

(2014) 2 CALLT 605 : (2014) 5 CHN 194

Calcutta High Court

Case No: W.P. No. 38168 (W) of 2013

Ananta Barui

APPELLANT

Vs

The State of West
Bengal

RESPONDENT

Date of Decision: Jan. 20, 2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 164

Citation: (2014) 2 CALLT 605 : (2014) 5 CHN 194

Hon'ble Judges: Debasish Kar Gupta, J

Bench: Single Bench

Advocate: Ekramul Bari and Syed Mansoor Ali, Advocate for the Appellant; Biswajit De and Kartick K. Roy, Advocate for the Respondent

Final Decision: Allowed

Judgement

Debasish Kar Gupta, J.

None appears on behalf of the respondent Nos. 4, 5, 6, 7 and 8 inspite of service copies of this writ application

upon them. No accommodation is prayed for. Let the affidavit of service filed in Court today be kept on record. This writ application is directed

against an order of suspension passed by the respondent school against the petitioner under Memo No. JHS/05/13 dated August 19, 2013.

According to the petitioner, he was appointed to the post of non teaching staff (clerk) of Jadabpur High School, District - Hooghly with effect from

June 20, 2006. By virtue of the order impugned he was placed under suspension. Subsequently, the respondent school issued a charge sheet dated

November 10, 2012 against the petitioner.

2. According to the petitioner the provision of Rule 28(9)(viiia) of the Management Rules, 1969 prescribes the procedure for placing a teaching or

non teaching staff of a government aided educational institution under suspension.

According to the petitioner, the above procedure has not been

followed by the respondent authority.

3. Mr. Biswajit De, learned State Government advocate, submits that the respondent school is the appropriate authority to assist this Court with

regard to the above order of suspension. The Government had no role to play in the above matter. For adjudication of the issue involved in this

case the provision of Clause (viiia) of Sub-rule (9) of Rule 28 of the Management Rule is quoted below:

** (viiia) to suspend a teacher or an employee where such suspension is in the interest of the Institution, pending drawal of proceedings against the

person concerned within ninety days from the date of suspension and during the period of suspension, the person concerned shall be paid pay and

allowances equal to fifty per cent of the pay and allowances drawn by him immediately before such suspension. Such steps shall be referred to the

Board within seven days of such action for approval. The person affected by the decision of the Committee may, however, make his/her

representation to the Board. The order of suspension shall automatically stand withdrawn in case proceedings are not drawn within a period of

ninety days, provided that in exceptional circumstances this time limit may be waived by the Board after due consideration of the facts of the case,

but under no circumstances the time limit shall be waived beyond the limit of one year:

Provided that where the period of suspension exceeds 90 days, the amount of subsistence allowance shall be increased after the expiry of ninety

days to seventy five per cent of the pay and allowances drawn immediately before such suspension:

Provided further that the person concerned shall not be entitled to any subsistence allowance if he/she accepts employment during the period of

suspension elsewhere.

(viii) to deal with other matters that are brought to be Committee in the interest of the Institution.

Note: After Clause (I) of Sub rule(9) of Rule 28, add the following Note: ""The Committee shall grant leave according to rules shown in the

appendix.

Note: An Institution receiving recurring financial assistance in any shape or form from the State Government either for maintenance or for payment

of salary and/or allowances of teachers and/or other employees thereof shall be treated as an aided Institution for the purpose of these rules.

4. The department circular dated June 21, 1982 is required to be taken into consideration for adjudication of the issue involved in the matter and

the same is set out below:

WEST BENGAL BOARD OF SECONDARY EDUCATION

No. S/606 Dated:

Calcutta, the 21st June, 1982

To: The Management of all Recognised Non-Govt. Secondary Institutions in the State.

Sub: Proposal for approval of suspension of members of the teaching/non teaching staff of Secondary Schools as required under Rule 28(9)(viia)

of the Management of Recognised Non Govt. Institutions (Aided and Unaided) Rules, 1969, as amended.

The management of recognized Secondary Institution is hereby informed that they will strictly act according to the formalities, as set forth below, in

the matter of submission of a proposal seeking Board's approval to the suspension of any member of teaching/non teaching staff of the school

under Rule 28(9)(viia) referred to above.

1. Any proposal for approval of suspension of a member of the teaching/non teaching staff should contain the following particulars:

Name and designation of the person concerned;

Date of appointment against a sanctioned post;

Date of order of suspension;

Copy of the resolution of the Managing Committee recommending such suspension;

Information about the payment of subsistence allowance to the person concerned;

Whether there is any previous record of suspension and/or punishment against him, if so, give details.

2. Letter seeking approval of suspension shall be submitted within seven days of such suspension, containing the particulars as mentioned under 1

above, with the superscription ""Suspension under Rule 28(9)(viiia) of the Management Rules"" written legibly on the envelope.

3. The order of suspension shall normally be issued to a member of the teaching/non teaching staff under Rule 28(9)(viiia) when his/her presence in

the school is deemed likely to prejudice the proper conduct of inquiry into the charges brought or to be brought against him/her.

4. Proceedings containing the articles of charges shall be drawn up against a suspended person within 90 (ninety) days from the date of his/her

suspension on the basis of a resolution of the Managing Committee and communicated to him/her without fail.

5. If such proceedings be not drawn up within 90 (ninety) days, the order of suspension shall automatically stand withdrawn as per provision of

Rule 28(9)(viiia) of the Management Rules.

6. The Board will acknowledge receipt of school's letter on the subject at the earliest opportunity.

7. If no acknowledgement letter is received from the Board within a month of despatch of school's letter, the school concerned shall send a

reminder to the Secretary of the Board by name bearing the superscription on the cover of the envelope - ""Reminder suspension case.

8. If no communication about the decision of the Board on the school's proposal be received by the school concerned within two months of the

date of submission of the proposal the school authority will meet the Secretary of the Board with all relevant papers on the subject, with a prayer

for expeditious disposal of the case.

Sd/- N. Sinha, Secretary.

(Emphasis supplied)

5. After perusing the aforesaid provisions of the Management Rules, 1969 I find that the order of suspension can normally be passed against a

teaching and non teaching staff of the non Government Aided Educational Institution where such suspension is in the interest of the institution

pending or in anticipation of a proceeding against the staff concerned. The above provision has further been clarified in the circular under reference.

Clause (3) of the said Circular provides that the order of suspension shall normally be issued to a member of the teaching and/or non teaching staff

under Rule 28(9)(viii) of the Management Rules, 1969 where his/her presence in the school is likely to prejudice to proper conduct of enquiry into

charges and/or to be brought against him or her.

6. After considering the order impugned I find that the same is cryptic one nothing reflects from the above order with regard to any prejudicial

effect on the disciplinary proceedings against the writ petitioner in case of his presence in the school. Admittedly the impugned order was not

passed adhering to the procedure prescribed in the Management Rules, 1969.

7. It is a settled proposition of law that where a power is given by the statute to do certain things in a certain way, it must be done in that way and

other methods of performance are forbidden. Reference may be made to the decision of AIR 1936 253 (Privy Council) The relevant portions of

the above decision are quoted below:

It was also said, and with this argument their Lordships agree, that if the oral evidence was admissible then S. 91 Evidence Act, requiring evidence

in writing did not apply because the matter would in such a case not be one which had to be reduced to writing. For the appellant it was said that

the Magistrate was in a case very different from that of a private person, and that his case and his powers were dealt with and delimited by the

Criminal Procedure Code, and that if this special Act dealing with the special subject matter now in question set a limit to the powers of the

Magistrate, the general Act could not be called in aid so as to allow him to do something which he was unable to do, or was expressly or impliedly

forbidden to do, by the special Act. The argument was that there was to be found by necessary implication in the Criminal Procedure Code a

prohibition of that which was here attempted to be done: in other words that the Magistrate must proceed under S. 164, or not at all.

(Emphasis supplied)

8. The above settled principles of law has been adopted by the Hon"ble Supreme Court of India and the same was repeated on a number of

occasions by the Supreme Court of India. Reference may be made to the decision of Ram Phal Kundu Vs. Kamal Sharma, and the relevant

portions of the above decision are quoted below:

12. The rule laid down in Taylor v. Taylor that where a power is given to do a certain thing in a certain way, the thing must be done in

that way or not at all and that other methods of performance are necessarily forbidden, was adopted for the first time in India by the Judicial

Committee of the Privy Council in Nazir Ahmad v. King Emperor. The question for consideration was whether the oral evidence of a Magistrate

regarding the confession made by an accused, which had not been recorded in accordance with the statutory provisions viz. section 164 Cr.P.C.

would be admissible. The First Class Magistrate made rough notes of the confessional statements of the accused which he made on the spot and

thereafter he prepared a memo from the rough notes which was put in evidence. The Magistrate also gave oral evidence of the confession made to

him by the accused. The procedure of recording confession in accordance with section 164 Cr.P.C. had not been followed. It was held that

section 164 Cr.P.C. having made specific provision for recording of the confession, oral evidence of the Magistrate and the memorandum made by

him could not be taken into consideration and had to be rejected. In *State of U.P. v. Singhara Singh* a Second Class Magistrate not specially

empowered, had recorded confessional statement of the accused u/s 164 Cr.P.C. The said confession being admissible, the prosecution sought to

prove the same by the oral evidence of the Magistrate, who deposed about the statement given by the accused. Relying upon the rule laid down in

Taylor v. Taylor and *Nazir Ahmad v. King Emperor* it was held that Section 164 Cr.P.C. which conferred on a Magistrate the power to record

statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to

him. This principle has been approved by this Court in a series of decisions and the latest being by a Constitution Bench in *CIT v. Anjum M.H.*

Ghaswala (SCC para. 27). Applying the said principle, we are of the opinion that the question as to who shall be deemed to have been set up by a

political party has to be determined strictly in accordance with paras. 13 and 13A of the Symbols Order and extrinsic evidence cannot be looked

into for this purpose unless it is pleaded that the signature of the authorised person on Form B had been obtained from him under threat or by

playing fraud upon him. Where signature is obtained under threat or by playing fraud, it will be a nullity in the eye of the law and the document

would be void.

(Emphasis Supplied)

9. In view of the above settled principles of law the impugned order of suspension cannot be sustained in law and the same is quashed and set

aside.

10. This writ application is, thus, disposed of. However, there will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis.