

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA No.15031 of 2022

Arnab Bandyopadhyay

....Petitioner

-Vs-

The State of West Bengal & Ors.

..... Respondents

- - - - -

Mr. Rabiul Islam, Adv.

Mr. K.M. Hossain, Adv.

Mr. Raju Mondal, Adv.

..... for the Petitioner

Ms. Chaitali Bhattacharya, Adv.

Mr. Kartik Chandra Kapas, Adv.

..... for the Respondent Nos. 1
to 5

Mr. Sandip Kumar De, Adv.

Mr. Abhijit Sarkar, Adv.

.....for the Respondent Nos. 6,
7&8

Heard On : 09.09.2022

Judgment on : 20.09.2022

Rabindranath Samanta, J:-

1. The petitioner by preferring this writ petition has challenged the order of dismissal from service served upon him by the respondent No.7, the Secretary, Managing Committee, Dayanand Vidyalaya, Asansol, Paschim Bardhaman. The petitioner states that he completed his

- B.SC (Honours) degree from the University of Burdwan in 1995. Thereafter, he completed his Bachelor of Library & Information Science (B.Lib. & I.Sc) from Mats University vide Roll No. 9111311500 and mark-sheet No. 001780/12-13 in June-July, 2013. Having requisite qualification to be appointed as Librarian, the petitioner applied for appointment to the post of the Librarian of Dayanand Vidyalaya to its Managing Committee. He participated in the selection process and being successful he was appointed as a Librarian in H.S. Section of the school on probation for a period of one year on a salary of Rs.7100/- as basic pay per month in the scale of PB-3, Rs.7100-37600 + Grade pay Rs.3900/- plus allowances as admissible under the Government Rules subject to the terms and condition laid down in the school code applicable to aided schools. The Additional District Inspector of Schools (S.E) approved the appointment of the petitioner and passed order of retention.
2. Since the appointment the petitioner rendered service as Librarian with sincerity and honesty. It may be noted that the Additional District Inspector of Schools (S.E), Asansol, District –Burdwan vide Memo dated 26.09.2016 sanctioned additional post of Librarian in favour of the said school in terms of Memo dated 03.10.2007 and Government Order dated 08.06.2007 and this post was retained until further order considering the roll strength of the school. The appointment of the petitioner as Librarian was confirmed after completion of two years of continuous service considering the satisfactory service rendered by him.
 3. The present Managing Committee of the school after taking charge raised a number of vague allegations against the petitioner with an ulterior motive to remove him from the post of Librarian. With such ulterior motive, the Secretary of the school issued a show cause notice dated 12.09.2019 to him asking him as to why legal action would not be initiated against him as per the verification report of Global Open

- University, Nagaland vide their letters dated 23.10.2018 and 04.02.2019 whereby his certificate of B.A in Library and Information Science was found to be fake. The petitioner by a letter dated 21.09.2019 sought for time to respond to the show cause notice. Allowing his request the Secretary by an another Memo dated 01.10.2019 asked reply of the petitioner on the verification report furnished by Global Open University, Nagaland. By a letter dated 18.10.2019 he again sought for time on the ground that he was out of station for treatment of his father-in-law.
4. Without responding to his letter dated 18.10.2019, the Secretary of the school, all of a sudden, served the order of dismissal upon him vide Memo dated 22.10.2019.
 5. The petitioner challenges the verification report of the Global Open University, Nagaland on the premise that the verification report relates to two Roll Nos. i) TGOU/BA/7890/B.LIB.I.SC/2012F and ii) TGOU/BA/7890/B.LIB.I.SC/2008G.
 6. The petitioner contends that after the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching staff) Rules, 2018 came into force vide notification dated 8th March, 2018, the West Bengal Board of Secondary Education is now the appropriate authority to start disciplinary proceeding against a teacher and non-teaching staff and dismiss him from service. The Managing Committee of the said school is not authorised either to initiate disciplinary proceedings or to inflict order of dismissal upon the petitioner.
 7. The petitioner states that he never pursued his course from the Global Open University. He pursued his course from the Mats University, Raipur. He never submitted his Librarian mark-sheet of the Global Open University, Nagaland to the aforesaid school. In fact, he submitted his Librarian mark-sheet of Mats University vide Roll

- No. 9111311500, mark-sheet No. 001780/12-13 at the time of appointment in the said school.
8. He submits that since the Secretary of the aforesaid school is not authorised to pass any order of dismissal upon him, the order of dismissal is liable to be set aside. The petitioner, accordingly, seeks direction upon the respondents to allow him to resume his duties in the school as Librarian immediately and release his Arrear and current salary.
 9. In their affidavit-in-opposition the respondent Nos. 6,7 and 8 state that Dayanand Vidyalaya is a school governed by the Special Rules published vide notification No. 404-Edn.(S).- 19th March, 1973. The school published an advertisement for recruitment of a Librarian in the school on 27th February, 2014 in a Hindi daily 'Sanmarg' and invited applications from the suitable candidates for the post. By the advertisement it was instructed that all the suitable candidates would submit their applications within fifteen days from the advertisement i.e. by 14th March, 2014.
 10. After the school authority came to know that the petitioner submitted fake certificates, it wrote to the concerned University i.e. Global Open University, Nagaland seeking verification of the certificate produced by the writ petitioner at the time of recruitment. In reply to the requisition, the Global Open University, Nagaland by letters dated 23rd October, 2018 and 4th February, 2019 intimated the school authority that after verification the University found the name and roll number furnished by the writ petitioner to be fake. At the time of recruitment the petitioner submitted copies of the Admit card and certificate of B.A. degree in Library and Information Science from Global Open University, Nagaland. The petitioner submitted the said documents again duly self-attested by him on the basis of which the school sent the same for verification. By issuing a show cause notice the Managing Committee of the school sought clarification with regard

to the verification report of Global Open University, Nagaland from the petitioner. The petitioner by his reply dated 21st September, 2019 stated that there were some mistakes which might occur in the verification process. However, he stated that he was trying his best to collect the papers from the Global Open University and for which he sought some time. The school authority granted fifteen days' time to him. The petitioner failed to submit any reply on the query made by the school authority within the aforesaid period granted to him. On the other hand, he by a letter dated 18th October, 2019 sought for more time. Being dissatisfied with the failure on the part of the petitioner to reply to the show cause notice, the school authority vide letter dated 22nd October, 2019 dismissed him from service. On the allegations that the petitioner submitted and used forged documents to get appointment, the school authority lodged an FIR at the local police station and the FIR was registered as Asansol (South) P.S Case No. 31 dated 16.01.2021 under Sections 420/467/468/471, IPC. The petitioner is now on bail in connection with the aforesaid P.S case.

11. Though the petitioner submitted his Bachelor degree of Library and Information Science degree of Global Open University, but, he for the first time submitted before this Court that he obtained bachelor degree of Library and Information Science from Mats University, Raipur. The writ petitioner suppressed the documents which were submitted by him before the school authority. Instead, he has brought a new set of documents. Such act on his part demonstrates that he not only has defrauded the school authority but has played fraud on this Court. On such grounds, these respondents seek dismissal of the writ petition.
12. The petitioner, in his reply to the affidavit-in-opposition states that Dayanand Vidyalaya is not governed by the Special Rules of 1973 since the school has lost its minority status. From a Memo dated 13.09.2019 issued by the District Inspector of Schools (S.E) it appears

that the Joint Secretary of the School Education Department, Government of West Bengal passed a reasoned order vide No. 204-SE(S) dated 03.03.2017 in compliance with the Order of this Court in W.P. No. 3648(W) of 2016 and in the Order the Joint Secretary refused to issue “No Objection Certificate” for the purpose of obtaining minority status certificate in favour of Dayanand Vidyalaya. This shows that the school authority does not enjoy the minority status and the Rules of 1973 are not applicable to this school. Since the school is a Government Sponsored aided educational institution, it is guided by the provisions of West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staffs) Rules, 2018 framed under the provisions of West Bengal Board of Secondary Education Act, 1963. In terms of the Rules of 2018 West Bengal Board of Secondary Education is the appropriate authority to initiate disciplinary proceeding against any teaching and non-teaching staff of a Government aided school like Dayanand Vidyalaya. He asserts that he never submitted Admit Card and certificate of Bachelor degree in Library and Information Science from Global Open University, Nagaland.

13. The respondent No. 3, District Inspector of Schools (S.E), Paschim Bardhaman in the report in the form of affidavit states that Dayanand Vidyalaya has been running under the Special Rules of 1973. The Government has no role in selection process and/or administrative process. Reiterating the facts as disclosed in the affidavit-in-opposition of the respondent Nos. 6,7 and 8, the respondent No.3 states that since the petitioner submitted fake testimonials of Bachelor degree of Library and Information Science, an FIR was lodged by the school authority at the concerned police station. This respondent says that the school authority has dismissed the petitioner from service being empowered by the Special Rules of 1973

and the Government has no role in this regard. On such grounds, this respondent also submits that the writ petition is liable to be dismissed.

14. Learned lawyer appearing for the petitioner by referring to a letter dated 13.09.2019 annexed to the affidavit-in-reply submits that the District Inspector of Schools (S.E), Paschim Bardhaman informed the Secretary, Dayanand Vidyalaya (HS) that since the Joint Secretary of the School Education Department refused to issue No Objection Certificate as to minority status in favour of Dayanand Vidyalaya, he would not proceed further with the process of recruitment in teaching and non-teaching staff of the school. He was told to send the details of the sanctioned vacant post to his office so that he could take appropriate steps for sending the same to the West Bengal Regional School Service Commission for filing up the vacancies. Learned lawyer submits that the school is not governed by the 1973 Rules presently and it will be governed by the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staffs) Rules, 2018. Learned lawyer argues that in terms of the Rules, 2018, the West Bengal Board of Secondary Education is the competent authority to initiate disciplinary proceeding against any teaching and non-teaching staff of the aforesaid school. According to learned lawyer the order of dismissal issued by the school authority is vitiated with illegality and the same is liable to be set aside.
15. Learned lawyers appearing for the answering respondents submit that the Rules of 1973 by which the management of the school is governed still remain in force. Learned lawyers point out that by virtue of letter dated 13.09.2019 issued by the District Inspector of Schools (S.E), Paschim Bardhaman, the legality of the Rules of 1973, a statutory document, cannot be diluted or whittled down. They submit that the school authority was within their domain in terms of the Rules, 1973

to dismiss the petitioner. Learned lawyers argue that since the petitioner has suppressed the material facts and committed fraud on this Court he is not entitled to get any relief from this Court. In support of their contention learned lawyers have cited a decision in the case of ***State of Chhattisgarh and Others –Vs- Dhirjo Kumar Sengar*** reported in ***(2009) 13 SCC 600***.

16. Before I advert to the submissions advanced by the learned lawyers appearing for the parties, it will be apposite to refer some factual matrix which are coming out from the documents filed by the respective parties.
17. Admittedly, in response to an advertisement dated 27.02.2014 published in a Hindi daily 'Sanmarg' the school authority for the purpose of recruitment of a Librarian in the school invited applications from the suitable candidates by 14th March, 2014. The petitioner submitted all his testimonials including Bachelor degree in Library and Information Science to the school authority along with his application. As it is evident from the affidavit-in-opposition, he submitted certificate of Bachelor degree in Library and Information Science obtained from the Global Open University, Nagaland under Roll No. TGOU/BA/7890/B.LIB.I.SC/2008G. The verification report with regard to this Roll Number furnished by the Controller of Examinations, the Global Open University, Nagaland shows that the certificate of Bachelor degree of Library and Information Science in favour of the petitioner in respect of this Roll Number is fake. Interestingly, while the school authority served show cause notice upon the petitioner to seek his explanation on such verification, he then did not deny that he obtained Bachelor degree of Library and Information Science from the Global Open University. By letters dated 21.09.2019 and 18.10.2019 the petitioner sought time to answer on the verification report. These two letters indicate that he did not deny that he obtained the degree from Global Open University. For the first

- time, the petitioner in the writ petition states that he furnished his degree in Library and Information Science obtained from Mats University, Raipur at the time of recruitment process.
18. As stated above, in terms of the advertisement published in the aforesaid Newspaper, the petitioner was to submit his application along with the testimonials within 14th March, 2014. But, surprisingly, what it appears, the testimonial relating to the Bachelor degree of Library and Information Science obtained from Mats University is dated 21st March, 2014. That being so, it is not believable, rather it is absurd that the petitioner submitted his bachelor degree of Library and Information Science of Mats University along with his other testimonial by 14th March, 2014. Ex facie, all these facts, are undisputed.
 19. It is not in dispute that on the allegations of furnishing fake or forged documents and using the same as genuine, the school authority lodged an FIR at Asansol (South) P.S and the FIR has been registered as Asansol (South) P.S Case No. 31/2021 dated 16.01.2021 under Sections 420/467/568/471, IPC and the petitioner is now on bail.
 20. Though the petitioner knew that one FIR was registered against him for investigation and he was granted bail, he suppressed all such facts in the writ petition. Though, he did not submit the testimonial relating to bachelor degree of Library and Information Science obtained from Mats University along with his application, he for the first time speaks of the same in the writ petition. This shows that the petitioner has practised fraud upon this Court.
 21. In the decision in the case of ***State of Chhattisgarh and Others –Vs- Dhirjo Kumar Sengar*** reported in ***(2009) 13 SCC 600*** the Hon'ble Apex Court has held that fraud, as is well-known, vitiates all solemn acts. If the commission of fraud stands proved, the principles of natural justice do not require to be complied with.

22. Since the petitioner has not come to this Court with clean hands and practised fraud upon this Court by furnishing a document which was not filed by him at the time of submitting his application for the purpose of recruitment, the benefit of extending the principles of natural justice should not be extended to him.
23. To turn to other point, it appears that Dayanand Vidyalaya is governed by the Special Rules, 1973 for the management of secondary schools established and run by Arya Samaj and/or Gurukul Vidyalaya Trust, under the aegis of Arya Pratinidhi Sabha of the State (Representative Body of Arya Samaj in the State) published in the Calcutta Gazette vide notification No. 404.EDN.(S).-19th March, 1973. A co-ordinate Single Bench by order dated 16th August, 2017 passed in W.P. 15526 (W) of 2017 has held that the Rules of 1973 are still in operation and it has not lost its force.
24. The Joint Secretary, Education Branch, School Education Department to dispose of a representation of the school authority in compliance with the order passed in W.P. No. 3647(W) of 2016 has observed by a reasoned order dated 22.02.2017 that since the power to declare some group or organisation as minority has been vested in the statutory authorities, he cannot issue any No Objection Certificate for getting minority status certificate for Dayanand Anglo-Vedic Higher Secondary School, Asansol and accordingly the representation of the school was rejected. In terms of this Order the Inspector of Schools(S.E),Asansol, Paschim Bardhaman by the letter dated 13th September, 2019 informed the Secretary of Dayanand Vidyalaya that since the Joint Secretary declined to issue No Objection Certificate to the school to obtain minority status certificate, he was requested not to proceed further with the process of recruitment in the teaching and non-teaching posts.

25. The Rules of 1973 as quoted above is a statutory document. In order to repeal or rescind this statutory document, another statutory document is required. It is the well settled principle of law that an executive fiat having no statutory force cannot take away the right conferred by a statutory document.
26. In view of the above, I am of the opinion that Dayanand Vidyalaya is governed by the Special Rules of 1973 and not by the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staffs) Rules, 2018.
27. As Rule 12 of the Special Rules, 1973 enjoins, the management of Dayanand Vidyalaya is authorised to dismiss or terminate any employee of the school. Therefore, the action taken by the school authority to dismiss the petitioner from service on his furnishing fake or forged educational testimony is warranted by law.
28. Since the petitioner has not come to the Court with clean hands and he has practised fraud upon the Court also and in view of the legal position as discussed above, the petitioner is not entitled to get the reliefs as sought for.
29. In the result, the writ petition merits dismissal.
30. Accordingly, the writ petition is dismissed on contest with cost of Rs.10,000/- to be deposited by the petitioner with the Office of the learned Member Secretary, West Bengal Legal Services Authority within ten days from date. This amount of money will be earmarked by the Legal Services Authority for the juveniles.
31. However, it is made clear that the observation as made hereinbefore is for disposal of the writ petition and it will have no persuasive effect on the criminal case launched by virtue of the aforesaid Asansol (South) P.S. Case No. 31 dated 16.01.2021.
32. With the aforesaid direction and observation the writ petition and connected application, if any, stand disposed of.

33. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)