

(2013) 10 CAL CK 0037

Calcutta High Court

Case No: Writ Petition No. 8649 (W) of 2007

Paresh Nath Dutta

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Oct. 8, 2013

Citation: (2014) 1 CALLT 226 : (2014) 1 ESC 131

Hon'ble Judges: Sambuddha Chakrabarti, J

Bench: Single Bench

Advocate: Kashi Kanta Maitra and Mr. Biswa Ranjan Bhakat, for the Appellant; Satya Ranjan Kundu for the Respondent Nos. 3 and 4, for the Respondent

Final Decision: Allowed

Judgement

Dr. Sambuddha Chakrabarti, J.

By this writ petition the petitioner has prayed for a writ in the nature of Mandamus directing the respondents to disburse the salary of the petitioner as well as the arrear salary on and from May 19, 2006 by recalling or canceling the memo dated May 31, 2006 issued by the Chairman/Secretary, District Primary School Council. The petitioner was appointed as an Assistant Teacher by the Chairman of the District Primary School Council, Purulia and he joined the Kashidi Primary School in October, 1995. Subsequently he was transferred to Dhanibari Primary School in the same district.

2. The facts necessary to appreciate the complexity of the issues may be mentioned in a short compass.

The petitioner joined Ghatiwali Primary School in the District of Purulia as an Assistant Teacher on October 26, 1995 and his service has been confirmed.

3. Subsequently he received a letter from the Sub Inspector of Schools, Raghunathpur-III circle asking him to submit his academic certificates with the training pass certificate in original to the Chairman of the District Primary School

Council, Purulia. The petitioner informed the Chairman of the District Primary School Council, i.e., the respondent No. 3 herein that all his original academic and training certificates had been lost for that he had lodged a complaint with the Kashipur Police Station. The petitioner says that at the time of appointment he produced his certificates in original before the respondents. In August, 1998 there was yet another direction from the respondent No. 3 to submit some particulars in connection with his academic and training certificates which the petitioner had duly furnished.

4. The petitioner was subsequently asked to show-cause why disciplinary proceeding should not be initiated against him for non-submission of the original certificates.

5. The petitioner filed a writ petition in the year 1998 which was disposed of by a learned single judge of this Court by directing the respondents to complete the enquiry proceeding preferably within a period of three months. It was further directed that if for any reason not attributable to the petitioner the respondents authorities failed to complete the proceeding within the said period he would be entitled to subsistence allowance payable to the teachers placed under suspension. An appeal filed by him against this order was dismissed.

6. The petitioner states that subsequently he had found the original educational certificates and made an application to the authority.

7. On April 28, 2004 the petitioner was asked to explain why he would not be terminated from his service for procuring appointment by producing false certificates. It was mentioned that since on verification it was found that the testimonials submitted by the petitioner did not tally with the records of the Bihar School Examination Board, Patna, he was asked to explain in writing by appearing personally on May 12, 2006 why his service would not be terminated. Since he did not appear on the date he was again asked to appear on May 23, 2006 by the Secretary of the District Primary School Council.

8. The petitioner had given a reply to the said show-cause and he appeared before the Board on the date appointed. By an office memo dated May 31, 2006 the service of the petitioner was terminated on the ground that the appointment obtained by him was vitiated by production of fraudulent marksheets and certificates and in the interest of primary education.

9. The petitioner has challenged this letter of termination by the District Primary School Council in this writ petition.

10. The respondent No. 3 has filed an affidavit-in-opposition denying the allegations made by the petitioner. It has been contended by the said respondent that he had received an information from an "anonymous person" that the petitioner had obtained appointment on the basis of fake marksheets and certificates from the

state of Bihar. Therefore, the said respondent had directed the petitioner to submit the documents before him. The District Primary School Council, Purulia forwarded the marksheets and certificates of the petitioner to the Bihar School Examination Board, Patna for verification. In response to the same the Bihar School Examination Board, Patna informed the Primary School Council, Purulia by a letter dated May 20, 2005 that the particulars given by the District Primary School Council in respect of the petitioner did not tally with the records of the Bihar School Education Board. On the basis of the report of the Bihar School Examination Board a show-cause notice was served upon the petitioner by the District Primary School Council in April, 2006 asking him to appear before the authority on May, 2013. As the petitioner did not turn up on that date by a notice dated May 15, 2006 the petitioner was again directed to appear personally before the Secretary of the District School Council on May 23, 2006 to explain why he would not be terminated from service.

11. It appears from the said affidavit that the petitioner appeared before the District Primary School Council and he was informed that the verification report from the Bihar School Examination Board indicated that the marksheets and the certificates were fake. An enquiry was held by three Assistant Inspectors of School on May 12, 2006. The enquiry report and the entire facts were placed before the disciplinary committee of the District Primary School Council which had unanimously resolved to cancel the appointment of the petitioner. It further appears from the said affidavit that pursuant to a First Information Report lodged by the District Primary School Council the petitioner was arrested and a criminal case has been started against him. The said respondent has taken a point that the petitioner should have approached the appeal committee against the order of cancellation of appointment.

12. Mr. Kashi Kanta Maitra, the learned senior counsel for the petitioner, has assailed the order impugned on the ground that the decision was not a reasoned one and since this was a quasi judicial proceeding it was incumbent upon the disciplinary authority to disclose the reasons for the conclusion arrived.

13. Mr. Maitra has further submitted that the respondents had proceeded with a closed mind and it will be obvious from the perusal of the records that they had decided to terminate the service of the petitioner. He had further described the action on the part of the respondents authorities as an abuse of the process of the Court which calls for judicial interference.

14. As against that Mr. Kundu, the learned Advocate for the respondent No. 3, justified the action taken by the respondents. He submitted that the petitioner should not have any just cause to complain against the steps taken by the respondents which in view of what he had done was the only action that could be taken by the authorities. Mr. Kundu further submitted that the Bihar School Examination Board having intimated the respondents that the certificates were not genuine it was obvious that the petitioner had procured his appointment by submitting some fake documents. Therefore, the authorities had taken the

appropriate action after giving the petitioner an opportunity of being heard. The respondents have not violated the principles of natural justice as the authorities had served notice upon the petitioner and had given the opportunity to the petitioner to present his case before the authority.

15. Mr. Kundu had relied on the case of *Union Public Service Commission v. Jagannath Mishra*, (2003) 9 SCC 237 and submitted that the District Primary School Council was an expert body and where a decision had been taken by such a body the same should not ordinarily be interfered by a Court of law.

16. The respondents further relied on the case of *Anil Kumar Vs. Presiding Officer and Others*, which in fact helps the petitioner and does not advance the case of the respondents.

17. Mr. Maitra had relied on the case of *ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others*, for a proposition that a quasi judicial authority while acting in exercise of its statutory power must act fairly and with an open mind while initiating a show-cause proceeding. In that case the Supreme Court had held that the stage of show-cause the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. At that stage the authority cannot confront him with definite conclusions of his alleged guilt. If that is done the entire proceeding initiated by the show-cause notice vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony. Mr. Maitra has further relied on this judgment as an authority for recording reasons. The absence of reasons in the original order cannot be compensated by presence of reasons given in the appellate order upholding the original order.

18. Mr. Maitra has further referred to the case of *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, for a proposition that an administrative order affecting the rights of citizen is a quasi judicial order and must be a speaking one. The Supreme Court with reference to the facts of that case held that the relevant rules granted a right of appeal against the order of the District Magistrate and the aggrieved employee must have an opportunity to convince the state government that the order passed by the District Magistrate was erroneous. This right can only be effectively exercised if reasons are recorded by the District Magistrate and supplied to the aggrieved party. If the aggrieved party is not provided with the reasons the right to appeal is an empty formality. Mr. Maitra submitted that the order does not contain any reason at all and if reasons are not recorded the petitioner has been prejudiced and his recording of reasons is also a part of ensuring the observance of the principles of natural justice.

19. The petitioner further relied on the case of *Union of India (UOI) and Another Vs. Vicco Laboratories*. The Supreme Court had held that where a show-cause notice is issued either without jurisdiction or in an abuse of the process of law the writ Court would not hesitate to interfere even at the stage of the issue of the show-cause.

According to Mr. Maitra the order passed by the learned single judge in the first writ petition was accepted by the respondents. But the petitioner again had to come as the authorities has opposed the order in violation of the direction given by this Court in the writ petition. Mr. Maitra submitted that the authorities had proceeded with a closed mind which will be evident from their correspondences itself. He had relied on the case of [Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others](#), where the Supreme Court had held that judicial review of administrative action is feasible and the same has its applications to its fullest extent in even departmental proceedings where it is found, that the recorded findings are based on no evidence or are totally perverse or legally untenable. Judicial review of the adequacy or inadequacy of evidence is not permitted. But, the Supreme Court observed, in the event of there being a finding which otherwise shocks the judicial conscience of the Court it is a well-nigh impossibility to decry availability of judicial review at the instance of an affected person. The Supreme Court had further observed that the word "bias" in popular English parlance stands included within the attributes and broader purview of the word "malice" which in common acceptation means and applies "spite" or "ill will". It was further observed by the Supreme Court in the said case a slight shift in the original thinking pertaining to the concept of bias is clearly discernable to the effect that a mere apprehension of bias could otherwise be sufficient. Laying down the test for determining whether an act of the respondents could be described as vitiated by bias the Supreme Court held that the surrounding circumstances must and ought to be collated and necessary conclusion drawn there from. In the event the conclusion is otherwise inescapable that there is existing a real danger of bias the administrative action cannot be sustained. Relying on this judgment Mr. Maitra submitted that the respondents were proceeding with a closed mind and, therefore, the order passed was a biased and unsustainable one.

20. After hearing the learned Advocates for the respective parties it appears that the petitioner has sufficient justification to be aggrieved by the order passed by the Chairman of the District Primary School Council. Although I do not find any substance in the submission of the petitioner that the order passed was not a reasoned one I otherwise find merit in the submissions of the petitioner. The order passed undoubtedly contains the reasoning for passing the order. Whether they were sustainable and how the conclusion was arrived at are different matters. Mere presence of reasons in an administrative order does not clothe it with immunity if the order passed is otherwise bad and not sustainable in law.

21. The judgment in the case of Union Public Service Commission (supra) cannot have any application to the facts of this case inasmuch as the judgment was delivered in the context of an allegation of copying in a competitive examination where the expert body of the Union Public Service Commission had come to the conclusion that one candidate had copied from another and this would not have been possible but for the connivance of the other. It was in this context that the

Supreme Court had held that where an expert body had come to a conclusion of fact the same should not ordinarily be interfered with by a Court of law. It was in this context that the Supreme Court had occasion to observe that absence of report of the invigilator would not be sufficient to exonerate the delinquency if otherwise a conclusion could be arrived about the delinquency of the candidate. This judgment should be held to be inapplicable for yet another reason. The Supreme Court had held that as long as an enquiry is held to be fair and it affords the candidate adequate opportunity to defend himself Courts ought not to examine the matter with the same strictness applicable to criminal charges. But here the enquiry cannot be held to be conducted properly and it cannot also be held that the petitioner was given proper opportunity to defend himself.

22. The case of Anil Kumar (supra) equally goes against the respondents. I find that it applies to the facts of this case as against the respondents inasmuch as with reference to that case the Supreme Court had held that the enquiry officer had merely recorded his ipse dixit that the charges were proved without assigning any reason why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. There was no enquiry in this case worth the name and the order of termination passed on such proceeding disclosing non-application of mind would be unsustainable. From the petitioner's point of view the present case stands on a better footing inasmuch as there was no evidence adduced either by the respondents even by the respondents to prove the case. The question of the petitioner's producing any evidence did not arise as he was kept in dark. Thus the charges against the petitioner must be held not to have been proved at the enquiry for want of evidence.

23. Therefore, the order impugned in the writ petition as well as the enquiry report filed in this case are set aside and quashed. The petitioner is reinstated in service. The authorities are directed to reinstate him and to allow him to work with immediate effect and to release the salary along with other allowances. It is, however, made clear that the fate of this writ petition shall not prevent the respondents from proceeding afresh against the petitioner on the self-same allegation in accordance with law and upon compliance of the procedural requirements.

24. The writ petition is allowed. There shall, however, be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.