

27.06.2022.
Court No.13
Item No. 394
pk

W. P. A. 29406 of 2014

**Indranil Basu Ray
Versus
State of West Bengal and others**

Mr. Soumya Majumder,
Mr. Abir Lal Chakraborti

...For the petitioner.

Mr. Sanjay Kumar Baid,
Mr. S. P. Lahiri

..For the respondent nos. 3 to 5.

The writ petitioner was a teacher in the St. Lawrence High School. The said school is a private unaided school recognised by the West Bengal Board of Secondary Education.

The writ petitioner is aggrieved by an order dated 26.09.2014 by which his service has been terminated. The charge against the petitioner was that he had in the process of reprimanding a student, assaulted him physically, leaving said student psychologically and physically scarred. The said order was passed after appointment of enquiry officer and recording of evidence. The petitioner was given an opportunity of hearing.

Parallel criminal proceedings came to be instituted against the petitioner in C. G. R. Case No. 1591 of 2012 under Sections 323/114 of the IPC. The petitioner was acquitted for want of sufficient evidence

by the Chief Judicial Magistrate, Alipore, South 24 Parganas (State of West Bengal Vs. Indranil Basu Roy and another)

The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India on the following grounds:

- a) The evidence recorded in the enquiry does not support the charge.
- b) In the criminal proceeding, the CJM Alipore found that the proceeding against the petitioner might have been motivated.
- c) Even assuming for the sake of argument that the charges against the petitioner have been proved, the order of dismissal is disproportionate to the charges.
- d) Moreover, another teacher in the school was also accused of assaulting the same student earlier has been let off with a minor punishment of reduction of one increment.

On the question of maintainability, the school represented by Mr. Sanjay Baid, Advocate, submits that they are wholly unaided as on date, and on the date of the incident, the approved employees of the school were getting only D.A. from the State which has since been surrendered. The petitioner was not even an approved employee/teacher. The relationship between the parties is private and contractual. The

writ Court, therefore, should not entertain a writ petition in respect of the proceedings of the private school against the petitioner.

In answer thereto, counsel for the writ petitioner, Mr. Soumya Majumder, would rely upon a decision of the Supreme Court in the case of **Ramesh Ahluwalia Versus State of Punjab and others** reported in **(2012) 12 SCC 331** particularly paragraphs 12 to 15. It is submitted that in the said case of a teacher of a purely private school was terminated. The Supreme Court did not find favour with the views of the High Court that a writ petition cannot be maintained against a purely unaided private institution. Relief was however denied to the petitioner therein since there were disputed questions of fact.

Mr. Baid refers to the decision of the three judge bench of the Supreme Court in the case of **Vidya Ram Mishra Vs. Managing Committee, Shri Jai Narain College** reported in **(1972)1 SCC 623** and submits that the same has not been taken into consideration by the Supreme Court in the aforesaid **Ramesh Ahluwalia** decision (supra).

In the State of West Bengal, institutions are governed by the laws as prescribed by the State. The Management Rules of 1969 indeed provide for State control and prior approval for the State in respect of all employment matters of aided and unaided

institutions. However, given the definition of 'aided' institutions in the West Bengal School Service Commission Act of 1997, particularly Section 2(n) and the Explanation II to the Section thereto, private educational institutions in the State are completely excluded from the purview of the State control. The petitioner, even otherwise, has not approached any authority under the State for any remedy in that regard.

This Court finds that in the disciplinary proceedings in the instant case the principles of natural justice were duly followed. There is definitely some evidence on record to indicate the acts and omission alleged against the petitioner. He was granted every opportunity to defend himself, which he did. The observations in a criminal trial cannot be applied to domestic proceedings, that too of a purely private educational institution.

Consideration of the argument of Mr. Majumder on the findings of the criminal Court conflicting with the findings of the enquiry officer and the disciplinary authority, would require the writ Court to enter into the disputed questions of fact. This cannot be done under Article 226 of the Constitution of India. The remedy, if any, available to the petitioner to seek damages for any civil wrong meted out to him is left open to be pursued.

On the question of unequal treatment, this Court is equally not inclined to apply Article 14 of the Constitution of India. One cannot ignore the fact that the other teacher also found involved in the assault on the student of the question had tendered unconditional apology. The matter as regards proportionality of punishment in the facts of the instant case, according to this Court, should be left to the private employer.

Given the fact that this Court does not see any serious impropriety in the procedure adopted by the institution in dealing with the service of the petitioner, this Court is not inclined to exercise jurisdiction under Article 226 of the Constitution of India to interfere with the impugned order.

Hence no relief can be granted to the writ petitioner. The writ petition fails and is hereby dismissed.

There will be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)