
(2013) 10 CAL CK 0043

Calcutta High Court

Case No: Writ Petition No. 2831 (W) of 2009 and CAN 10115 of 2009

The Members of Managing
Committee

APPELLANT

Vs

Sri Pasupati Das and Others

RESPONDENT

Date of Decision: Oct. 8, 2013

Citation: (2014) 1 CALLT 216

Hon'ble Judges: Sambuddha Chakrabarti, J

Bench: Single Bench

Advocate: Kartick Bhattacharya, for the Appellant; Asish Kumar Sanyal, Ashim Kumar Ghosh, Advocates for the Respondent No. 1, Mr. Sadananda Ganguly and Mr. D. Banerjee, Advocates for the State, for the Respondent

Final Decision: Allowed

Judgement

Sambuddha Chakrabarti, J.

The petitioner is aggrieved by the order passed by the appeal committee of the West Board of Secondary Education as communicated by the Secretary to the said Board setting aside the order of dismissal passed by the Managing Committee of the concerned school against the respondent No. 1 and directing the said respondent to be reinstated in service. The facts of this case, put in a brief compass, was that the respondent No. 1 is an assistant teacher of Howrah Rabindra Vidyamandir (H.S.). He was charged with bigamy in a criminal case and in the trial that followed he was convicted and sentenced to simple imprisonment for one year with fine of Rs. 3,000/-. An appeal therefrom had failed. Ultimately this court in revision set aside the sentence of imprisonment but directed him to pay a fine of Rs. 5,000/- with a default clause.

2. After receiving a complaint about the bigamy committed by the respondent No. 1 the school authorities decided to initiate disciplinary proceeding under Rule 28(8) and (8a) of the Management of recognized Non-Government Institutions (Aided and unaided) Rules, 1969 (the Rules, for short).

3. When the disciplinary proceeding reached the stage of dismissing the petitioner from service and when the Board of Secondary Education had approved the same, the petitioner challenged the same by filing a writ petition being W.P. No. 18291(W) of 2001 and the same was dismissed by a learned single judge by an order dated December 17, 2004.

4. When the petitioner was dismissed by the school authorities he had filed an appeal to the appeal committee of the West Bengal Board of Secondary Education. As has been mentioned earlier the appeal committee had found merit in the appeal largely on the ground of violation of the principles of natural justice. The committee, therefore, directed the respondent No. 1 to be reinstated in his earlier post with necessary directions for payment of salaries.

5. A very interesting question has cropped up for consideration, i.e., whether after a learned single judge of this court had passed an order in the earlier writ petition the appeal committee could take a view contrary to the one taken by a learned single judge of this court. The school authorities are mainly aggrieved by the fact that the proposal to dismiss the petitioner from service had been approved by the Board and challenge to such approval was negatived by the court before. Mr. Bhattacharya, the learned advocate for the petitioner has argued that it was improper on the part of the appeal committee to set aside the order of dismissal without considering the judgment of this court passed in the earlier writ petition. Mr. Bhattacharya argued in view of the order dated December 17, 2004 passed in the earlier writ petition the appeal committee could not raise any question up to the stage of the proposal of dismissing the petitioner and, therefore, order of the appeal committee setting aside the dismissal of the writ petitioner on the ground of violation of the principles of natural justice was plainly untenable.

6. I have heard the learned advocates for the parties and have gone through the records. This argument of the petitioner does not appear to be very convincing for what was decided in the earlier writ petition related to a different stage than what was under challenge before the appeal committee of the Board. Apparently it looks as if once the proposal to dismiss had not been interfered with by this court the subsequent dismissal also is saved. A minute and close examination, however, reveals that these two orders were passed at two different stages. By an order dated January 27, 2001 the Secretary of the school had informed the Secretary of the Board that the Managing Committee of the school had resolved to remove the respondent No. 1 from the service in the interest of the school and the students. Necessary papers were sent to him for information and necessary action. Obviously the school was seeking approval of the decision taken by the Managing Committee of the school. The parties were directed by the Board to appear before the committee constituted u/s 24 of the West Bengal Board of Secondary Education Act (the Act, for short) and subsequently that the said committee approved the proposal to dismiss the respondent No. 1 from service provided there was no contrary order

from this court. It was in this context that the order dated January 17, 2004 was passed by a learned single judge of this court.

7. But subsequently when the petitioner was dismissed from service the appeal filed by him gave rise to a different cause of action. The earlier writ petition was filed challenging the approval given to the proposal in terms of the requirement of the Act concerned. This approval was a procedural matter. This does not mean that once approval has been given and the court has declined to interfere the respondent No. 1 cannot challenge an order of dismissal passed pursuant to the approval granted.

8. Although the learned single judge while disposing of the earlier writ petition had come to a finding that the petitioner had been found guilty of bigamy and was convicted by a court of law and although the court had found that the petitioner had approached the court with unclean hands it cannot be lost sight of that this observation was made by the court only in connection with the challenge to the approval granted by the Board. It will be too much to say that this had taken away the right of the petitioner to challenge the order of dismissal passed pursuant to such approval.

9. The submission of Mr. Bhattacharya that after this court had rejected the contention of the petitioner the appeal committee ought not to have set aside the order of dismissal is not sustainable in law. The order of this court must be read in the context in which it was passed and should not be applied to a stage which was yet to be reached at that point of time.

10. The petitioner has referred to the case of Supreme Court [Supreme Court Employees' Welfare Association and Others Vs. Union of India \(UOI\) and Another](#), or a proposition that when a particular decision has become final and binding between the parties it cannot be set at naught on the ground that such a decision is violative of Article 14 of the Constitution. So far as the parties are concerned they will always be bound by the said decision. This principle has obviously no application to the facts of this case as the question of finality of the decision does not arise as two decisions were delivered in respect of two stages. It cannot be overlooked that the High Court had not said anything about the validity of the dismissal or the appeal filed or the merit of the appeal. It would have been entirely a different thing if the court had expressed any opinion about the propriety of the dismissal. It will not be proper to fetter the respondent No. 1's right to appeal against an order of dismissal.

11. Thus I find no merit in the submissions made by the petitioner that the appeal committee exceeded the jurisdiction in allowing the appeal on merit after the order of this court passed in connection with the earlier writ petition.

12. But there is a serious problem in upholding the finding of the appeal committee on merit. The appeal committee had found that the school authorities had

proceeded with the disciplinary proceeding by not affording sufficient opportunity to the petitioner and thereby violated the principles of natural justice. The appeal committee had come to a finding that the school authority did not allow the respondent No. 1 to examine or cross-examine the witnesses neither did they allow the petitioner any personal hearing and the respondent No. 1 without getting sufficient opportunity to defend his case had been axed.

13. This finding of the appeal committed would have been unimpeachable in any other context. Violations of principles of natural justice is a very serious thing and courts have always frowned upon any attempt on the part of the authority to violate any of the principles. While this is true as a general law, it is equally true that the principles of natural justice cannot be stretched beyond a permissible limit and the necessity to adhere to the principles of natural justice is never insisted on when it is likely to result any empty formality.

14. More recent ratiocination of different courts as reflected in the pronouncements of different judgments is that while this principle is basic to all jurisprudential endeavor unnecessarily stretching it beyond a point is neither warranted nor desirable.

15. The question must thus, in all cases, boils down to if the non-observance of the principles of natural justice has caused any real prejudice to the person complaining. In *R. vs. Secretary of State for the Home Department, ex P. Mughal*, (1973) 3 All ER 796 it was observed that the rules of natural justice should not be allowed to be exploited as a purely technical weapon to undo a decision which does not in reality cause substantial injustice. The Supreme Court too in the case of [S.L. Kapoor Vs. Jagmohan and Others](#), held that if on admitted or indisputable facts only one conclusion is possible, and under the law only one penalty is permissible the court may not compel the observance of natural justice "not because it approves the non-observance of natural justice but because courts do not issue futile writs." Again in [The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others](#), the Supreme Court held that it is by now well settled that in all cases of violation of the principles of natural justice, the court exercising jurisdiction under Article 226 of the Constitution need not necessarily interfere and set at naught the action taken. The genesis of the action contemplated, the reasons thereof and the reasonable possibility of prejudice are some of the factors which weigh with the court in considering the effect of violation of the principles of natural justice.

16. In this case it is an admitted position that the person had committed bigamy. He was tried in a criminal court and was convicted and sentenced. Although this court in a revisional application had altered the sentence the conviction remained and the learned single judge while disposing of the earlier writ petition had very specifically held that substitution of punishment of imprisonment by imposition of fine cannot and does not amount to acquittal. He was found guilty and convicted by a court of

law. Thus there cannot be any two opinions about the fact that he had committed bigamy. The respondent No. 1 also never disputed it. On the contrary he had admitted in his affidavit-in-opposition that the factum of second marriage was very much within the knowledge of the secretary of the Managing Committee and other teachers of the school for a very long time.

17. Thus, the respondent No. 1 also having himself admitted the second marriage it cannot be said that he has been in any manner prejudiced by the non-observance of the principles of natural justice. The second marriage having been admitted by him it would have been an empty formality to give a fresh opportunity to defend himself because it is a settled principle of any legal system that a fact admitted need not be proved.

18. In such view of it I find sufficient merit in the writ petition and the order passed by the appeal committee is hereby set aside and quashed.

19. The writ petition is allowed.

20. 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.