

HIGH COURT OF TRIPURA
AGARTALA

WA 263 OF 2021

Sri Chandan Shil Sharma, son of Late Hemanta Shil Sharma,
Village-Pal Para, West Pipariakhola, P.O. Abhoy Ganj Bazar,
P.S. P. R. Bari, District- South Tripura, Age-51.

....**Appellant.**

Vrs.

1. The State of Tripura, to be represented by the Principal Secretary,
Department of Education (School), Govt. of Tripura, Agartala,
New Secretariat Building, Kunjaban, P.S. New Capital Complex,
Agartala, West Tripura, PIN 799010.

2. The Secretary, Department of Education (School), Govt. of Tripura,
Agartala, New Secretariat Building, Kunjaban, P.S. New Capital Complex,
Agartala, West Tripura, PIN 799010.

3. The Director, Department of Elementary Education (Siksha Bhavan),
Govt. of Tripura, Office Lane, Agartala, West Tripura, Pin 799001.

4. The Joint Director, Department of Elementary Education (Siksha
Bhavan), Govt. of Tripura, Office Lane, Agartala, West Tripura, Pin
799001.

....**Respondents.**

For the appellant(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. S. Bhattacharjee, Advocate.

For the respondent(s) : Mr. D. Bhattacharya, G.A.
Mr. S. Saha, Advocate.

Argument heard and :
judgment delivered on **12.01.2023**

Whether fit for :
reporting Yes/ No

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR.JUSTICE ARINDAM LODH**

JUDGMENT & ORDER(ORAL)

[T.Amarnath Goud, ACJ]

The present writ appeal is directed against the judgment and order dated 23.08.2021, passed by the learned Single Judge in WP(C) No.570 of 2021 whereby the learned Single Judge has dismissed the writ petition.

2. Brief facts of the case of the appellant (here-in-after referred to as the petitioner) is that he had challenged the order dated 01.01.2021 passed by the Director of Elementary Education, the respondent no.3 herein imposing punishment of compulsory retirement on the petitioner and the order dated 18.03.2021, passed by the Secretary, Department of School (Education), the Appellate Authority, the respondent no.2 herein affirming the order of the Disciplinary Authority. The allegation was that the petitioner as an Under Graduate teacher in a Government School namely, Barkhasari S.B. School, Belonia, on 06.05.2019 beaten up Smt. Pratima Debnath, a student of Class-III of that school with bamboo stick and injured badly. She was hospitalized. The Inspector of Schools, Belonia, South Tripura being taken note of the incident issued a memorandum on

07.05.2019 asking the petitioner to give explanation for such incident. The petitioner replied to this memorandum stating that while he was taking the class of Arithmetic in Class-III, he had asked the students to write down numbers from 9 to 99. The victim student could not write some numbers, such as, 19,29,47 etc. Since the victim student could not write down properly, he lost his temper and beaten her up with a cane which he was carrying in his hand.

Being not satisfied with the reply of the petitioner, a departmental proceeding was initiated against him vide memorandum dated 20.05.2019 by the authority concerned since the petitioner had caused mental harassment to the student and the punishment inflicted upon the student by the petitioner was prohibited under Section 17 of the Right to Education Act,2009. The petitioner was charge-sheeted for his misconduct in regard to the punishment inflicted upon a girl student of Class-III.

3. On completion of departmental proceeding the charge framed against the accused-petitioner was proved. The petitioner was supplied the Inquiry Officer's report enabling him to make a representation. The petitioner accordingly, made representation on 17.11.2020. On being considered the inquiry report and the representation of the petitioner, the Disciplinary Authority imposed the punishment of compulsory retirement by the impugned order dated 01.01.2021 making following observations:

“AND WHEREAS, Sri Sharma, UGT submitted his representation on 17/11/2020 which has carefully been examined, wherein, he agreed to the charge brought against him;

AND WHEREAS, the mental and physical trauma the child had to go through is irreversible;

AND WHEREAS, such kind of act from a teacher will not only create phobia in the mind of the particular child but also in the minds of other children in the class;

AND WHEREAS, such kind of cruel act is not desired from a teacher which resulted in hospitalization of a student studying in class III;

NOW, THEREFORE, the undersigned, on going through the records in file and in consideration of the facts & circumstances of the case, and confession of the incumbent concerned, takes an extremely lenient view and hereby imposes a major penalty of “Compulsory retirement” to Sri Chandan Shil Sharma, UGT.”

4. The petitioner preferred statutory appeal against such order before the Appellate Authority and the Appellate Authority vide order dated 18.03.2021, dismissed the appeal and affirmed the major punishment of compulsory retirement imposed by the Disciplinary Authority upon the petitioner.

5. Being aggrieved by and dissatisfied with the concurrent find of both the Disciplinary Authority and the Appellate Authority, the petitioner preferred a writ petition before this court and learned Single Judge dismissed the writ petition. Hence, this appeal.

6. Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the petitioner as well as

Mr. D. Bhattacharya, learned G.A. assisted by Mr. S. Saha, learned counsel appearing for the State-respondents.

7. Mr. Roy Barman, learned counsel at the outset submits that learned Single Judge while dismissing the writ petition failed to consider that the conduct of the petitioner was nothing but momentary loss of discretion on account of sudden provocation, i.e. failure of the student to write the numbers properly, despite task was given to student 10 days earlier. Mr. Roy Barman, learned senior counsel further submits that the punishment imposed on the petitioner was excessive and disproportionate. More so, he submits that the petitioner had candidly accepted the charge and regretted his actions and assured that such incidents shall not occur in future. Mr. Roy Barman, learned senior counsel contended that due to compulsory retirement, the petitioner has been deprived of 9 years service. Thus, learned senior counsel has prayed for quashing/setting aside the impugned judgment and order dated 23.08.2021, passed by learned Single Judge in WP(C) 656 of 2020 and also for quashing/setting aside the orders dated 01.01.2021 & 18.03.2021, passed by the Disciplinary Authority and the Appellate Authority respectively.

8. Appearing on behalf of the respondents, Mr. D. Bhattacharya, learned G.A. submits that learned Single Judge has rightly decided the writ petition and accordingly, he prays for upholding the impugned judgment and order dated 23.08.2021.

9. Having considered the facts and circumstances of the case and the rival submissions of learned counsels appearing for the parties, we are of the view that the impugned order of learned Single Judge was not justified in dismissing the writ petition. Hence, the impugned Judgment and order dated 23.08.2021 is liable to be set aside and quashed.

10. In view of the above, the impugned judgment and order dated 23.08.2021, passed by learned Single Judge in WP(C) 570/2021 is hereby set aside and quashed.

11. Accordingly, the orders in appeal dated 01.01.2021, passed by the Disciplinary Authority and dated 18.03.2021, affirmed by the Appellate Authority are also set aside and quashed for the reason that these are non-speaking orders. The matter is remanded back to the Appellate Authority to decide the matter with a speaking order. It is the discretion of the Appellate Authority to decide the matter afresh. The Appellate Authority shall decide the matter within a period of six months from the date of receipt of the copy of this order.

12. The instant writ petition, accordingly, stands allowed and disposed.

JUDGE

CHIEF JUSTICE (ACTING)