

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

THE HON'BLE JUSTICE ARINDAM MUKHERJEE.

W.P 6228 (W) OF 2020

With

IA NO.CAN 1/2020

(CAN 4599/2020)

BARNALI GHOSH

VS.

THE STATE OF WEST BENGAL & ORS.

For the petitioner	:	Mr. Rahul Karmakar, Ms. Gargi Goswami	 Advocates
For the Board	:	Mr. Ratul Biswal	 Advocate
For the Council	:	Mr. Bhaskar Prasad Vaisya, Mr. Suman Dey, Mr. Nilay Baran Mandal	 Advocates
Heard on	:	30.09.2020.	
Judgment on	:	21st October, 2020.	

Arindam Mukherjee, J.:

- 1) The writ petitioner has challenged the order contained in the memo bearing No.1187 dated 11th June, 2020 issued by the Chairman, District Primary School Council, Purba Bardhaman (hereinafter

referred to as said memo) in the instant writ petition. The relevant portion of the said memo is set out below:-

“In terms of West Bengal Board of Primary Education’s No.926/BPE/2020 Date 11/06/2020 Smt. Barnali Ghosh, Teacher In Charge, Burdwan Municipal Girls’ High School (Primary Section) is placed under suspension on disciplinary grounds from her post as Teacher In Charge and Assistant Teacher with immediate effect.”

- 2) The petitioner says that the petitioner joined Bardhaman Municipal Girls Junior Basic School (hereinafter referred to as the said Junior School) as an Assistant Teacher on 22nd April, 2010. The petitioner before being suspended taught mathematics in Class-III, English in Class-I and took other classes in the primary section as may be assigned to her from time to time. The petitioner says that Shyamali Mondal, the Head Mistress of the said Junior School was about to retire in December, 2016. The next senior most teacher at that relevant time in the said Junior School was Shefali Roy (Ghosh). She expressed her inability to take charge of the said Junior School and as teacher-in-charge as a result whereof, the petitioner was asked to function as the Teacher-in-Charge of the said Junior School in December, 2016. By a memo bearing No.1787/IGA, the Commissioner, School Education, West Bengal approved the necessary arrangement for amalgamation of two management bodies, one being that of Bardhaman Municipal Girls School and

the other being that of the said Junior School on the basis of the existing rules and procedures. In terms of such approval, the amalgamated school became to be known as Bardhaman Municipal Girls High School (HS) being an integrated Higher Secondary School from Pre-Primary to Higher Secondary (hereinafter referred to as the said integrated School). The Head Mistress of the said junior school was appointed as Head Mistress of both the Pre-Primary and the Higher Secondary Section. It will also appear from the said memo annexed to the writ petition at page 21 thereof that the teachers of Junior Basic Section of the integrated School will be sponsored and appointed by West Bengal Board of Primary Education (in short WBBPE) through District Primary School Council (in short DPSC), Bardhaman, but the controlling authority including their service related issues and suspension etc will be conducted by the Management Committee/ Administrator of the integrated School with the concurrence of DPSC and WBPE.

- 3) Pursuant to such amalgamation, it is the petitioner's case that a resolution was taken which will be reflected in memo No.3670/9 dated 22nd March, 2017 issued by the Chairman, DPSC, Bardhaman. A copy of such memo was endorsed to the petitioner being the then Teacher-in-Charge, Bardhaman Municipal Girls Junior Basic School. It will appear from the said memo that the Teacher-in-Charge of Bardhaman Municipal Girls Junior Basic School i.e. the petitioner was required to hand over the charge including Mid-Day-Meal of the Primary Section to the Head Mistress

of the said integrated School in the presence of SI/S, Sadar Urban-II, DIS(SE)'s representative and DIS(PE)'S representative. It is petitioner's further case that on 31st March, 2017, the petitioner handed over the charge in the presence of DPSC, Bardhaman, DI School (SE) DI School (PE). The handing over of the charge will appear at page 29 of the writ petition. The petitioner also says that after handing over of the charge, the petitioner did not function as an teacher-in-charge but has been working as an assistant teacher in the primary section of the said integrated school.

- 4) The petitioner says that all on a sudden the petitioner received a memo bearing No.377 dated 11th June, 2017 issued by the District Inspector of Schools Primary Education, Purba Bardhaman wherein the petitioner was described as the teacher-in-charge, Bardhaman Municipal Girls (primary section). The relevant portion of the said memo bearing No.377 dated 11th June, 2020 is set out hereunder for the sake of convenience:-

“It is come to the notice of the undersigned that a report has been published in daily News Paper (Pratidin) on 08.06.2020 about CHILD'S STUDY book in Pre-Primary Class (Copy enclosed).

In this situation the Head of the Institution is asked to clarify the matter and also asked why the school authority has advised the students of Pre-Primary class to buy/study the Book named CHILD'S STUDY, Published by a Pvt. Agency which is contrary to the existing Government Rules.

She is also asked to submit the clarification report to this office of the undersigned within 12th June, 2020 positive”.

It will appear from the memo issued by the District Inspector of Schools Primary Education, Purba Bardhaman that the head of the institution was asked to clarify as to the report published in daily news paper, Pratidin on 8th June, 2020 about a book titled child's study in the pre-primary class and was further asked as to why the school authority has advised the students of pre-primary class to buy / study the book published by a private agency which is contrary to the existing Government rules.

- 5) The Head Mistress of the School was directed to hand over the letter to the petitioner. The petitioner understood the letter as if she was asked to submit the clarification report to the District Inspector of Schools Primary Education Purba Bardhaman positively within 12th June, 2020.
- 6) The petitioner in her written clarification says that she has no role to play in the academic council of the school and had nothing to do with the selection of the book in question. Petitioner was never asked or invited to attend any official meeting after the formation of the said integrated school and that she is only an assistant teacher and not the teacher-in-charge of the Primary Section of the said integrated School.
- 7) It also appears that without even waiting for the clarification report by an order referred to in the memo dated 11th June, 2020 being the

impugned memo the Chairman, District Primary School Council, Purba Badhaman placed the petitioner under suspension on disciplinary grounds from her post as teacher-in-charge and assistant teacher with immediate effect. In the impugned memo there appears to be a reference of another memo bearing No.926/BPE/2020 dated 11th June, 2020 issued by the West Bengal Board of Primary Education. Thus there appears to be three memoranda all dated 11th June, 2020.

- 8) The petitioner has replied separately to the memo issued by the District Inspector of Schools Primary Education Purba Bardhaman being No.377 and that issued by the Chairman District Primary School Council, Purba Bardhaman being No.1187 both dated 11th June, 2020.
- 9) It is also the case of the petitioner that the Head Mistress of the School, namely, Shrabani Mallick was also issued a suspension memo on the self-same charge on 11th June, 2020 by the President, West Bengal Board of Secondary Education. The said Head Mistress had challenged her suspension by filing a writ petition being WP No.5563 (W) of 2020 (Shrabani Mallick Vs. The State of West Bengal and Ors.).
- 10) On behalf of the petitioner an order dated 18th August, 2020 passed in said writ petition No.WP 5563 (W) of 2020 by Arindam Sinha, J. has been relied upon. It appears from the said order that the order of suspension of Shrabani Mallick has been set aside.

- 11) It also appears from the order dated 18th August, 2020 passed in the instant writ petition i.e. WP 6228 (W) of 2020 by Debangsu Basak, J. that the instant writ petition was directed to be heard by the Judge bearing No. WP 5228 (W) of 2020 to avoid conflicting judicial decision.
- 12) It is submitted by the petitioner that prior to the instant writ petition could be listed before Arindam Sinha, J, the other writ petition being WP 5563 (W) of 2020 was disposed of by the order dated 18th August, 2020 setting aside the order of suspension of the Head Mistress i.e. Shrabani Mallick.
- 13) The petitioner submits that after disposal of the other writ petition being WP 5563 (W) of 2020 there is no embargo for this bench in hearing the writ petition. On behalf of the State respondents it is submitted that the authority who had issued the suspension memo being the subject matter of this writ petition is different from the authority who had issued the suspension notice in the other matter and as such it cannot be said that both the matters are identical and this bench can hear out the instant writ petition as a separate case from the other writ petition which has already been disposed of.
- 14) Since on a previous occasion another bench was of the view that there may be judicial conflict if the two matters are heard by two different benches, I had called for the records of the said writ petition being WP 5563 (W) of 2020 to ascertain the issues in the other writ petition which has been already disposed of. After going

through the writ petition being WP 5563 (W) of 2020 and the affidavit filed therein, I find that the adjudication against the Head Mistress (Shrabani Mallick) and that against present petition arise in connection with the same book but are not identical as the petitioner and the Head mistress of the said integrated School does not share the same duties and responsibilities. All teachers including the petitioner are under the superintendence of the Head Mistress. Considering all aspect of the two matters, I find that there is no embargo in me taking up the matter particularly when the other writ petition stands disposed of.

- 15) The case made out in paragraphs 3 and 4 of the supplementary affidavit affirmed by the respondent Nos. 1, 4, 5 and 6 in WP 5563 (W) of 2020 on 18th August, 2020 and used as supplementary to the affidavit-in-opposition of the said respondents is as follows:-

“3....the depiction of a human face to elucidate the word “U for Ugly” amounts to racial profiling or in other words racism/racist action. The Book and the picture of a man annexed as “R-1” to the Affidavit in Opposition amounts to racial profiling. On the basis of the query fallen from the Hon’ble Court it is stated that the picture denoting “Ugly” is that of a Black Man (a man having very deep skin tone) and such depiction is extremely racist and vile in nature amounting to polluting young mind. It is further clarified that the answering respondents do not encourage and/or support the usage of words like “Black Man” and the same is being made only to answer the query fallen from the Hon’ble Court.

4. It is thus reiterated that the book “Childs Study” depicts the picture of a Black Man to teach a child that “U” for “Ugly” and “Ugly” for a “Black Man” and “kutsit” in Bengali. The same is not only violative of the G.O. dated 4th March 2014 but also the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching staff) Rules, 2018.”

16) The respondent No.6 in WP 5563 (W) of 2020 is the District Inspector of Schools Primary Education, Purba Bardhaman who is also the person to have issued memo No.377 (3) dated 11th June, 2020 to the writ petitioner. The version of the respondents in the instant writ petition wherein the District Inspector of School Primary Education, Purba Bardhaman has been impleaded as respondent No.7 cannot be different from that taken in the affidavit filed on his behalf in the other writ petition being WP 5563 (W) of 2020. I am, therefore, inclined to dispose of the instant writ petition without calling for affidavits as no fruitful purpose will be served by inviting such affidavit other than delaying the adjudication.

17) On a reading of the writ petition, affidavit-in-opposition and the supplementary affidavit to the affidavit-in-opposition in WP 5563(W) of 2020 and the two notices issued to the petitioner in the instant writ petition. The case of the respondents in the instant writ petition can be summarised as follows:-

- i) The book named “Child’s Study” has been introduced in the Pre-Primary Section of the said integrated school without any government approval. Introduction of any private publication

book without the approval of the competent authority is strictly against prescribed government norms.

- ii) The language in the memo of suspension issued to the Head Mistress (Shrabani Mallick) and the order of suspension issued against the writ petitioner are not identical though the charge as to introduction of the said book Child's Study is the same. The writ petitioner is placed under suspension on disciplinary grounds without specifying any charges whereas the Head Mistress was alleged to have violated the norms for which a disciplinary proceeding was contemplated.
- iii) The depiction of a human face of a Black Man (a man having very deep skin tone) to elucidate the word "U for Ugly" amounts to racial profiling or in other words racism/racist action.
- iv) By suggesting such book or introducing the same a child has been taught that "U" for "Ugly" and "Kutsit" in Bengali for a "Black Man" pollutes the mind of the child studying the same. The suggestion or introduction is in violation of the government order bearing no.134 (61)-SSE/14 dated 4th March, 2014 said to have been circulated amongst all Head Mistresses and Teacher-in-Charges of the Schools.

18) On a perusal of the writ petition being No.5563 (W) of 2020 it appears from page 33 thereof that one Nupur Das and one Bulbul Hazra being two assistant teachers in the Primary section has expressed their regret in suggesting the book in question. The said

letter has been signed by Nupur Das on 11th June, 2020. The Head Mistress, Shrabani Mallick in her letter dated 11th June, 2020 addressed to the District Inspector of Schools Primary Education, Purba Bardhaman appearing at page 34 of the said writ petition being writ petition No.5563 (W) of 2020 has stated follows:-

“The aforesaid book “ CHILD’S STUDY” is an optional reference book for the advanced students of primary section. Never have we, the institutuion, forced any of the students or guardians to buy/study that book. It was merely a suggestion as there are many curious and advanced students keen to seek prior knowledge.

I have already received a written application from some primary section teachers about the same where they mentioned it was unfortunate and that they are sorry for selecting that book as an optional reference medium.”

- 19) In the letter dated 11th June, 2020 written by the Head Mistress it has, however, been stated that the “academic Head of Primary Section” of the school is the teacher-in-Charge, Barnali Ghosh i.e. the writ petitioner in the instant writ petition. On a conjoint reading of the letters written by Shrabani Mallick and Nupur Das it appears that the petitioner Barnali Ghosh assuming without admitting to be the teacher-in-charge had no role in suggesting the Book in question. Even if the petitioner is the teacher-in-charge which is denied by the petitioner it is the head mistress of the integrated school to be the head mistress of both the Pre-Primary to Higher Secondary Section as per the approval memo bearing No.1487/1GA dated 15th December, 2016 issued by the Commissioner of School

Education. The Senior most teacher of the Primary Section even if is appointed as the teacher-in-charge as per the memo bearing no.1487/1GA dated 15th December, 2016 then also the said teacher has to function under the control of the Head Mistress and Managing Committee/Administrator of the integrated School. The petitioner, even if is assumed to be the teacher-in-charge of the Primary Section cannot of her own suggest a book. Any decision on her part is scrutinized and/or supervised by the Head Mistress and the Managing Committee/Administrator as the case may be. The petitioner, therefore, cannot be held responsible on either count to have suggested the book. That apart and in any event the petitioner says that she was never appointed as Teacher-in-Charge after having handed over the charge on the said integrated School coming into effect. The petitioner has also clarified that she had no role to play in suggesting the book. The suspension order and the letter seeking clarification is of the same date. Placing a teacher-in-charge or an assistant teacher under suspension on the same day without even waiting for clarification is also against the principles of natural justice.

- 20) So far as the issue of racial profiling is concerned, the book Child's Study has been written by Ruma Roy and published by the Bani Prakashan having its office at 22/1, Bidhan Sarani, 2nd Floor, Kolkata-700006. If at all the picture shown against the word "Ugly" or "Kutshit" in Bengali amounts to racial profiling or racism or a racist action, the primary responsibility is on the author and

publisher of the book. A book is published after compliance of several statutory norms and the government is entitled to impose reasonable restriction as provided in Article 19 of the Constitution if it is of the opinion that the portion of the book Child's Study in question amounts to racial profiling or racism or amounts to a racial act thereby offending the right guaranteed under Article 14 and 15. The availability of the book, if a portion of it amounts to racial profiling in the market will continue with the problem apprehended even if the same is removed from the course material of the school.

- 21) The writ petitioner is neither the author nor the publisher. She at the highest as the Teacher-in-Charge or as an Assistant Teacher of the Primary Section had suggested the book either in optional or in the regular course. By doing so, the petitioner at the highest has violated the government rules and norms by suggesting a book of private publication or has failed to discharge her duties as enumerated under rule 3(3) of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001 assuming without admitting that the petitioner is the teacher-in-charge and had actually suggested the book.
- 22) Article 15 of the Constitution prohibits discrimination on the ground of religion, race, caste, sex or place of birth. The International Convention on Elimination of All Form of Racial Discrimination (CERD) was adopted by United Nations General Assembly on 21.12.1965. India ratified the Convention in 1968. The

Convention has come into force on 04.01.1969. India being a signatory to the Convention is duty bound to enforce its obligation under the law. The provisions of the Convention are of significance while construing the nature and ambit of constitutional guarantee contained in Article 15 of the Constitution. India's obligation under an international convention designed to protect fundamental human rights must be read into the Constitutional guarantee against racial discrimination. Even Article 51-A(e) of the Constitution speaks of promotion of harmony and the spirit of common brotherhood amongst all people of India transcending religion, linguistic and regional or sectional diversities. The government agencies are, therefore, duty bound to take steps against racial profiling.

- 23) The role of the petitioner is required to be looked into in the light of Article 14, 15, 19, 51A(e) and CERD. Even if it is assumed that the petitioner had suggested the questioned book which has been, however, denied by the petitioner it cannot be said that her act only restricted to such suggestion amounts to racial profiling particularly in absence of any further act from the petitioner's side corroborating racial profiling. There is no allegation as against the petitioner that as a teacher while teaching in the School or by referring to the questioned book, the petitioner encouraged racism or did any racial act thereby bringing herself within the ambit of racial profiling.
- 24) The other point which requires to be looked into as to whether the petitioner assuming without admitting having suggested the questioned book is guilty of misconduct. Misconduct – what

amounts to has been dealt within by the Hon'ble Supreme Court in a judgment reported in 2012 (4) SCC 407. In paragraphs 12 and 13 (SCC page 423) it has been held that mere error in judgment resulting in doing of a negligent act does not amount to misconduct. Unless the petitioner's act is unlawful in behavior, is willful in character and as such forbidden in law, the petitioner cannot be said to be guilty of misconduct. It is not found from the materials on record that the petitioner believed in the fact that a "Black Man" (a man having very deep skin tone) is a symbol of "Ugly" or "Kutshit" in Bengali and propagated such feeling amongst students while teaching. The petitioner's act is, therefore, not willful in character to be termed as forbidden in law thereby indulging in racism by making a distinction on the basis of race. The petitioner is, therefore, not guilty of misconduct for being suspended on disciplinary ground on a contemplation of disciplinary proceedings.

- 25) There is also no document in either of the writ petition or in the affidavits filed in WP 5563 (W) of 2020 that Barnali Ghosh, the petitioner was appointed as teacher-in-charge after the amalgamation of the two schools. In absence of the writ petitioner having been appointed by the DPSC as the teacher-in-charge to look after the Junior Basic School, it cannot be said that the writ petitioner was the teacher-in-charge of the Primary Section. Moreover, the teacher-in-Charge is to function under the control of the Head Mistress and the Managing Committee/Administrator of the integrated school. In such circumstances, it cannot be said that

the writ petitioner had a role in suggesting the book child's study. It also appears from section 23(3) (a) and (b) of the West Bengal Primary Education Act, 1973 that the books to be studied in a Primary School or the Primary Section of the School is generally suggested by the Curriculum Committee or the Academic Committee, that may be constituted under Section 67(1)(c) of the said Act. There being a managing Committee of the integrated school, a head mistress of the said school, a Curriculum Committee and an Academic Committee, the petitioner appears to have no role to play in suggesting the book in question.

26) The order of suspension contained in memo dated 11th June, 2020 bearing no.1187 is set aside and/or quashed for the reasons as aforesaid. Any contemplated disciplinary proceedings in pursuance to such order if initiated is also set aside.

27) The writ petition is disposed of accordingly.

There shall, however, be no order as to cost.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)