

Court No. 17

WPA 3511 of 2022

08.04.2022

(AD 5)

(S. Banerjee)

Anita Nigam

Vs.

The State of West Bengal & Ors.

with

CAN 1 of 2022

Mr. Ekramul Bari
Ms. Tanuja Basak
Sk. Imtiajuddin

... for the petitioner

Mr. Supriyo Chattopadhyay
Mr. Biswarup Biswas

... for the State

Mr. Sujit Bera
Mr. Avishek Acharya

... for the school

Mr. Kunal Ganguly

... for the WBBSE

1. Let the affidavit of service filed in court today be kept with the record.
2. This writ application was first taken up by this court on 01.04.2022 when an order was passed for exchange of affidavits.
3. The school authorities are the main respondents along with the State respondents.
4. In this writ application the petitioner prayed for, inter alia, quashing and/or setting aside the impugned undated order of the enquiry officer (appointed by the school) and the communications issued vide reference

no. OLP/01/2022 dated January, 2022 and to drop and close the disciplinary proceeding and to execute and implement the order dated 29th April, 2019 issued by the West Bengal Board of Secondary Education ('Board' in short) and allow her to function in the post of Assistant Teacher in English without any hindrance etc.

5. Therefore, the order of the enquiry officer was an issue before this court and also whether the disciplinary proceeding is to be dropped and/or to be quashed was another issue amongst other before this court and the court's interference was prayed for executing and implementing the order of the Board dated April 29, 2019 which is at page 117 of the writ application. Page 117 is a communication issued by the Board to the Secretary of the school, namely Convent of Our Lady Providence Girls' High School, contents whereof are as follows:

"Sir,

You are informed that in spite of the order passed by the President of the Board (Memo No. 24/27/C, dtd. 20.02.17) disapproving the suspension order issued to Anita Nigam, A.T. you have not allowed the incumbent to resume her duty and you have started a domestic enquiry against the said teacher on disciplinary grounds which is in gross violation with notification no. 214-SE/S/10M-01/18 dated Kolkata, the 8th March, 2018 issued by the School Edn. Deptt. Govt. of W.B. As both these acts are seen as a gross violation of Govt. rules and orders, you are hereby directed to take necessary steps in this matter at earliest in accordance with the concerned rules. Punitive measures from this office will be invited for any further delay on your part in this matter. "

This order of the Board was dated 29th April, 2019.

6. Learned advocate for the petitioner, Mr. Bari, has also drawn my attention to a previous order of the Board dated 20.02.2017 memo number whereof was 24/27/C/2 by which order the Board said under the heading 'Findings' which is as follows:-

"Findings:-

The principle laid down in the Management Rules 1969 is that the order of suspension can normally be passed against a teaching or non-teaching staff of the Institution where such suspension is in the interest of the Institution.

As per Rule 28 sub-rule (9) (viiia) of the Management Rules 1969, as amended read with circular no S/606 dt. 21.06.1982, the paramount consideration is whether the presence of the charged teaching/non-teaching staff will prejudicially affect the pending enquiry, if the answer is negative, the approval of the suspension could not be accorded.

There is also no material on record to suggest that there is any chance of tampering with the evidence or influencing the witnesses by Smt. Anita Nigam, Assistant Teacher of the school. The presence of Smt. Anita Nigam is deemed unlikely to prejudice the proper conduct of the enquiry.

Furthermore Smt. Anita Nigam is not the custodian of records.

Hence, after careful consideration of the facts and circumstances and after taking into account the relevant papers and documents and the submission made by the concerned parties at the time of hearing, I, President, West Bengal Board of Secondary Education ordered that the Proposal for approval of suspension of Smt. Anita Nigam, Assistant Teacher, Assistant Teacher of the school be disapproved provided there is no

contrary order of the Hon'ble Court. However there is no bar to initiate Disciplinary proceedings against the incumbent as per norms. ”

7. From the said finding it is evident that the disciplinary authority, being the President of the Board ordered that the proposal for approval of suspension of the petitioner, an Assistant Teacher of the school, was disapproved with the rider that if there was no contrary order of the court. The President of the Board made it clear that there was no bar to initiate fresh disciplinary proceeding as per norms.

8. There was no fresh disciplinary proceeding, as has been submitted by the learned advocate for the school today.

9. After this disapproval of suspension order of the Board on 28.12.2016, which was communicated by the Board on 20.02.2017, the letter of the Board dated 29.04.2019 was issued to the school intimating clearly that the domestic enquiry against the said teacher on disciplinary grounds is in gross violation of the notification dated 8th March, 2018 (the contents of the said letter has already been reproduced above).

10. Now after this writ application was filed and was moved and order was passed on 01.04.2022, the school in continuation of the said disciplinary proceeding terminated the petitioner by their letter dated 02.04.2022 which has been filed by way of an

application in connection to the writ application, being CAN 1 of 2022 in this writ application.

11. Learned advocate for the school has drawn my attention to Article 30 of the Constitution of India (Right of Minority Institution) and also other provisions of the Constitution of India and has submitted that their right is being interfered with by the provision of the management rules and the disciplinary rules etc. of 2018 for Teachers.

12. Learned advocate for the school has submitted further that they have drawn disciplinary rules which was framed some years back but even then they could not mention in the letter of termination whether the said rule was pressed in service or not. The school has also said that up till now they have not challenged the vires of the management rules of the Board or the present disciplinary rules etc. for the Teachers of 2018 which is followed by the Board. Therefore, the teachers of the school is covered by 2018 Rules.

13. From the action of the school it is found that the school does not care the direction of the court for exchange of affidavits and a final hearing or the decision of the Board, which is a statutory authority, in respect of suspension of the petitioner and in respect of the observation of the Board as to gross violation of notification dated 8th March, 2018, i.e., the existing Rules. The school does not care this court's order dated 01.04.2022, does not care the order of the Board dated

20.02.2017 and does not care the Board's letter dated 29.04.2019.

14. When the matter was kept pending with direction of this court for filing affidavits, the order passed by the school for termination of the petitioner during the pendency of the matter, i.e., in a sub-judice matter, in my view, is clearly an act of overreaching the court. The school never approached the court before passing such termination order, which judicial decorum and discipline demands. Ignoring the court is unforgivable. The school is of this habit, as will appear from the facts stated above, of ignoring the statutory authority, i.e., the Board.

15. The main issues that are involved in the writ application have already been recorded above.

16. By issuing the letter of termination to the petitioner dated 02.04.2022, the school has tried to make a final onslaught upon the writ petitioner for making the writ application infructuous which, in my view, is an exceptional over-smart action on the part of the school.

17. Therefore, I set aside the termination order.

18. I do not think that the school should be given any further opportunity as they have overreached the court by issuing the termination letter, for using an affidavit in this matter. I allow the writ application as the action of the school which does not care for the Board's

authority or the court's authority is not required to be heard after exchange of affidavits as it has terminated the petitioner.

19. Further as the school does not care for the Board's authority for the reasons best known to it, though it is affiliated by the Board, I direct the West Bengal Board of Secondary Education to forthwith withdraw the affiliation of the school and the school shall not be allowed to send any student to the examinations conducted by the West Bengal Board of Secondary Education.

20. If the present students of the school approach the Board for safeguarding their interest, the Board is granted liberty to take steps as it will think appropriate for safeguarding the interest of the students including scattering them to other schools affiliated by the Board.

The writ application is allowed.

No costs

(Abhijit Gangopadhyay, J.)

Later:

After delivery of this judgement and order, learned advocate for the school prays for stay of the operation of this order. Which is considered and rejected.

(Abhijit Gangopadhyay, J.)