primary school or in a Primary Teachers" Training Institute on a regular and whole time basis and is paid wholly from the funds under the control of the State Government in the Education Department".

13. Rule 11 of the West Bengal Primary Teachers" Recruitment Rules provides for issuance of appointment letters. Such appointment letters are to be issued to candidates from the approved panel under the signature of the Chairman of the Council or by an officer, not below the rank of Secretary of the Council, authorised by the Council to sign such appointment letters. The scheme of the Recruitment Rules proceeds only upto the stage of appointment of a teacher. The moment, a teacher is appointed in terms of Rule 11 of the Recruitment Rules, he/she is governed by the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001. The procedure for suspension including conduct of disciplinary proceedings and imposition of penalties have been clearly provided under the said Rules. The order of suspension dated 9th September, 2010, has crystallized into the show-cause notice dated 27th December, 2010. The procedure for suspension is clearly laid down under Rule 7 of the said Rules, whereas issuance of a show-cause notice is provided under Rule 9 of the said Rules. The order of suspension dated 9th September, 2010 has already been quoted hereinbefore.

14. The show-cause notice dated 27th December, 2010, is set out in its entirety hereinbelow :-

.....You have been selected as a primary teacher under District Primary School Council, Jalpaiguri, in the recent recruitment process along with several hundred other candidates.

Your selection was approved by the Director of School Education, West Bengal, in terms of the statutory Recruitment Rules in vogue. In furtherance to the said approval, this Council issued appointment, letter in your favour and pursuant whereunto you joined as a primary teacher in KRISHI BAGAN ADDL. School.

The School Education Department, Government of West Bengal, upon receipt of several complaints of various illegalities and malpractices against the aforesaid selection conducted by District Primary School Council, Jalpaiguri, in exercise of powers conferred by section 100 of the West Bengal Primary Education Act, 1973, appointed an enquiry team which was sent to the district and thereafter, an Expert Committee was formed to re-examine the answer scripts of candidates, who prima facie, appears to have been selected in a highly illegal and improper manner. Selection of a total of 423 (four hundred twenty three) candidates was prima facie found to have been made in a highly illegal and improper manner.

Your selection also falls within those 423 cases. The relevant extract of the Expert Committee's report concerning your selection is extracted and/or quoted herein below :-

Grossly Over marked and no signature of Examiner or invigilator the answer script.

You are hereby directed to show cause in response to the aforesaid prima facie finding of the Expert Committee, which District Primary School Council, Jalpaiguri is in receipt of, as to why appropriate action contemplated in the Service Rules regulating your appointment and service will not be taken against you for the aforesaid reason.

Such show cause is required to be responded by you in writing within a period of fifteen days from the date of receipt of this communication. You will be at liberty to append documentary evidences in support of your contentions along with your reply to this show cause.

It is abundantly made clear that in the event you fail to reply to this show-cause; then the District. Primary School Council being the recruiting authority, will have no other option but to proceed against you ex parte, without any further reference to you.

15. A bare reading of the order of suspension dated 9th September, 2010, makes it clear that the Secretary, Jalpaiguri District Primary School Council, has directed the Head Teacher/Headmistress of Krishi Bagan Additional Primary School to keep the service of the writ petitioner suspended with immediate effect till further order in case she had already joined the school. The show-cause notice, being the natural corollary of the order of suspension, discloses no allegation against the writ petitioner relating to any misconduct or misbehavior on her part during the period she rendered service in the school where she was appointed. If at all there are allegations in the show-cause notice which require any response from the writ petitioner, the same relates to a period prior to the writ petitioner being appointed as a teacher of a primary school in terms of Rule 11 of the Recruitment Rules.

16. The submission of the learned Advocate for the Council that the Conduct Rules have not been invoked in the facts of the instant case does not find any support, from the records. The letter dated 9th September, 2010, specifically states that her service is kept suspended with immediate effect till further order. Without invocation of Rule 7 of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001, this letter could not have been issued. Similarly, no "show-cause notice" could be issued against the writ petitioner without invoking Rule 9 of the said Rules. The question of any inherent power of the Council to keep the service of the writ petitioner suspended until completion of an enquiry simply because there exists a master-servant relationship between the Council and the writ petitioner cannot be accepted. Even in the show-cause notice it is clearly stated that the writ petitioner is to show cause as to why appropriate action contemplated in the Service Rules regulating her appointment and service would not be taken against her for the reason of her answer script being grossly over marked and having no signature of the examiner or the invigilator. Thus, there is no question of applying or invoking any inherent power by a statutory Council whose powers are clearly defined, and circumscribed by various statutory laws. The moment the writ petitioner was issued an appointment letter by the Council and she joined service in the post of an Assistant Primary Teacher in Krishi Bagan Additional Primary School, the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001, became applicable. Once the said Rules become applicable in the case of the writ petitioner, the Council had no option but to proceed in accordance with the said Rules, strictly in the manner as provided therein. There is no dispute to the proposition that one who has power to appoint has a corresponding power to dismiss. However, once a candidate is appointed as a teacher by a Primary School Council, no disciplinary proceedings can be initiated against him/her by the Council which may lead to his/her dismissal, without adhering to the specific provisions of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001. A fishing and roving enquiry cannot be made by the Council in the guise of a show-cause notice which has nothing to do with any act of misconduct or misbehavior on the part of the writ petitioner consequent upon her joining service in the school. At the highest, allegations made in the show-cause notice even if proved to be true and correct at a subsequent stage, relates to a period prior to her joining service and, as such, there is no question of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001, being applicable in the facts of the instant case.

17. It is well-settled that where a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. This principle of law has been reiterated time and again. In [Gujarat Urja Vikash Nigam Ltd. Vs. Essar Power Ltd.](#), this principle has been stated in paragraph 35. Thus, the Council was obliged and duty bound under law to proceed against the writ petitioner only in accordance with the provisions laid down in the West Bengal Primary Education (Conduct of Teachers of Primary Schools) Rules, 2001, which they miserably failed to do.

18. Having regard to the facts and circumstances of the instant case as elucidated above, the order of suspension dated 9th September, 2010, as well as the show cause notice dated 27th December, 2010, issued by the Council are liable to be set aside and quashed and are accordingly set aside and quashed.

19. The writ petitioner shall be permitted to rejoin her service as an Assistant Primary Teacher in Krishi Bagan Additional Primary School forthwith. Although she will not be entitled to any salary for the period when she did not actually render service as a teacher of the concerned school, she will be entitled to all notional benefits including seniority relating to her service that, may have accrued in her favour in the meanwhile.

20. This order shall, however, not cause any prejudice to the enquiry which has been initiated by the State Government in terms of section 100 of the West Bengal Primary Education Act, 1973.