

ML- 08.08.2022
300 Ct.15
rkd

W.P.A. 4577 of 2020

Nurul Huda

-vs-

The State of West Bengal & Ors.

Mr. Shubro Prakash Lahiri,
Md. Habibur Rahman,
Mr. Rajesh Naskar

....for the petitioner.

Ms. Koyeli Bhattacharyya

....for the WBBSE.

Mr. Bhaskar Prasad Vaisya,
Mr. Mrinal Kanti Ghosh

....for the State.

In this writ petition, petitioner being the Assistant Headmaster of Darivit High School (HS), District- Uttar Dinajpur has questioned issuance of suspension order dated 2nd November, 2018 by the President of the Board and subsequent issuance of charge sheet dated 25th November, 2019 by the West Bengal Board of Secondary Education being the Disciplinary Authority.

Mr. Lahiri, learned advocate representing the petitioner has questioned the suspension order as well as charge sheet on the ground that in terms of Rule 5 of the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching staff) Rules, 2018 (hereinafter referred to as the "said Rules of 2018") there is a requirement of holding preliminary enquiry prior to issuance of charge

sheet which has not been done in the present case and it has also been submitted that the report of the Commissioner of School Education bearing no date which has been annexed to the affidavit-in-opposition to this writ petition affirmed on behalf of the State respondents should not be treated as the report based on preliminary enquiry as contemplated under Rule 5 of the said Rules of 2018.

In addition thereto, it has also been contended that the petitioner was placed on suspension vide order dated 2nd November, 2018 and subsequently, retired on superannuation on 31st December, 2018 whereas charge sheet has been issued on 25th November, 2019. According to the petitioner, since the charge sheet was issued after superannuation of the petitioner on 31st December, 2018 the requirement as contemplated under the 2nd proviso to sub-rule (3) of Rule 5 needs to be complied with, which has not been done in the present case.

It is submitted that since the charge sheet has been issued after the date of superannuation of the petitioner the approval of the State Government is required and initiation of proceeding in that event has to be made within three years from the

date of retirement if the misconduct becomes known to the Board after retirement. It is the case of the petitioner that the misconduct of the petitioner became known to the Board prior to retirement therefore after date of superannuation of the petitioner no proceeding can be initiated in terms of the said 2nd proviso to sub-rule (3) of Rule 5 of the said Rules of 2018.

Ms. Bhattacharya, learned advocate representing the Board has submitted that suspension order has been issued prior to date of superannuation of the petitioner therefore it cannot be considered as a case where disciplinary proceeding has been initiated after the superannuation of the petitioner. Moreover, it has also been contended on behalf of the Board that charge sheet has been issued on 25th November, 2019 therefore Board should be permitted to conclude the disciplinary proceeding strictly in accordance with the provisions as contained in the said Rules of 2018.

It has further been submitted that Presiding Officer and the Enquiry Officer have already been appointed by the Board being the disciplinary authority.

Mr. Ghosh, learned advocate is

representing the State respondents who has drawn attention of this Court to the report of the Commissioner of School Education, West Bengal which has been prepared pursuant to the direction of the concerned authority of the Education Department after giving opportunity to the petitioner to make deliberation before the Commissioner.

According to Mr. Ghosh, the report of the Commissioner goes to show that there was misconduct on the part of the petitioner in connection with the alleged incident which took place in the premises of the school on 20th September, 2018. Therefore, it has been contended on behalf of the State respondents that the proceeding which has been initiated by the Board in accordance with the relevant Rules of 2018 should be permitted to continue and to be brought to its logical conclusion.

Having considered the submissions made on behalf of the parties to this writ petition and on perusal of materials available on record including the pleadings used by the parties, it appears that the petitioner was suspended in contemplation of disciplinary proceeding vide order dated 2nd November, 2018 and subsequently after

superannuation of the petitioner on 31st December, 2018 charge sheet was issued on 25th November, 2019.

According to the appreciation of this Court since the suspension order has been issued in contemplation of disciplinary proceeding prior to the date of superannuation of the petitioner the proceeding initiated by the Board ought not to be considered as a disciplinary proceeding initiated after the superannuation of the petitioner. Therefore, the 2nd proviso to sub-rule (3) of Rule 5 does not get attracted in the present case. It is within the domain of the Board being the disciplinary authority to take steps to bring such disciplinary proceeding initiated against the petitioner to its logical conclusion.

It further appears that petitioner without waiting for the outcome of the disciplinary proceeding initiated against him has challenged the suspension order as well as the charge sheet dated 25th November, 2019. It is well-settled that the suspension order vis-à-vis charge sheet cannot be questioned unless the same is without jurisdiction or there is *mala fide* action by the disciplinary authority.

In view of aforesaid facts, this Court directs

the concerned authority of the Board to conclude the disciplinary proceeding initiated against the petitioner within a period of six months from this date.

During the course of proceeding, petitioner shall be granted reasonable opportunity to represent his case. However, no prayer for unnecessary adjournment would be entertained by the Board, if made, on behalf of the petitioner excepting on the ground which is beyond the control of the parties.

With the aforesaid direction, the writ petition stands disposed of.

Mr. Lahiri, learned advocate representing the petitioner has submitted that in spite of placing the petitioner under suspension vide order dated 2nd November, 2018 till the date of superannuation petitioner has not received subsistence allowance.

If subsistence allowance has not been paid to the petitioner, the concerned State respondents are directed to release subsistence allowance in favour of the petitioner within fortnight from this date.

Petitioner shall be at liberty to approach the concerned State respondents for release of provisional pension during the pendency of the

disciplinary proceeding. If such approach is made by the petitioner by making application before the concerned State respondents, the respondent authorities in their turn shall take a decision relating to release of provisional pension in favour of the petitioner within four weeks from the date of receipt of such application in accordance with law.

The aforesaid direction relating to release of provisional pension has been made in view of the fact that the petitioner has superannuated on 31st December, 2018.

However, There shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)