

GAHC010105482005



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6581/2005

DINESH KALITA

VERSUS

THE STATE OF ASSAM AND ORS

Advocate for the Petitioner : MR.B S BASUMATARY

Advocate for the Respondent : MR.T GOGOI

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 09.02.2024

Heard Mr. G. Goswami, learned counsel for the petitioner. Also heard Mr. P. Hazarika, learned counsel for the respondent and Mr. N. J. Khataniar, learned standing counsel, Education department.

2. This writ petition is preferred by petitioner challenging the resolution dated 13.07.2005, whereby the petitioner was dismissed from his service as the Head

Master of Rajendra Kalita Vidyapith High School, Changsari.

3. It is projected by the petitioner that pursuant to the enquiry conducted against him and resolutions adopted against the petitioner, he was coerced to submit a Resignation letter dated 28.06.2005. It is submitted that the said resignation letter is also contrary to law and the same came to be submitted by the petitioner without his consent and upon coercion exerted by the School Management Committee.

4. The petitioner was appointed in the Rajendra Kalita Vidyapith High School on 17.05.1994 as Head Master. During his services certain allegations were made against him by certain vested quarters. In course of his official duties because of some differences of opinion, there were threats issued by private respondent Nos. 5 and 6 to the petitioner to cause physical assault, if he did not resign from the post and leave the school. Being thus situated, petitioner lodged an FIR before the Dispur Police Station on 09.06.2005. It is submitted that because he lodged the FIR against the private respondents, they managed to influence the management committee and on false allegations charges were framed against him and enquiry was conducted against him.

5. By communication dated 14.06.2005, petitioner was show-caused and asked to submit his reply in respect of the allegations made in the said show-cause. Petitioner furnished his reply to the show-cause on 19.06.2005. Not being satisfied with his reply, the management committee appointed an enquiry committee to conduct an enquiry in respect of the petitioner in so far as the allegations levelled against him. The enquiry committee completed the enquiry and concluded that the charges framed against the petitioner have proved and the enquiry report was submitted before the school management committee. It may be mentioned that during the course of the enquiry, petitioner was put

under suspension.

6. The school management committee, by its resolution dated 13.07.2005 resolved to remove the petitioner from his service on the basis of the report of the enquiry committee. The resignation letter, which was stated to have been submitted by the petitioner was submitted upon coercion by the school management committee and without his due consent. Being aggrieved, the petitioner has approached this Court by filing the present writ petition.

7. By the order dated 04.05.2017 this writ petition was dismissed by Co-Ordinate Bench. Subsequent thereto a review petition was filed being Review petition 81/2019. By order dated 12.09.2022, upon hearing the learned counsels for the review petitioners, the review petition was allowed. The earlier order dated 04.05.2017 dismissing the writ petition was re-called and the writ petition was restored to file for a fresh consideration as per law.

8. Pursuant to the writ petition being restored to file, the writ petitioner approached this court by filing an Interlocutory Application seeking amendment of the writ petition. The said amendment was allowed by order dated 24.11.2023 whereby certain amendments were carried to the writ petition. The amended writ petition was filed by the writ petitioner thereafter.

9. A perusal of the pleadings revealed that the writ petitioner essentially challenged the resolution dated 13.07.2005 as well as the communication dated 15.07.2005 issued by the managing committee of the Rajendra Kalita Vidyapith High School, whereby the petitioner services be terminated. The further prayer of the petitioner is that the school authorities be directed to provincialised the services of the petitioner by giving all consequential benefits. A prayer is also made to issue directions to the respondents not to give effect to the resignation

letter dated 28.06.2005 stated to have been submitted by the petitioner, but under coercion from the school management committee.

10. The respondents contested the writ petition by filing their respective affidavits. The claims made by the writ petitioner have been denied and it is stated that the enquiry was necessary in view of the allegations of blackmailing and financial mismanagement resorted to by the writ petitioner during his tenure as the Headmaster of Rajendra Kalita Vidyapith High School. The state respondents, however, did not respond to the allegations made as perhaps no specific allegations are made against the writ petitioner.

11. Ordinarily, this court would not have entered this writ petition in view of the Judgment and Order passed in ***Abdul Gofur Mondal Vs State of Assam and Ors.*** reported in ***2015 (2) glt 337 (FB)***, on 11.11.2014, whereby this Court had directed setting up of educational tribunals and pursuant to this order, the tribunals have already been set up for deciding issues. Pursuant to that by Notification No. ELC/WP(C)/2272/2013/403/194 dated 3rd December, 2015, tribunals have been constituted to decide issues relating to seniority and other claims by teachers *inter-party* and by the school management. However, considering that the writ petition has been pending for several number of years now and it was restored to file by order dated 12.09.2022 passed in Review petition 81/2019, it will not be appropriate to dispose of the writ petition remanding parties to agitate their matters before the Tribunal. The tribunal was constituted in 03.12.2015. As such, at the time when the writ petitioner has approached this Court, there was no tribunal in case. Upon considering the submissions made by the learned counsels for the parties and upon perusal of the pleadings on record it is apparent that the enquiry conducted by the committee constituted by the school management committee submitted its

report before the school management committee. There is no pleading for averment made in the affidavits filed by the respondents nor has the learned counsel been able to point out from their records that a copy of the enquiry report was furnished to the petitioner enabling him to make necessary representations if required, before the disciplinary authority, namely, the school management committee. There are no pleadings or materials available before this Court, which suggest that the disciplinary authority also made an attempt to furnish copy of the enquiry report on the writ petitioner prior to issuance of the impugned order of termination. The law, as enunciated by the Apex Court is the mandatory requirement of furnishing an enquiry report on the delinquent employee pursuant to any enquiries conducted by an enquiry officer or enquiry committee, as the case may be. This law has been settled by the Apex Court in ***Managing Director, ECIL Vs Karunakar*** reported in **(1993) 4 SCC 727** and other Judgments of the Apex Court and which is also followed in several Judgments of this Court.

12. Under such circumstances, as per the law laid out in ***Managing Director, ECIL Vs Karunakar*** reported in **(1993) 4 SCC 727** unless a copy of the enquiry report is furnished on the writ petitioner, all proceedings from the point where the enquiry report was not furnished to the writ petitioner will have to be held to be bad in law and contrary to the provisions of law. From the discussions made above, it is clear that enquiry report was never furnished to the writ petitioner before any decision was taken by the disciplinary authority, namely, the school management committee. As such, this Court will have to go that all proceedings which have taken place without a copy of the enquiry report, be furnished to the writ petitioner, are contrary to the provisions of law. Ordinarily, such proceedings are required to be interfered and set aside.

However, in the peculiar facts and circumstances of this case and considering the extended period of time, which has elapsed since the filing of the writ petition till its disposal today, this Court considers it appropriate to direct the respondent No.2, the Director, Secondary Education, Assam, who will ensure that the copy of this report be furnished to the writ petitioner and thereafter an opportunity be granted to the writ petitioner to represent before the school management committee, namely, respondent No.4 and thereafter, the school management committee will consider the matter on the basis of such representations as may be filed by the writ petitioner against the findings of the enquiry committee and thereafter pass necessary orders. Till such time, if the school management committee different from the conclusion arrived earlier by the impugned resolution order, then there is liberty to recall the earlier orders and pass other effective orders.

13. The respondent No.2 will ensure that the service of the enquiry report is completed on the petitioner within 15 (fifteen) days from the date of receipt of a certificate copy of this order and the respondent is granted further 15 (fifteen) days time to file their reply before the authorities. The school management committee will thereafter, within a further period of 30 (thirty) days, therefrom pass necessary resolutions. If the disciplinary authority and the management committee different from the impugned resolution, then, all consequential benefits will be conferred on the writ petitioner.

14. Matter is now relegated to the Director of Secondary Education, who will ensure that copy of the enquiry report be served on the writ petitioner within 30 (thirty) days from the date of receipt of the copy of this order. And upon such receipt, the petitioner may represent before the Director against the findings arrived at by the enquiry officer within a further 15 (fifteen) days time. And

thereafter, the Director will pass necessary orders within further 15 (fifteen) days therefrom. This order is passed in view of the fact that at the time when the proceedings took place, school was not provincialized and today the school has been provincialized, including the post of the Headmaster under the Assam Secondary Education provincialized Rules, 2018 and under the said rules, it is the Director of Secondary Education, who is in overall control and supervision of all teaching and non teaching employees of the school. Under such circumstances, the above direction is issued.

15. As it is stated by the writ petitioner that he is gainfully employed in a private school, this Court does not consider it necessary to suspend the resolutions dismissing the writ petition by the impugned resolutions.

16. Accordingly, writ petition stands closed in terms of the above.

JUDGE

Comparing Assistant