

290.
BD 04.08.2022
Ct.15

W.P.A. 2480 of 2020
CAN 1 of 2020 (Old CAN 2199 of 2020)

Md. Ashique Ikbal Mandal

-vs-

The State of West Bengal & Ors.

Mr. Sudipta Daggupta

Mr. Arka Nandi

Mr. Sutirtha Nayek

... for the petitioner.

Mrs. Saswati Chatterjee

... for the Board.

Mr. Ananda Gopal Mukherjee

... for the respondent nos.

6,7,9,10, 11 & 12.

Petitioner is a headmaster of a Government aided recognised secondary school who has been suspended by the disciplinary authority of the Board in terms of the relevant provision of the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of teacher and non-teaching staff) Rules, 2018 (hereinafter referred to as the “said Rules of 2018”) communicated vide memo dated 30th December, 2019. Pursuant thereto charge-sheet was issued on 5th September, 2020 by the disciplinary authority of the Board for initiation of proceeding against the petitioner.

Petitioner first filed present writ petition (WPA 2480 of 2020) challenging the order of suspension as well as for permitting him to resume his duty as headmaster of the school. Prayer (b) and (c) of the present writ petition runs infra:

“b. A writ and/or in the nature of Mandamus commanding the respondent authorities and each one of them to cancel and/or set aside and/or quash and/or rescind and/or withdraw the order of suspension issued by the disciplinary authority, West Bengal Board of Secondary Education, being Annexure “P-8” to the writ petition.

C. A Writ and/or in the nature of Mandamus commanding the respondent authorities and each one of them to forthwith allow the petitioner to join Madhyampur Gulaichandi High School as headmaster.”

Subsequently, petitioner filed another writ petition being WPA 10747 of 2020 challenging charge-sheet dated 5th September, 2020 which was issued against him and in the said writ petition again petitioner couched a prayer for allowing him to resume his duty as headmaster of the said school. Prayer (a) and (b) of the writ petition being WPA 10747 of 2020 is quoted below:

“ (a) A Writ and/or in the nature of Mandamus commanding the respondent authorities and each one of them to cancel and/or set aside and/or quash and/or rescind and/or withdraw the purported charge sheet being Memo No. DA/386/20 dated 5th September 2020.

(b) A Writ and/or in the nature of Mandamus commanding the respondent authorities and each one of them to forthwith allow the petitioner to join Madhyampur Gulaichandi High School as headmaster.”

Out of these two writ petitions the writ petition being WPA 10747 of 2020 was considered by a co-ordinate Bench on 8th March, 2021 and after hearing the parties to the said writ petition the co-ordinate Bench set aside the Charge-sheet dated 5th September, 2020 upon granting liberty to the Board to proceed afresh in accordance with the said Rules of 2018.

After disposal of the writ petition being WPA 10747 of 2020 today the writ petition being WPA 2480 of 2020 is taken up for consideration. In the present writ petition challenge has been thrown only to the order of suspension communicated vide memo dated 30th December, 2019. On perusal of the prayer couched in another writ petition and in consideration of the order passed by the co-ordinate Bench on the said writ petition being WPA 10747 of 2020 dated 8th March, 2021 it appears to this Court that the issue relating to suspension against the petitioner was one of the issues before the co-ordinate Bench in the said writ petition. However the co-ordinate Bench found it fit not to interfere with the suspension order issued against the petitioner and did not permit the petitioner to resume his duty though prayer has been made in

that writ petition seeking issuance of mandamus against the concerned respondents for resumption of his duty.

Since the issue relating to suspension of the petitioner was one of the issues before the co-ordinate Bench in another writ petition and the same has already been decided; on the anvil of the principle of constructive res-judicata in terms of Explanation IV to Section 11 of the Code of Civil Procedure 1908 as the principle embodied therein is applicable to writ proceedings this Court finds that the petitioner is estopped from raising identical point before this Court today in connection with the order of suspension issued against him.

It is now well-settled that even though the CPC, in terms, may not apply to writ proceedings, the principles flowing therefrom can, as far as possible, be made applicable. In this regard reliance has been placed on the decision of the Apex Court reported in (2010) 1 SCC 234 (Bharat Amratlal Kothari and Another vs. Dosukhan Samadkhan Sindhi And Others), paragraph 30. Therefore, it can be concluded that provisions of the CPC may not apply but the principles analogous thereto can be made applicable to the writ proceedings in this Court as far as possible in view of the Writ Rules framed by the Full Court in exercise of the power conferred by Article 225 of the Constitution of India. Rule 53 of the Writ Rules is quoted below:

“53. Save and except as provided by these Rules and subject thereto, the provisions of the Code of Civil

Procedure (Act V of 1908) in regard to suits shall be followed, as far as it can be made applicable, in all proceedings under Article 226 and nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of this Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Courts.”

On the strength of Rule 53 of Writ Rules abuse of process of the Courts also required to be prevented. In the present case after disposal of the writ petition being WPA 10747 of 2020 it would be improper on the part of the petitioner to press the present writ petition which is touching upon the identical issue of suspension and the same amounts to abuse of the process of the Court.

Accordingly, the present writ petition being WPA 2480 of 2020 and the connected application being CAN 1 of 2020 (Old CAN 2199 of 2020), if pending, stands dismissed. However, there shall be no order as to costs.

Affidavits filed by the parties to the present writ petition are taken on record.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)

