

(1999) 07 CAL CK 0039

Calcutta High Court

Case No: A.P.O. No. 51 of 1999

St. Paul's School

APPELLANT

Vs

Ashis Mondal

RESPONDENT

Date of Decision: July 12, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226, 30

Citation: (2000) 1 ILR (Cal) 280

Hon'ble Judges: Tarun Chatterjee, J; S.K. Tiwari, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Tarun Chatterjee, J.

This appeal is preferred against a judgment and order passed by a learned Judge of this Court in W.P. No. 571 of 1998. By the impugned order, the order of termination issued against the writ Petitioner Respondent No. 1 Ashis Mondal was set aside and consequent thereupon; direction was made upon the authorities including the School Authorities to reinstate the writ Petitioner/Respondent No. 1 with full back wages.

2. We have heard Mr. Saktinath Mukherjee, appearing on behalf of the Appellant, and Mr. Dutta, appearing on behalf of the writ Petitioner/Respondent No. 1. We have considered the entire materials on record and also we have considered the respective submissions of the Learned Counsel for the parties. In our view, the judgment and order of the learned Trial Judge is liable to be set aside on a very short question. From a perusal of the impugned order passed by the Trial Court, it appears that before the learned Trial Judge two questions were raised by the parties. The first question was whether the writ jurisdiction of this Court could be invoked in the present case as the writ Petitioner was an employee of St. Paul's School which is not a Government Institution. So far as this question is concerned,

the law is now well settled by the decision of the Supreme Court in the case of K. Krishnamochari Lu and Ors. v. Sri Venkateswara Hindu College of Engineering AIR 1998 S.C. 295 . That apart, Mr. Mukherjee, appearing on behalf of the Appellant also did not throw any challenge against the aforesaid finding of the learned Trial Judge holding that the High Court under Article 226 of the Constitution was entitled to entertain the writ petition against the Appellants. The second ground on which the learned trial Judge has set aside the order of termination was that the principle of natural justice was violated in the present case. Therefore, we restrict ourselves to the argument advanced by the parties in respect of violation of principle of natural justice by the authorities by issuing the order of termination straightaway against the writ Petitioner/Respondent. We would have answered this question raised but we find that the learned trial Judge has not given any reason as to how in the facts and circumstances of this case the principle of natural justice was violated. Mr. Mukherjee, appearing on behalf of the Appellant contended that in view of Article 30 of the Constitution which protects the right of minority institution and in view of the fact that the writ Petitioner/Respondent No. 1 was served with the chargesheet and reply was submitted by him, it cannot be at this stage, held that the principle of natural justice was violated. Mr. Mukherjee further contended that even assuming that the order of termination was bad on the ground of violation of principle of natural justice even then in the facts and circumstances of the case and in view of the decision of the Supreme Court as noted herein below, it was not open to the learned trial Judge to direct reinstatement with full back wages. In support of this contention, Mr. Mukherjee relied on a decision of the Supreme Court in the case of [State of U.P. and another Vs. Ved Pal Singh and another](#),

3. On the other hand, Mr. Dutta, appearing on behalf of the writ Petitioner/Respondent No. 1 submitted that no opportunity of hearing to the writ Petitioner/Respondent was given in terms of Sub-rule 11(2) of the Special Rules for the Management of Secondary Schools established and run by a Christian Church/Missionary Society (Board)/Religious Society/Subsidiary Trust or their successors-in-law, in West Bengal and accordingly, the learned Trial Judge was fully justified in setting aside the order of termination on the ground of violation of the principle of natural justice.

4. So far as the second submission of Mr. Mukherjee was concerned, Mr. Dutta submitted that the decision cited by Mr. Mukherjee in support of the second submission in the facts and circumstances of this case was clearly distinguishable on facts and accordingly, he submitted when the order of termination was to be set aside on the ground of violation of principle of natural justice, discretion was rightly exercised by the learned Trial Judge in directing the school authorities to pay all back wages to the Writ Petitioner/Respondent No. 1.

5. We have considered the respective submissions of the Learned Counsel for the parties as noted herein above. Before we proceed further, it may be stated at this

stage that in the original writ application, the writ Petitioner/Respondent has only challenged the order of termination issued against him, but had not prayed for striking down the relevant rule being 11(3) of the special rules as noted herein earlier. Subsequently by filing an application for amendment, of the writ petition, such a prayer for striking down Clause 11(3) of the said special rules has been made. Rule 11 of the said special rules deals with appointment, confirmation, dismissal, appeal and termination.

11. Appointment, confirmation, dismissal and appeal and termination (1) In all cases appointments, permanent or temporary, the School Committee shall issue letters of appointment specifying the terms and conditions governing such appointments, when a permanent appointment is made the selected candidate shall be on probation for a specified period, ordinarily not exceeding one year, after which he or she may not be confirmed, as determined by the School Committee. In the absence of communication of any decision to the contrary, an employee shall be deemed to have been confirmed on the expiry of the period of probation.

Where the Committee thinks it necessary, the probationary period of an appointee may be extended up to a period not exceeding one year, or his services terminated if his performance during such extended period is not satisfactory. In either case, he or she may appeal to the Governing Body of the respective school. The decision of the Body in such cases shall be final. In any such case the decision of the School Committee shall be notified in writing to the employee on probation, at least six weeks before the expiry of the period of probation.

(2) No permanent employee shall be dismissed except after giving him or her an opportunity to defend himself or herself and in such cases the employee concerned may appeal to the Governing Body or such body which the Governing Body may appoint, against the decision. The decision of the Governing Body or such Body which the Governing Body may appoint as the case may be, shall be operative. But the Director of Public Instruction, West Bengal, shall have the right to call for all relevant papers relating to an employee who is dismissed. If the Director of Public Instruction, West Bengal is not satisfied with the decision of the Governing Body, he may then advise the Governing Body for reconsideration of their decision. The final decision, however, shall lie with the Governing Body or such body which the Governing Body may appoint, as the case may be, except in the case of employees of institutions receiving aid from the State Government in any form, in which case the decision of the Director of Public Instruction, West Bengal, shall be final:

(3) The services of a permanent employee may be terminated with three months' notice on either side or in lieu thereof three months' pay. Neither side need show any reason in such cases. For termination of service of a temporary employee or an employee on probation, one month's notice or in lieu thereof one month's pay shall be given. But the Director of Public Instruction, West Bengal, shall have the right to call for all relevant papers relating to such cases and see if the action taken is

consistent with the terms and conditions of appointment.

Note: These rules shall apply mutatis mutandis in the cases of Headmaster, Headmistress and Assistant Headmaster/Assistant Headmistress.

6. According to Mr. Mukherjee, even assuming that the order of termination could not be passed in the facts and circumstances of this case under Rule 11(3) of the Special Rules, even then in the facts and circumstances of this case and on the materials on record, the Trial Court erred in law as well as on facts by setting aside the order of termination only on a ground that before issuing such order of termination, principle of natural justice was not followed as no opportunity of hearing in terms of Rule 11(2) of the special rules was given to the writ Petitioner/Respondent No. 1. The Learned Counsel for the parties have made submissions on the aforesaid questions whether in the facts and circumstances of this case, the order of termination was passed in terms of Rule 11(2) or 11(3) of the special rules and whether the Rule 11(3) of the special rule is ultra vires to the Constitution of India. In our view, in the facts and circumstances" of this case, there was substantial question to be gone into. It is to be seen whether in fact and on the materials on record, the Trial Court was justified in holding that there was any violation of principle of natural justice within the meaning of Rule 11(2) of the special rule or not. The other question that arises also is whether the order of termination was passed in terms of Rule 11(3) of the special rules and if so whether 11(3) of the said special rules was ultra vires the constitution of India. In our view, in view of the involvement of the important question to be decided in the present case, it was not open to the learned Judge to set aside the order of termination without going into the merits of the aforesaid question posed before us. From a perusal of the order of the learned trial Judge, it appears that the learned trial Judge in fact, in a hot haste and without applying his mind and without considering the materials on record has not set aside the order of termination on a finding that the opportunity of hearing was not given to the writ Petitioner/Respondent No. 1 to defend himself and, therefore, only on this ground the impugned order is set aside and the matter shall be remitted back to the Trial Court for re-hearing of the entire matter in accordance with law.

7. So far as the second submission of Mr. Mukherjee is concerned, we are of the view such submission should be gone into by the Trial Court in the event the order of termination is set aside by it. From the impugned order under challenge in this appeal, we find that after setting aside the order of termination, the Appellants were directed to reinstate the writ Petitioner/Respondent No. 1 with full back wages. Mr. Mukherjee, appearing on behalf of the Appellant relied on one decision of the Supreme Court in the case of State of U.P. and Anr. v. Ved. Paul Singh Supra. In the said decision, the Supreme Court held that in the facts and circumstances of that case, the employee was not entitled to back wages after setting aside the order of termination. In deciding the question whether the employee was entitled to back

wages or not, the Court should consider before taking any final decision, the matter in detail for the purpose of coming to a proper conclusion that in the facts and circumstances of the present case the writ Petitioner/Respondent No. 1 was entitled to full back wages from the Appellants. Since we are setting aside the order passed by the Trial Court which had set aside the order of termination, the question of payment of back wages at this stage cannot arise at all but at the time of final decision, the writ court shall consider the above aspect and decide the matter in accordance with law.

8. For the reasons aforesaid, the impugned order under challenge in this appeal is set aside. The Trial Judge is requested to dispose of the writ application as early as possible preferably within four months from the date of communication of this order. Before parting with this order it may be kept on record that we have not gone into the merits as to the question whether there was violation of principle of natural justice so far as the writ Petitioner/Respondent was concerned and also the question whether the writ Petitioner if reinstated, would be entitled to the entire back wages all questions shall be decided by the learned Trial Judge in accordance with law without being influenced by any of the observations made by us in this appeal.

9. For the reasons aforesaid, the appeal is allowed to the extent indicated above.

10. There will be no order as to costs.

11. Let a xerox copy of the judgment duly signed by the Assistant Registrar of this Court be given to the parties upon their undertaking to apply for certified copy of the judgment.

S.K. Tiwari, J.

12. I agree.