

Mrs. Leena Nandi Vs The West Bengal Board of Secondary Education and Others

Court: Calcutta High Court

Date of Decision: Aug. 5, 1969

Acts Referred: West Bengal Board of Secondary Education Act, 1963 â€” Section 22(3)

Citation: 74 CWN 325

Hon'ble Judges: D. Basu, J

Bench: Single Bench

Advocate: M.N. Banerjee and S.S. Alam, for the Appellant; S.C. Bose, Bhagabati Banerjee and Harashit Chakraborty, for the Respondent

Judgement

Mr. D. Basu, J.

The history behind this case is that the Petitioner who was the Headmistress of Narkeldanga Girls' High School which is

being represented by the Respondents No. 2 to 4, took leave on the ground ill-health and after the leave was continued up to the 26th August

1966, she made a further period of six weeks by the letter of that date which is at Annexure "A" to the Petition (Page 31), attaching a Medical

Certificate of a competent Medical Officer which is at page 32. There was nothing to question the authenticity of the certificate or its weight but the

Ad-Hoc Committee of the School, by their letter at page 33, rejected the further leave prayed for on the ground that she was not entitled to further

leave according to the rules. If the Medical Certificate had been taken proper cognizance of, the Petitioner was entitled to be considered to remain

unfit till the 10th October 1966, and by the fit Certificate granted by the same Medical Officer dated the 29th October 1966 (Page 39), the

Petitioner can be said to have been fit to resume her duties on the 29th October, 1966. These dates fell during the period when the school was

closed for the Puja Vacation. Notwithstanding refusal of further leave asked for by Annexure "A", the Petitioner was unable to join and she

proposed to join after the reopening of the Puja Vacation on the 31st October 1966 by her letter at Annexure "F", dated the 17th October 1966,

Instead of allowing the Petitioner to rejoin on the reopening of the vacation, the Secretary of the School wrote a letter at Exhibit "G" dated the 27th

October 1966, by which he said that since she did not join on the expiry of the leave granted by the school and on the refusal to grant further leave

I cannot allow you to join the school in any capacity whatsoever on reopening of school after the Puja Vacation". The substance of this letter

issued by Secretary was the Petitioner could not be allowed to resume her duties since she did not join immediately after the expiry of the leave

which was formally granted by the School. There has been some controversy as to whether the Secretary had the power to do this but in the

counter-affidavit of the school, it was stated that the Ad-Hoc Committee had subsequently ratified it. Whether that would be valid or not it is not

necessary to go into because the matter has gone upto the Board of Secondary Education in appeal against Order of the Secretary at Exhibit "G"

and it has been fought on the footing that it is an Order of the School Committee against which appeal lies to the Appeal Committee of the Board

u/s 22(3) of the West Bengal Board of Secondary Education Act 1963.

2. The Petitioner has come to Court being aggrieved with the order of the Appeal Committee which is at Exhibit "K" to the Petition. The

substantive relief prayed for is that the decision of the Appeal Committee should be quashed on the ground that the order passed by the Appeal

Committee is not in consonance with and does not follow from the judgment which was recorded rather elaborately by the Appeal Committee.

Before we enter into the merits of this case, it is necessary to dispose of the preliminary point which has been raised on behalf of the Ad-Hoc

Committee of the School by Mr. Bose, that this rule is not maintainable in the absence of the Appeal Committee on the record. His argument in

short was that the composition of the Appeal Committee, as given u/s 22(1) of the Act shows that there are certain members of this Committee

who did not appertain to the staff of the Board and that, accordingly, the Appeal Committee must be held to be an entity separate from the Board.

It is not possible to accede to this contention inasmuch as this Act, as its title goes, was enacted with the object of setting up statutory corporation,

namely, the Board of Secondary Education to look after the matter, relating to Secondary Education in this State. By Section 3(2) of the Act this

Board, which is a body corporate, is declared to be a person to sue and to be sued in its own name. There is no other statutory corporation under

this Act and the Appeal Committee can not be said to be a legal person. Apart from that, Section 18 of the Act makes it clear that it is the Board

which establishes and constituted the different Committees as specified in that Section. The Committee so formed are limbs of the Board and the

decision of the Appeal Committee must be taken to be a decision of the Board itself. Be that as it may, it is not possible to contend that when the

Board itself has been sued in terms of Section 3(2), a legal proceeding shall fail because of the absence of the individual members of the Appeal

Committee. In a proceeding against the Board, the law will presume the presence on record of all the organs of the Board as constituted under the

statute. This preliminary objection, accordingly, must be rejected.

3. It was further argued that because the Appeal Committee was a Tribunal from which the present proceeding for a Writ of Certiorari has been

brought the proceeding cannot be maintained in the absence of the Tribunal, as held by the Supreme Court (1) Udit Narain Singh Malpaharia Vs.

Additional Member, Board of Revenue, Bihar, . This breach of the argument has no independent footing once we have held that it is the Board

which represents the Appeal Committee at law.

4. Coming now to merits of the Petitioner's case, I am of the opinion that the decision of the Appeal Committee suffers from errors apparent on

the face of the record. The first is that though the letter of the Secretary at Annexure "G" against which the Appeal was preferred by the Petitioner

did not say that her services were terminated the Appeal Committee took it that it amounted to an order of termination of service on the ground

that "It is admitted during hearing by both sides, that amounts to termination of service". It may be pointed out in this connection that under the

statute the jurisdiction of the Appeal Committee to hear appeals was not confined to appeals against orders of termination of services. The appeal

can be preferred by teachers against any decision of a Managing Committee adversely affecting them.

5. The next point is whether the Petitioner can be fixed by any admission made by her before the Appeal Committee in this behalf. It cannot be

overlooked that whether a particular order constituted a termination of service or not was not a question of fact but one of law and that accordingly

if the Petitioner appeared in person before the Appeal Committee, it is difficult to hold that her admission on this question of law was final and

binding. If we look to the Memorandum of Appeal which was on a printed form as prescribed by Rules, it will appear that the Petitioner

categorically stated against item No. 8 (Vide paragraph 18 of the Petition) "service was not explicitly terminated. I was not allowed to rejoin my

duties after the expiry of my medical leave." Against item No. 16, she also stated - "Wrongfully restrained me from performing my normal duties

after expiry of my medical leave." As a layman the Petitioner was at a loss to find out its legal implications as would be apparent from her statement

in item No. 11 - "Its nature is hard to determine as it simply restrains me from joining my duties after the expiry of my medical leave. It neither

dismisses nor discharges."" After this statement it is very difficult to say that the Petitioner, so far as her Memorandum of Appeal is concerned

admitted that the letter of the Secretary amounted to an order of discharge merely because against item No. 14 in the column the relief prayed for

was reinstatement and arrears of salaries. It should be borne in mind that legal advice is not available to a party before the Appeal Committee of

the Board. In this connection, reference should also be made to the procedure which is laid down by the Circulars of the Board for termination of

service (Vide Circular 16/May/53 dated 4.5.1953). This was in fact appreciated by the Appeal Committee itself when it stated that the Ad-Hoc

Committee did not frame any charge but that when she wanted to join she was not allowed to join and further the order terminating the service in

this manner was not passed after following the proper procedure. It is because of the proper procedure was not followed in discharging her from

service the Appeal was allowed by the Committee in these words ""As the proper procedure was not followed in discharging her from service, the

Appeal should be allowed."" But in fact, by the letter in question the Secretary or the Committee did not profess to terminate the services of the

Petitioner, if next, the supposed admission was no admission in law, the foundation of the decision of the Appeal Committee in treating this as a

case of termination and the order of gratuity would be gone.

6. In fact the Ad-Hoc Committee or its Secretary simply made an order refusing the Petitioner to join her duties on expiry of the leave which,

however, they did not have under the relevant rules. If the Appeal Committee had looked at the matter from this point of view they would have

quashed the letter of the Secretary which stood in the way of the Petitioner's resuming her duties. In the counter-affidavit of the Ad-Hoc

Committee, it is urged that the Petitioner was not entitled to have any leave as a matter of right and that it was absolutely at the discretion of the

Committee to refuse her extension of the leave she was asking for. There is no doubt that all leave is at the discretion of the authorities under the

corresponding Rules applying to Government Servants and that principle seems to have been adopted by the authorities under the Board of

Secondary Education by the Circular No. 46/55 dated the 12th September, 1955 which has been shown to me. These very rules show that of the

various types of leave that may be granted there is extraordinary leave without pay up to two years when no other leave is due to an employee.

Even though leave is discretionary no authority can be allowed to exercise discretionary power in an arbitrary manner. Here was a case of a Lady

Teacher who had undergone an operation and was under competent medical treatment and the Medical Officer advised her continued rest which

was totally ignored by the Ad Hoc Committee and by the impugned letter of the Secretary, she was being asked to resume her duties at a time

when she was not physically fit. If one goes through the judgment of the Appeal Committee, it becomes evident that this action of the Ad-Hoc

Committee was not supported by the Appeal Committee. In fact the reference made by the Appeal Committee are in agreement with the report of

the District Inspectress of Schools who also expressed the opinion that the Petitioner should have been granted extraordinary leave. In the

circumstances, if the Appeal Committee had not relied upon the alleged admission of the Petitioner during hearing that the letter of the Secretary

amounts to termination of her services, it is quite clear that the Appeal Committee would have simply struck down the letter of the Secretary from

which the Appeal was preferred.

7. Proceeding on the footing that the letter of the Secretary constituted a termination of her services, the Appeal Committee made an order

directing her to be paid gratuity instead of directing reinstatement presumably on the basis of Rule 9(1)(b) of the Rules made by the Board

regarding the powers and jurisdiction of the Appeal Committee. The said Rule no doubt specifies the alternative orders which can be made by the

Appeal Committee and it is a matter of discretion that the Appeal Committee which of the alternatives should be adopted after hearing a particular

appeal. The Appeal Committee, however, has not given any reason as to why the Committee did not consider that it was not a fit case for

reinstatement even after a finding that the procedure for discharge was not adopted by the Ad-Hoc Committee. The exercise of the discretion does

not appear to be proper in view of the report of the District Inspectress of Schools which was before the Appeal Committee and which the

Committee says was taken into consideration. That report would show that the Petitioner was popular not only with the pupils of the School but

also with the majority of the teachers excepting a few who were supporters of Subject-matter. Kanak Ghosh who got the opportunity of officiating

as Headmistress in place of the Petitioner after the Secretary's letter in question. In these circumstances, the absence of reason in the Appeal

Committee's order as to why gratuity was to be the proper relief instead of reinstatement becomes more prominent. Gratuity is, of course,

mentioned as an alternative to reinstatement but if the discretion is to be exercised properly, it would be ordered in such cases for instance, where

reinstatement is impossible because the discharged teacher has in the meantime reached the age of retirement.

It is however, not necessary to pursue this aspect of a matter inasmuch as, as I have stated at the beginning, the letter of the Secretary could not be

taken to constitute an order of termination of service and even though the Petitioner might have made admission to that effect before the Committee

that admission was not binding upon the Petitioner because it was on a point of law. It was for the Committee to arrive at a proper decision on this

point. But this Court cannot substitute a proper order in place of that passed by the Appeal Committee. The matter should, therefore, go back to

the Appeal Committee to give a proper decision in accordance with law and in the light of the observations made herein.

8. The rule is made absolute in the above terms but there will be no order as to costs.