

24-26 23.11.2022
Sc Ct. no.22

WPA 11438 OF 2022
with
WPA 12924 OF 2021
with
WPA 24028 OF 2022

Syed Imroze Ali

Vs.

The State of West Bengal & Ors.

Mr. Piush Chaturvedi
Mr. Sk. Rejaul Alam.

....For the Petitioner
in all writ petitions

Mr. Jaydip Banerjee

....For the State in
WPA 11438 of 2022

Mr. Tapan Kumar Mukherjee
Mr. Somnath Naskar.

....For the State in
WPA 12924 of 2021

Mr. Bhaskar Prasad Vaisya
Mr. Mrinal Kanti Biswas.

....For the State in
WPA 24028 of 2022

Mr. Nadeem Sulaiman
Ms. Sunita Guha.

....For the Madrasah
Board in all writ
Petitions

Mr. Prosenjit Mukherjee
Mr. Nirmalya Kr. Das
Mr. Jahangir Hossain.

....For the Madrasah

This series of writ petitions filed by the writ petitioner who claims to be an **Assistant Teacher at Panchpara High Madrasah (H.S.)** (for short the Madrasah) **ultimately suffered a proposal for dismissal from his service issued by the Madrasah dated September 3, 2022, Annexure-P1** to the writ

petition being **WPA 24018 of 2022** (for short the first writ petition). Along with the said document, the report of the inquiry officer at pages 28 to 39 was also served upon the petitioner.

The petitioner contended that the records, papers and documents on the basis whereof the inquiry officer had filed his report were not made available to the petitioner and the petitioner was also not granted an opportunity of cross-examination in course of the inquiry proceeding despite his asking. The petitioner had participated in the said inquiry proceeding as would be evident from **page 82** to **WPA 11438 of 2022** (for short the second writ petition).

The disciplinary proceeding was initiated by the disciplinary authority accepting the report of the inquiry officer. Before the disciplinary authority the writ petitioner filed his reply, **Annexure-P2 at page 40 to the first writ petition**. In the said reply the petitioner specifically took a point that the statement of imputation of charges and all documents based on which the charge-sheet was framed were not supplied to him and the petitioner had also prayed for an opportunity to file his reply to show cause notice and parawise objection to the same.

In course of the hearing Mr. Prosenjit Mukherjee, learned counsel appearing for the relevant Madrasah submitted that a proposal dated **September 16, 2022**

had already been sent before the Madrasah Board upon taking a proper resolution dated September 15, 2022 recommending termination of service of the petitioner from the Madrasah.

Mr. Piush Chaturvedi, learned counsel appearing for the writ petitioner submitted that this was not within the knowledge of the writ petitioner.

Mr. Chaturvedi also submitted that this is a classical example of gross violation of Natural Justice when an inquiry proceeding was held without furnishing the relevant show cause notice arising out of which the inquiry proceeding had commenced, neither the relevant documents alleging charges were also furnished before the petitioner to deal with it. The imputation of charges was also not made available before the petitioner to deal with those and the inquiry proceeding was concluded with the inquiry report at page 29 to the first writ petition. He submitted that, unless the delinquent was furnished with all such, as referred to above, which were not furnished to the petitioner, the delinquent's valuable right to defend the proceeding in accordance with law stood defeated. Inasmuch as, the learned counsel further submitted that no opportunity was granted for cross-examination of the Madrasah witness to defend the charges against the petitioner. The entire disciplinary proceeding had proceeded in gross violation of the elementary principle of Natural Justice culminating into

the finding of the inquiry officer as would be evident from the said inquiry report against the petitioner.

Mr. Chaturvedi also submitted that the valuable right of the petitioner was taken away at the inquiry stage and, therefore, any further proceeding in continuation thereof before the disciplinary authority also stood vitiated.

Mr. Prosenjit Mukherjee, learned counsel appearing for the relevant Madrasah submitted that sufficient opportunity was granted to the writ petitioner and he refused to choose to file any written reply to the original show cause notice. The writ petitioner also did not file any written response to the chargesheet. Challenging the said chargesheet the petitioner had filed the writ petition **WPA 12924 of 2021** which is pending in this series of writ petitions.

Mr. Mukherjee also submitted that since repeated opportunity was granted to the petitioner at the threshold of the initiation of the disciplinary proceeding and he chose not to participate or to avail of such an opportunity, the writ petitioner had waived his further right of any kind of participation in the inquiry proceeding in accordance with law culminating into the finding of the inquiry officer as would be evident from the said inquiry report.

Mr. Mukherjee further submitted that on the basis of the said inquiry report, the disciplinary proceeding was

initiated and ultimately after considering the reply of the petitioner before the disciplinary authority, ***Annexure-P2*** to the first writ petition, the disciplinary proceeding had arrived at its finding in line with the inquiry report. Following such finding the decision for termination of the petitioner from his service at the relevant Madrasah was taken and was forwarded to the Madrasah Board for its final approval.

Mr. Nadeem Sulaiman, learned counsel for the Madrasah Board referring to ***Rule 40*** of the ***Rules for management of recognised Non-Government Madrasahs (Aided and Unaided) Rules, 2002*** (for short the said Rules of 2002) submitted that, since the matter had already been recommended before the Board and is pending before the Board for its decision, the writ petitioner has a remedy by way of review to challenge the same before the Board itself on whatever count it thinks fit.

Mr. Jaydip Banerjee, learned counsel appears for the State.

Considering the rival contentions of the parties and considering the materials on record, it appears to this Court that, the inquiry officer had come to its finding through the said inquiry report at page 29 of the first writ petition and the relevant materials on the basis whereof such finding was arrived at by the inquiry officer were not provided to the petitioner who was a delinquent.

It is trite law that when a delinquent is identified with certain alleged charges, such a delinquent must know details of the charges along with all the documents and records upon which such charges were allegedly framed, so that the delinquent can defend itself in due process of law. This is an elementary principle of Natural Justice.

Admittedly from records it appears, in the facts of this case that, the details of charges and the documents on the basis whereof the inquiry officer had proceeded were not furnished to the petitioner. It is equally the elementary principle of Natural Justice that the delinquent must receive an opportunity of cross-examination in a fact finding inquiry process. Such an opportunity was not granted to the petitioner in the facts of this case.

When the disciplinary authority had commenced its disciplinary proceeding on the basis of the said inquiry report, the petitioner had duly filed his written objection, ***Annexure-P2*** to the first writ petition, which clearly shows that the petitioner had demanded the statement of imputation of charges and the relevant documents based on which such chargesheet was framed.

This Court should also not lose sight on an important fact that despite an opportunity and service of both the chargesheet and show cause notice, the petitioner did not reply thereto. From page 40, ***Annexure-***

P11 to **WPA 11438 of 2022** and page 53 thereof it would also be evident that since inception of the inquiry proceeding, the petitioner had raised his demand to provide him with the particulars of charges and necessary documents.

From the document dated September 3, 2022, **Annexure-P1** to the first writ petition it appears that the disciplinary authority had made its finding accepting the inquiry report against the petitioner. The disciplinary authority had ignored the objections raised by the petitioner demanding the particulars of charges and the relevant documents connected therewith on the basis whereof the disciplinary proceeding was initiated against the delinquent petitioner. In effect, the decision of the disciplinary authority as recorded in and would appear from the said communication dated September 3, 2022, **Annexure-P1** to the first writ petition suffers from serious infirmity for the reasons recorded above. At the very initiation stage of the inquiry proceeding, there was a breach of elementary principle of Natural Justice.

For the foregoing reasons and discussions ***the finding of the disciplinary authority terminating the employment of the petitioner from his service as recorded on September 3, 2022, Annexure-P1 to the first writ petition and/or existing in any other or further records of the Madrasah, stands set aside and quashed.***

The relevant disciplinary authority of the concerned Madrasah shall furnish the detail of charges on which the inquiry proceeding had commenced along with all the supporting materials and documents on the basis whereof the inquiry report was made, to the petitioner and/or his advocate on record positively on or before **December 5, 2022**.

The disciplinary authority then shall commence disciplinary proceeding *de novo* taking into consideration all the points to be urged by the petitioner including the points, according to the petitioner which would touch the inquiry proceeding and its validity, after granting an opportunity of hearing to the petitioner by serving at least a seven days' prior hearing notice to the petitioner and shall pass its reasoned decision taking into account all the points which shall be argued on behalf of the petitioner before it.

The petitioner shall also be at liberty to file written notes before the disciplinary authority at the time of commencement of the hearing before it.

The entire exercise as directed above shall be carried out and completed by the disciplinary authority within a period of **six weeks** from the date of the first day of hearing to be fixed by the disciplinary authority without granting any unnecessary adjournment to anybody.

In view of the above, this series of writ petitions, namely, **WPA 11438 of 2022, WPA 12924 of 2021 and WPA 24028 of 2022 stand disposed of**, without any order as to costs.

A copy of this order be placed in the records of all the writ petitions.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)