

(1988) 12 CAL CK 0045**Calcutta High Court****Case No:** F.M.A.T. No. 2083 of 1987

Secretary Salkia Sri Krishna
Vidyalaya

APPELLANT

Kailash Nath Rai and Others

Vs**RESPONDENT****Date of Decision:** Dec. 19, 1988**Citation:** 93 CWN 924**Hon'ble Judges:** Pabitra Kumar Banerjee, J; G.N. Ray, J**Bench:** Division Bench**Advocate:** P.R. Mondal, Sakti Nath Mukherjee and Prabhat Kumar Mukherjee, for the Appellant; B.R. Bhattacharjee, for the Respondent**Final Decision:** Allowed

Judgement

G.N. Ray, J.

This appeal is directed against the order dated 19th June, 1987 passed by the learned trial Judge in CO. No. 11206(W) of 1985. By the aforesaid order, the learned trial Judge allowed the writ petition made by the respondent no. 1, Sri Kailash Nath Rai and set aside the order dated 30th May, 1985 issued by the Secretary, West Bengal Board of Secondary Education being Annexure "F" to the writ petition and also the resolution dated 7th of April, 1985 of the Managing Committee of the School relating to the dismissal of the writ petitioner respondent no. 1. The learned trial Judge, however, directed inter alia that in the interest of justice the writ petitioner respondent no. 1 should not be allowed to join the school immediately, but the Director of School Education, West Bengal was directed to hold an enquiry into the matter and the question of reinstatement of the writ petitioner was directed to abide by the result of such enquiry. The learned trial Judge has also directed that the Director of School Education should pass a reasoned order after holding an enquiry as directed. It was further directed that if the enquiry to be made by the Director of School Education was not completed within two months, the writ petitioner would join the post of Headmaster of the School and would continue to

hold the same until the order was communicated by the Directors of School Education to the writ petitioner respondent no. 1. The Secretary of the School, namely Salkia Sri Krishna Vidyalaya has preferred the instant appeal against the aforesaid order of the learned trial Judge. For the disposal of the appeal it is necessary to refer to certain facts. The writ petitioner respondent no. 1 Sri Kailash Nath Rai was the Headmaster of Salkia Sri Krishna Vidyalaya and it is the case of the writ petitioner that while he was acting as the Headmaster of the said school in the month of March, 1980, he fell seriously ill and according to the advice of the physician on or about 4th of May, 1980 he made an application before the President of the School for granting him leave for the period from July, 1980 to 30th June, 1985, i.e. for long five years, on personal ground so as to enable him to undergo medical treatment at the petitioner's native village. It may be noted that the petitioner was not only the Headmaster of the said School, but he was also the Secretary of the said School at the relevant time. It is the case of the writ petitioner that as he himself was the Secretary of the said School he made an application to the President of the Managing Committee of the said School and according to the writ petitioner the President made an endorsement to the said letter and resolution no. 2 of the Managing Committee was taken on 11th May, 1980 by which the writ petitioner was thereafter directed. to hand over charge to one Sri Raj Deo Singh, seniormost teacher of the School and such charge was handed over to Sri Singh. It is the case of the writ petitioner that after the expiry of the said leave on 1st of July, 1985 the writ petitioner went to join the said School, but he was surprised to find that the present teacher-in-charge did not allow him to sign the attendance register and the petitioner was informed by the said teacher-in-charge that he would take instruction from the Secretary of the School. As the petitioner was not allowed to join after the expiry of the leave, he made a representation to the District Inspector of Schools (S), Howrah. It is the case of the petitioner that although he had been regularly attending the School he was not allowed to sign the attendance register and on 6th of July, 1985 the writ petitioner made representation before the Secretary of the present Managing Committee requesting him to allow the writ petitioner to resume his duty as a Headmaster. On 6th of July, 1985, the writ petitioner, however, came to know from the teacher-in-charge of the School sometime in April, 1985 the managing committee of the School had adopted a resolution for removing the petitioner from service on the ground of his remaining absent from 15th November, 1979 and such resolution for dismissing the service of the petitioner was forwarded to the West Bengal Board of Secondary Education for approval and West Bengal Board of Secondary Education approved the said decision of the Managing Committee to terminate the service of the writ petitioner. The writ petitioner, however, contended in the writ petition that no opportunity of hearing was given to the writ petitioner and the decision of the managing committee and the consequent approval of the West Bengal Board of Secondary Education were illegal and motivated and the petitioner being on leave with effect from 1st of July, 1980, there was no occasion to treat the petitioner as absentee teacher with effect

from 14th November, 1979. The writ petitioner further contended that as after the expiry of the period of leave of five years, the writ petitioner intended to join, there was no occasion to terminate the service of the petitioner and the School authorities were not also justified in preventing the petitioner to join in the post of Headmaster of the said School. The writ petitioner has also contended that he ascertained from the District Inspector of Schools(S), Howrah that the West Bengal Board of Secondary Education by its order dated 30th May, 1985 granted approval to the proposal of the "Managing Committee in treating the petitioner as resigned from the post of the Headmaster in terms of the existing leave rules of the Board. The writ petitioner has contended that in a civil suit being Suit No. 276 of 1981 in the 5th Court of the learned Munsif, Howrah against the resolution of the Managing Committee of the School, the writ petitioner was made a defendant and summons of such suit had been served on the writ petitioner at his native village. Accordingly, the School authorities were aware of his native village address and hence they had an obligation to serve a notice on him before adopting a resolution to treat his service as terminated on the score that he should be deemed to have resigned from the post by remaining absent for more than five years. As despite representations made by the petitioner the concerned authorities failed and neglected to allow the petitioner to resume his duties and functions as Headmaster of the said School, a writ petition was moved before this court which, as aforsaid, was disposed of by the learned trial Judge.

2. From the affidavit-in-opposition filed in the writ proceeding and also the application for interim order made in this appeal and also the supplementary affidavit by the appellant, namely the Secretary of the said School, it transpires that some teachers of the said School made various complaints against this writ petitioner to the effect that after being elected as Secretary of the managing committee of the said School, the writ petitioner in capacity of the Secretary and also in the capacity of the Headmaster of the said School took advantage of his position and committed various nefarious activities some of which were narrated in the affidavit-in-opposition filed in the writ proceeding. The allegations are, inter alia, that the writ petitioner took away the relevant records of the School, viz. attendance registers of both the students as well as the teachers, Admission Registers, Cash Books, Bank Pass Book, Acquittance Register, Recognition File and also took away four ceiling fans, one cyclostyle Gestetner machine, musical instruments and other moveable properties of the school. The writ petitioner also encashed a bill for Rs.7,776/- sanctioned by the D.I. of Schools (Secondary Education). Howrah as Government D. A. for the staff of the School and he went away with the entire amount without making any disbursement of the staff. The writ petitioner also received double payment of salary, as Headmaster of both Sri Krishna Pathsala and Salkia Sri Krishna Vidyalaya for the period January, 1969 to January, 1970. It may be noted that the writ petitioner was appointed as Headmaster of Salkia Sri Krishna Vidyalaya on January 1, 1969, and prior to that he was the Head teacher of Salkia Sri

Krishna Pathsala. It was further stated in the affidavit-in-opposition made by the teacher-in-charge of the said School in the writ proceeding that there was no occasion for entertaining the alleged application for leave by the President of the managing committee because at the material time there could not be any managing committee and there was therefore no occasion for holding the alleged meeting of the managing committee on the 11th May, 1980 or on any date thereafter. There was also no occasion to grant any leave to the writ petitioner for a period of five years with effect from 1st June, 1980 as alleged. It was stated that the annexures to the writ petition disclosing application made by the writ petitioner for grant of leave and such grant of leave by the President and/or handing over charge by the writ petitioner were all fabricated.

3. It has been stated in the affidavit-in-opposition of the teacher-in-charge that since 14th November, 1979 the writ petitioner remained absent from the School without any intimation whatsoever and in view of the chaotic condition created by the writ petitioner in the School, the Sub-Inspector of Schools, (Secondary Education), Howrah was appointed as a Drawing and Disbursing Officer of Salkia Sri Krishna Vidyalaya, but the writ petitioner while in office had created obstruction in functioning of the said Drawing and Disbursing Officer. A letter dated 8th December, 1979 written by the said Drawing and Disbursing Officer to the D. I., Howrah, has been annexed to the affidavit-in-opposition being marked as Annexure "A". It transpires from the said report that the Assistant Teachers of the said School had submitted two joint petitions before the D.I. of Schools (Secondary Education) Howrah dated 3rd December, 1979 and 5th December, 1979 making a complaint that the petitioner remained absent from the said School from 14th November, 1979. Serious allegations were also made against" the activities of the brother of the writ petitioner Sri Ravindra Nath Rai who was also employed as a Clerk of the said School. The copies of the representations of the said Teachers on 3rd and 5th December, 1979 were also annexed in the affidavit-in-opposition. The West Bengal Board of Secondary Education thereafter appointed Deputy Assistant Inspector of Schools, Sadar East Circle, Howrah as the Administrator of the said Salkia Sri Krishna Vidyalaya for a period of six months and such order was communicated by the Board by its memo no. 3287/G/1 dated 24th April, 1980. A copy of the said memo was also annexed to the affidavit-in-opposition. The said Administrator thereafter assumed charge on 24th April 1980 and after assumption of charge by the said Administrator all the staff of the school complained to the said Administrator about the various nefarious activities alleged to have been done by the writ petitioner and his brother, Sri Rabindra Nath Rai. Such copy of the representation was also annexed to the affidavit-in-opposition. It was categorically stated in the affidavit-in-opposition that there was no managing committee subsisting and/or functioning on 11th May, 1980 and as such, there was no occasion for such managing committee to grant leave to the "writ petitioner. It was stated in the affidavit-in-opposition that the writ petitioner used to keep with him blank

papovers containing the names of the petitioner himself and two others Assistant Teachers and used to get them signed by the Assistant Teachers beforehand against their respective names in order to make payment Of increased salary. It was stated in the affidavit-in-opposition of the teacher-in-charge that in all probability such papers have been utilised by the writ petitioner to fabricate the evidence about handing over charge on his obtaining leave to Rajdeo Singh. It was further disclosed in the said affidavit-in-opposition that the writ petitioner in fact was employed by the Indian Post and Telegraphs Department as Extra Departmental Branch Post Master at Raitha, Varanasi (U. P.) and he had taken charge of the said job from 1st April, 1980. The senior Superintendent of Post Offices, Varanasi Division by a letter dated 2nd May, 1980 in reply to a memo dated 20th April, 1980 of the Administrator of the said School disclosed the said fact. The senior Superintendent also addressed a similar letter to the District Inspector of Schools (Secondary Education), Howrah and a copy of such letter dated 2nd May was also annexed to the affidavit-in-opposition. It appears from Annexure "C" to the affidavit-in-opposition of the teacher-in-charge that on 14th May, 1981 that the Administrator of the said School submitted a report to the Secretary, West Bengal Board of Secondary Education about the affairs of Sri Kailash Nath Rai and it was pointed out in the said report that the said Sri Kailash Nath Roy, the Ex-Secretary and Headmaster of the School had taken away him all the records and he also encashed the bills for Rs.7776.00 passed by the District Inspector of Schools (Secondary Education) Howrah as Government D. A. for the period from 1/9/78 to 30/11/78 and from 1/12/78 to 28/8/79, but he did not disburse the said amount to the teaching and non-teaching staff of the school. As a result, no grant was released in favour of the school by the District Inspector. It also appears from the annexure "H" to the affidavit-in-opposition that an advertisement was given in the Statesman dated 22nd June, 1983 to the effect that Sri K. N. Rai, Headmaster and Sri R. N. Rai, Clerk of the said School were asked to report to the Secretary wit(sic) 15 days of the publication of the notice, otherwise they would be dismissed from service. It is the case of the School administration that neither the said writ petitioner nor his brother had responded to such notice. It also appears that the writ petitioner worked as extra-departmental Branch Postmaster from 1st April, 1980 upto 9th July, 1980 and again from 20th September, 1980 upto 20th October, 1980 and convincing documents from the postal department have been disclosed before this Court for such appointment of the writ petitioner. It also appears from the documents annexed to the supplementary affidavit that the writ petitioner joined as Asstt. Teacher in Bapu Higher Secondary School, Pipri, Bhaise at Varanasi and he received a sum of Rs. 30,316.86 as his salaries from July 1980 to 20th December, 1984 as an Asstt. Teacher of the said School. The writ petitioner also instituted a suit being Title Suit No. 898 of 1981 in the First Court of the learned Munsif at Varanasi for non-payment of his salary as Asstt. Teacher of the said School. An affidavit has been filed by the writ petitioner in the instant appeal to the supplementary affidavit made by the appellant in connection with interim affidavit made by the appellant in

connection with interim order and it has been admitted by the writ petitioner that he had accepted the post of an Asstt. Teacher in the said School and he also got appointment as Extra-depart menial Post Master in the aforesaid Post Office, but he actually did not do the work of the Extra-Departmental Postmaster all the time. He put a substitute for such work and such substitute in fact carried out the work of the postmaster.

4. It may be noted in this connection that initially in the affidavit-in-opposition made by the teacher-in-charge it was stated that the writ petitioner got an appointment as an Extra-Deaprtment Postmaster at Raitha, Varanashi. In the affidavit-in-reply made by the writ petitioner it was specifically stated in para 7 that as he fell seriously ill in the month of March, 1980 he had been to his native village in the last week of March, 1980. At that time, a new post office in his village was sought to be opened and his house was sought to be selected by the Postal authority. He was" given appointment as Extra-Department Postmaster with effect from April, 1980. But on 15th April, 1980, he handed over the charge to one Sri Onkar Nath Rai and such handing over of charge to Sri Onkar Nath was permissible under the rules and/or instructions of the Postal authority and Sri Onkar Nath Rai thereafter actually discharged the duties. It was also stated in para 7 of the affidavit-in-opposition that he did not draw any amount from the Postal authorities, for the few days he had served temporarily in the concerned Post Office. But it appears from the communication of the Postal Department that the salary for the said post of Branch Postmaster was paid by the Post department to him. It also partinent to mention in this connection that he obtaiend such appointment for the second time as an Extra-Departmental Branch Postmaster at Raitha sometime in September, 1980, but the said fact was not disclosed by him even in the affidavit-in-reply because the respondents in the writ petition could not disclose such fact of appointment for the second time for want of specific knowledge. But at the time of hearing of the application for interim order in the Rule, the said fact was disclosed by the appellant and the writ petitioner, respondent no. 1 was constrained to admit his second time appointment as. Branch Postmaster.

5. It is, therefore, quite apparent and evident that the writ petitioner suppressed the material facts in the writ petition before this Court. He deliberately did not disclose that although he tried to make out a case that he was very ill from March, 1980 and as such could not join the said School and discharge the duties as Headmaster, as a matter of fact, he secured an appointment of Extra-Departmental Branch Postmaster at Raitha (Varanashi) and on his own showing he acted as Branch Post Master at least for fifteen days because on the petitioner's case after 15th April, 1980, Sri Onkar Nath Rai was allowed to discharge such duties and functions on his behalf as his representative. The petitioner has tried to make a very simple case in the writ petition that he was very ill and not in a position to discharge the duties and functions as Headmaster and on medical advice he had to take a long leave for five years just to regain his health. By that process he remained in his village home for

five years and after expiry of leave of five years he came to join his duties and functions as a Headmaster, but he was not permitted to join on the score that he had left the service without any leave from November, 1979 and in any event, he must be deemed to have resigned from the said post for remaining absent for more than five years. From the affidavits disclosed "in this proceeding, it is quite apparent that the petitioner accepted the job of the Extra-Departmental Postmaster on two occasions and had also acted as Assistant Teacher in another School near Varanashi and it is an admitted case that he had worked in the said School near Varanashi as an Assistant Teacher for a long period and received salaries for such service. The said fact was deliberately suppressed in the writ petition. It is, therefore, quite apparent and evident that the writ petitioner was not very ill for which he was compelled to remain on leave but he was quite fit enough to serve another School as a teacher and also the Post Office as an Extra-departmental Branch Postmaster. It is also evident that the writ petitioner on a false pretext, remained absent in his own school and on his own showing, obtained leave for a long period of five years on the ground of health. Such a person in any event, does not deserve to remain as a Headmaster of a School. In view of the fact that the petitioner himself chose to serve another School goes to establish that he intended not to serve the School where he was holding the post of the Head Master. The petitioner was vigilant enough to institute a suit against the other School at Varanashi and to obtain a decree for Rs.30,000/- and odd for his arrear salaries. Such action, in our view, clearly indicates that he had no intention to serve the institution in question and he was not forced 16 remain absent on the ground of health.

6. In the circumstances, the School authorities may proceed reasonably that he had voluntarily left the service and joined the other School as Assistant Teacher. It also appears to us that at the relevant time there was no managing committee which ran the administration of the said School and the School at the relevant time was run by an Administrator who was a Government Officer appointed by the West Bengal Board of Secondary Education. In the circumstances, there was no question of the writ petitioner's making any application for leave to the President of the managing committee of the said School and to obtain such leave, as alleged by him and/or to hand over the charges to an alleged Teacher-in-charge of the said School. In the facts of the case, we are inclined to accept the contention of the appellant that the said documents are fabricated and should not be accepted to be genuine.

7. It should be noted in this connection that the writ Court is a Court of equity and the Writ Court is not bound to interfere simply because there is some infraction of law and/or procedure adopted under the law, if in the facts of the case and on consideration of equity, it transpires to the Writ Court that a party coming to the Writ Court has not come with a clean hand and he does not deserve any consideration from a Court of equity. In our view, the facts disclosed in this proceeding depict a very ugly and unfortunate state of affair and the writ petitioner has made himself unworthy to us that the writ petitioner had been acting,

dishonestly from the very beginning and resorted to blatant lies and left the School without any notice and/or leave granted to him and thereafter pursued different vocations of life including the job of an Assistant Teacher in another School near Varanashi. But later on, on a false pretext came to the Writ Court for getting his service reinstated.

8. In the aforesaid circumstances, we feel that the writ petition should be dismissed and we therefore allow this appeal, set aside the order passed by the learned trial Judge and discharge the Rule with cost assessed at 200 G.Ms. It initially appeared to us that it is a fit case where a sanction should be granted against the writ petitioner respondent no. 1 for being prosecuted before a Criminal court for making false statements in the writ proceeding and in this appeal. But after hearing the submissions of the learned counsel for the writ petitioner, we did not intend to proceed any further in the matter.

Pabitra Kumar Banerjee, J.

I agree.