

(2014) 06 CAL CK 0091

Calcutta High Court

Case No: W.P. Nos. 33522(W) and 37824(W) of 2013

Sri Birchand Mondal

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: June 30, 2014

Citation: (2014) 3 CALLT 228 : (2014) 4 CHN 93

Hon'ble Judges: Debasish Kar Gupta, J

Bench: Single Bench

Advocate: Ekramul Bari and Manowar Ali, Advocate for the Appellant; Ekramul Bari, Manowar Ali and Subrata Guha Biswas, Advocate for the Respondent

Final Decision: Allowed

Judgement

Debasish Kar Gupta, J.

The first writ application bearing W.P. No. 33522(W) of 2013 (hereinafter referred to as "the first writ application") is filed by the Headmaster of Jhunka High Madrasah, District - Murshidabad challenging the continuation of the period of suspension on the basis of an order dated October 25, 2011 passed by the Managing Committee of the above madrasah. The subject-matter of challenge in the second writ application bearing W.P. No. 37824(W) of 2013 (hereinafter referred to as "the second writ application") is filed by the Managing Committee of the above Madrasah challenging inaction on the part of the West Bengal Madrasah Board in considering the question of approval of the above order of suspension dated October 25, 2011. In view of the fact that these two writ applications arose out of one order of suspension and those may be disposed of after analogous hearing. These matters are taken up for hearing. Let it be recorded that the respondents in the aforesaid two matters do not want to file affidavit in opposition in the above matter. As a result these matters are taken up for final hearing.

2. The fact of the case in a nut shell is this. A criminal proceeding bearing Beldanga P.S. Case No. 591/2011, District - Murshidabad dated September 14, 2011 was initiated against the petitioner under the provisions of 464/467/468/671/409 and

420 of the Indian Penal Code on the basis of a complaint dated September 14, 2011 lodged against the petitioner by the Secretary of the Managing Committee of the above Madrasah. The above complaints were placed on the allegation of the defalcation of money from the school fund amounting to Rs. 65,000/-and Rs. 30,000/- respectively. The petitioner was taken into custody by the police authority in connection with the above case on September 22, 2011. He was released on bail on October 17, 2011.

3. The Managing Committee of the above Madrasah adopted a resolution dated October 24, 2011 for placing the petitioner under suspension after discussion of the above matter in the meeting of its Managing Committee. On the basis of the above decision the Secretary of the above Madrasah communicated the above order of suspension to the petitioner on October 25, 2011 with immediate effect. According to the Managing Committee of the above Madrasah the above order of suspension was sent to the West Bengal Madrasah Board on October 25, 2011 for the purpose of approval of the above order of suspension. Let it be further recorded that no disciplinary proceedings has yet been initiated against the petitioner in connection with the allegation as discussed hereinabove.

4. It is submitted by Mr. Ekramul Bari, appearing on behalf of the petitioner in the first writ application and the respondent No. 7 in the second writ application that the above order of suspension was not passed in connection with the criminal proceeding under reference. According to Mr. Bari no decision was taken by the respondent No. 3 Madrasah to place the petitioner under suspension during the period of his detention in the police custody. According to Mr. Bari, assuming that the impugned order of suspension was passed in connection with the above criminal proceeding it come to an end immediately after his release on bail in view of provisions of sub section (3) of section 28 of the Management of Recognised Non Government Madrasah (Aided and Unaided) Rules 2002 (hereinafter referred to as the "Management Rules for Non Government Madrasah") read with the decision of *Sunder Gopal Singha v. West Bengal Board of Secondary Education & Ors.* reported in 2003(4) CHN 601. It is also submitted by Mr. Bari that in accordance with the provisions of clause (1) sub rule (g) of Rule 25 of the Management Rules for Non Government Madrasah the order of suspension has lost its force after expiry of 90 days from the date when the same had been taken effect to.

5. On the other hand, it is submitted by Mr. Manowar Ali, learned counsel appearing on behalf of the petitioner in the second writ petition and the respondents No. 6 and 7 in the first writ petition that the instant order of suspension was passed in exercise of power conferred upon the Managing Committee of the above Madrasah under the provisions of Sub Rule (2) of Rule 28 of the Management Rules for Non Government Madrasah. According to Mr. Ali, immediately after placing the petitioner under suspension with effect from October 25, 2011 the matter was referred to the West Bengal Madrasah Board for its approval which was followed by

reminders dated May 07, 2012 and October 12, 2012. According to Mr. Ali the provisions of Clause (1), Sub Rule (h) of Rule 27 has no manner of application in the instant case in view of the inaction of the West Bengal Madrasah Board. Let the relevant true copy of the relevant produced by Mr. Manowar Ali in support of his submission be kept on record.

6. Having heard the learned counsel appearing for the respective parties as also after considering the facts and circumstance of this case I find that for full and complete adjudication of the issue involved in this writ application that to consider the question of propriety of the impugned order of suspension as also its continuation the provisions of Rule (2) and (3) as also Clause (1) of Sub Rule (h) of Rule 27 of the Management Rules for Non Government Madrasah are quoted below :

27(3)(I) to suspend a teacher or an employee where such suspension is in the interest of the Madrasah, 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 approval. The person affected by the decision of the Committee may, however, make his representation to the Board. The proposal seeking Board's approval with regard to suspension of any member of teaching, non teaching staff shall contain the following particulars - (a) name and designation of the person concerned; (b) date of appointment against a sanctioned post (c) date of order of suspension; (d) copy of the resolution of the Managing Committee recommending such suspension; (e) information about the payment of subsistence allowance to the person concerned; (f) details of previous record of suspension and/or punishment against him, if any. The order of suspension shall normally be issued to a member of the teaching/non-teaching staff under this clause, when his presence in the Madrasah is likely to vitiate the inquiry and the charges brought or to be brought against him/her.

The order of suspension shall automatically stand withdrawn in case the 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. Where the period of suspension exceeds 90 (ninety) 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. The suspended person shall not be entitled to any subsistence allowances if he accepts employment during the period of suspension elsewhere.

However, a member who is detained in custody for a period exceeding 48 (fourty eight) hours under any law providing for preventive detention or as a result of proceeding on a criminal charge or otherwise, shall be deemed to have been suspended by an order of the appointing authority with effect from the date of his detention and shall remain under suspension till disposal of the matter by Court of law;

28(2). An employee of Madrasah against whom a proceeding has been commenced on a criminal charge may be placed under suspension under clause (c) of sub-rule (1) by an order made by the Committee. If the criminal charge is related to the official position of the employee of Madrasah or involves any moral turpitude on his part, suspension shall be ordered under this sub-rule, unless there are exceptional reasons for not adopting such a course.

(3) An employee of a Madrasah who is detained in custody for a period exceeding forty-eight hours under any law providing for preventive detention or as a result of a proceeding either on criminal charges or otherwise, shall be deemed to have been suspended by an order of the Committee, with effect from the date of his detention, and shall remain under suspension until further orders. An employee of Madrasah who is undergoing a sentence of imprisonment shall also be dealt with in the same manner, pending a decision on the disciplinary action to be taken against him."

7. After perusing the aforesaid provisions I find that there are two provisions in the Management Rules for Non Government Madrasah for placing its teaching and non teaching staffs under suspensions sub-rule (2) of Rule 28 of the above rule deals with the cases where a criminal proceeding is pending before teaching and non teaching staff of a Madrasah involved charge relating to his official position in the Madrasah or involves any moral turpitude. The provisions of sub rule (3) of rule 28 of the above rules deals with the cases where a teaching or non taff staff is detained in the custody for more than twenty four hours without taking into consideration the nature of the charge in connection with a criminal proceedings.

8. After considering the minutes of the 34th meeting dated October 24, 2011 adopted in the meeting of the Managing Committee of the Madrasah under reference I find that the above order of suspension was passed considering the pendency of this criminal proceedings against the petitioner. That may not be recorded in the impugned order of suspension. Since the charges involved in the criminal proceedings initiated against the petitioner relate to his official position of Headmaster of the Madrasah under reference, in my opinion, the provisions of sub rule (2) of Rule 28 is applicable in this case in view of the above observations made hereinabove. It does not help the Headmaster of the above Madrasah to take any advantage out of the same on the basis of the admitted facts as discussed hereinabove.

9. The decision of Sundar Gopal Singha (Supra) was delivered in connection with the provisions of Rule 28, Sub Rules (8)(b) and (9) of the Management of Recognised Non Government Institution (Aided and Unaided) Rules, 1969. After taking into consideration the above provisions I find that it is *pari materia* to the provisions of Clause (1) of Sub-Rule (h) of Rule 27 of the Management Rules for Non Government Madrasah but the point for consideration in the above decision was the provisions for placing a teaching or non teaching staff of recognised non government institution in case of his custody for a period exceeding forty eight hours. Therefore, the above challenge is relevant for the cases where the teaching and non-teaching staff is placed under suspension on the ground of his detention in custody of forty eight hours. Since on the basis of the observation made hereinabove this case does not come within the purview of the above provision and it comes within the purview of sub rule (2) of Rule 28 of the Management Rules for Non Government Madrasah in view of the settled principles of law that a decision is not authority for a proposition which did not fall for the consideration of the Court. Reference may be made to the decision of [Punjab National Bank Vs. R.L. Vaid and Others](#), and the relevant portion of the above decision are quoted below:

"5. We find that the High Court has merely referred to the decision in R.K. Jain's case (Supra) without even indicating as to applicability of the said decision and as to how it has any relevance to the facts of the case. It would have been proper for the High Court to indicate the reasons and also to spell out clearly as to the applicability of the decision to the facts of the case. There is always peril in treating the words of a judgment as though they are words in a Legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a difference between conclusions in two cases. Disposal of cases by merely placing reliance on a decision is not proper. Precedent should be followed only so far as it marks on path of justice, but you must cut out the dead wood and trim off the side branches else you will find yourself lost in thickets and branches, said Lord Denning, while speaking in the matter of applying precedents. The impugned order is certainly vague."

10. So far as the other ground of challenge the impugned order of suspension is concerned, after considering the provisions of Clause (1) of Sub Rule (h) of Rule 27 of the Management Rules for Non Government Madrasah I find that the such an order can continue subject to approval of the same by the West Bengal Madrasah Board and subject to drawing of a disciplinary proceedings in the matter within 90 days from the date of the order of suspension save and except exceptional circumstances. Though the above order of suspension was forwarded to the West Bengal Madrasah Board on October 25, 2011, it not in dispute that the Madrasah under reference has not yet receive any decision from the West Bengal Madrasah Board with regard to the above order of suspension. It is also not in dispute that the period of 90 days from the date of placing of order of suspension expired long back

i.e. sometime last week of January, 2014. It is also admitted position that the Managing Committee of the above school did not take any step for obtaining the opinion of West Bengal Madrasah Board of aforesaid of 90 days. Considering the statutory provision of the Management Rules for Non Government Madrasah and complying the same in respect of the facts and circumstances of this case I find that the impugned order of suspension stood withdrawn automatically after expiry of 90 days from the date of passing the order of suspension. At the cost of repetition let it be recorded and once against that the Managing Committee of the above Madrasah took steps in respect of the alleged inaction of the West Bengal Madrasah Board after expiry of the aforesaid period and the West Bengal Madrasah Board has no power to consider the prayer of the petitioner with regard to the approval of the impugned order of suspension after expiry of the period of 90 days from the date of placing the petitioner under suspension.

11. In view of the observations made hereinabove the order for quashing or setting aside of the impugned order suspension is necessary to passed since the same stood withdrawn automatically by operation of the provisions of Clause (1) of Paragraph (h) of Rule 27 of the Management Rules for Non Government Madrasah.

12. I direct the respondent authorities to allow the petitioner to join his duties in respect of the office of the Headmaster of the school under reference.

13. With these observations and directions these writ applications are disposed of. However, there will be no order as to costs.

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