

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Before:

The Hon'ble Justice Lapita Banerji

WPA 646 of 2018

Rinku Sarkar

Vs.

State of West Bengal & Ors.

For the petitioner : Mr. Prasenjit Mukherjee, Adv.,
Mr. Saptarshi Chakraborty, Adv.,
Mr. Arghya Kamal Das, Adv.,

For the State : Ms. Munmun Tewari, Adv.,
Mr. Sanatan Panja Adv.,

For the respondent no.2 : Mr. Achyut Basu, Adv.,
Ms. Punam Basu, Adv.,
Mr. Goutam Mukherjee, Adv.,
Mr. Somen Bose, Adv.,
Mr. Anirban Saha, Adv.,
Mr. Srikumar chakraborty, Adv.,
Ms. Pritha Biswas Adv.,

Heard on : 19.07.2023.

Judgment Delivered on : 31.07.2023.

Lapita Banerji, J:- The petitioner was appointed as a Librarian in the Berhampore College by letter of appointment dated December 7, 2016, issued by the Principal/Secretary of the College in issue. The petitioner was to remain on probation for a period of one year with effect from date of joining the post.

The conditions of petitioner's service were to be guided by the West Bengal College Teachers' (Security of Service) Act, 1975 and the Rules framed thereunder. The College in issue is under the supervision of the University of Kalyani.

2. The petitioner joined her service vide Joining Report dated December 8, 2016. A show cause notice was issued to the petitioner on January 25, 2017. It was alleged in the show cause notice that the petitioner declined to perform the works assigned to her. Denial of the work of "Kanyashree Prokalpa" in addition to the normal duties as Librarian amounted to *dereliction of duty*. Disobeying the instructions of the Principal amounted to acts of insubordination. Therefore, the petitioner was required to show cause within three days why disciplinary action should not be taken against her.

3. The petitioner responded to the show cause notice by letter dated January 27, 2017 and February 8, 2017 issued to the Principal of the College in issue. The petitioner apologised for her Acts/conduct and tendered her sincere apology.

4. By a second letter dated February 8, 2017 issued to the Principal, the petitioner prayed for disbursal of her salary for the month of January 2017.

5. Thereafter, a letter of termination was issued on March 9, 2017. From the letter of termination it appears that the petitioner was *grossly negligent* in carrying out the Orders of the authority. The performance of the petitioner was

“unsatisfactory” and *“indisciplined”*. Hence, the service of petitioner as an Assistant Librarian was terminated with effect from March 8, 2017.

6. The petitioner also wrote to the President-cum-Governing Body, Berhampore College to reconsider the decision of termination. The petitioner intimated that she neglected neither her duty nor her job responsibility. Since, the petitioner was of the view that the additional duty of “Kanyashree Prokalpa” would hamper her primary job responsibility as a Librarian she did not take any additional responsibility of the said “Prokalpa”.

7. The petitioner prayed for an opportunity of hearing for presenting her defence before the Governing Body by the said letter.

8. Mr. Mukherjee, learned Counsel appearing on behalf of the petitioner submitted that the Governing Body of the College by a resolution dated January 17, 2017 decided to terminate the service of the petitioner in absolute violation of the principles of Natural Justice. The said resolution for termination was taken on January 17, 2017, prior to issuance of the show cause notice dated January 25, 2017.

9. He submitted that in the Governing Body’s Meeting dated January 17, 2017, the Government nominees and the University nominees were not present. Only 6 out of 11 members were present including a Group ‘D’ Staff. Without a proper quorum, the resolution dated January 17, 2017 was adopted.

10. He relied on a decision reported in (1998) 8 SCC 1 (**Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.**) to contend that an availability of alternative remedy is not a bar to writ proceedings, when principles of Natural Justice have been violated. Therefore, even though there may be an alternative remedy available under the 1975 Act, the same will not be a bar to maintainability of the present writ petition.

11. Under Section 5 (2) of the 1975 Act, the Governing Body could discharge a **probationer** from service, if the work was not considered *satisfactory*. There is no allegation that the petitioner's work was not satisfactory as a "Librarian". Admittedly, she discharged her duties *satisfactorily* as a Librarian.

12. He strenuously argued that even in case of a **probationer** principles of Natural Justice have to be complied with. Proper disciplinary proceedings should have been conducted prior to her termination. No imposition of penalty could be made except in the manner provided in Rule 7 of the West Bengal College Teachers' (Security of Service) Rules, 1977.

13. Under Statute 11 (CT) 4 (d) of the Kalyani University First Statutes in a disciplinary action against an erring teacher, the Governing Body of a College was under a duty to initiate corrective measures. If the offending act was minor, the offender could be let off with a written caution.

14. Penalty should not have been imposed without informing the teacher concerned about the charges against him and giving him an opportunity being heard. An enquiry was required to be held in accordance with the principles of

Natural Justice and in a manner prescribed by the Act and the Rules framed thereunder.

15. The petitioner being a Librarian was to be considered as a teaching staff/teacher of the College pursuant to a Circular dated April 24, 2014 issued by the Joint Secretary, Higher Education Department, Government of West Bengal to the Director of Public Instruction, West Bengal. He also relied on two decisions for the aforesaid proposition. He referred to a Judgment reported in 2011 SCC Online Cal 334 (**West Bengal College Librarians' Association & Anr. Vs. State of West Bengal & Ors.**) and also a Judgment of the Hon'ble Division Bench of this High Court passed in APO 93 of 2010 (**The Governing Body, Serampore Girls' College & Anr. Vs. Dr. Sailendra Nath Paul**).

16. Mr. Basu learned Counsel appearing on behalf of the Respondent no. 2/Principal, Berhampore College submitted that by a letter dated January 10, 2017 the respondent no. 2 directed the petitioner to perform some verification work with regard to "Kanyashree Prokalpa". The petitioner refused to perform the same. Thereafter, a preliminary resolution was taken on January 17, 2017 by the members of the Governing Body holding that the petitioner should be discontinued from service with immediate effect. The same was not a final decision.

17. Thereafter, a Show Cause notice was issued on January 25, 2017. The petitioner responded to the said Show Cause notice on January 27, 2017. The said Reply was vague and did not address these issues raised in the Show

Cause notice. Therefore, the Reply was considered to be irrelevant by the Principal, by a communication dated January 28, 2017.

18. Thereafter, a second resolution was taken by the Governing Body on March 7, 2017. In the said resolution, it was held that the petitioner disobeyed the Principal's instructions and provoked the other staff of the Library not to follow the Orders of the Principal. The petitioner created turmoil in the College environment. The discipline of the College/Library had to be protected. Therefore, the service of the petitioner was resolved be terminated immediately. It was further decided that the petitioner should not be allowed to enter the College. The entire incident was resolved to be informed to College Service Commission, in writing. Thereafter, the letter of termination dated March 9, 2017 was issued.

19. The petitioner being a **probationer** was terminated in terms of Section 5 (2) of the 1975 Act. There was no infirmity in the decision of discharging the petitioner from duty.

20. Principles of Natural Justice were not violated since the petitioner was given an opportunity of hearing by asking her to reply to the Show Cause notice. He relied on various Judgments of the Apex Court and also High Courts to contend that a **probationer** could be discharged from service without assigning any reason or granting on opportunity of hearing. The termination of the petitioner is termination '*simpliciter*' due to unsatisfactory conduct. Therefore, there should be no judicial intervention in the present case.

21. Even though, the employer/College had the right to terminate the petitioner's service without giving an opportunity of hearing or assigning any reason during the period of *probation*, still in the present case the principles of Natural Justice were complied with by issuing a Show Cause notice to the petitioner. He relied on a decision of the Delhi High Court in WP(C) 5603 of 2013 (**Suresh Chand Jain vs. Director General & Anr.**).

22. Decisions reported in (2001)9 SCC 319 (**Krishnadevaraya Education Trust and Another vs. L.A. Balakrishna**), (2002) 1 SCC 520 (**Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I of Medical SCI. & Anr.**), (2010) 2 SCC 623 (**Chaitanya Prakash & Anr. Vs. H. Omkarappa**) were relied upon.

23. Considering the aforesaid submissions of the parties and the materials placed on records this Court is of the view that:-

a. The petitioner was appointed on **probation** as a Librarian vide a letter of appointment dated December 7, 2016. The period of **probation** was one year from the date of joining.

b. The petitioner joined her service on December 8, 2016. Therefore, the period of probation was till December 7, 2017.

c. The petitioner was governed by the 1975 Act.

d. Section 5 (2) of the 1975 Act clearly stipulates that during the period of *probation* if the **probationer's** work was not considered satisfactory, the **probationer shall** be discharged by the Governing Body.

e. Prior to the issuance of the Show Cause notice dated January 25, 2017, the Governing Body took a resolution on January 17, 2017, to terminate the petitioner from service.

f. From the said resolution of the Governing Body it appears that several imputations were attached to the petitioner. It was alleged by one of the members that the petitioner would break the discipline of the College. The mentality of the petitioner was not to perform the work of a Librarian and her presence would worsen the environment of the College.

g. The dissatisfaction of the Principal due to the fact that the petitioner refused to do the work of “Kanyashree Prokalpa” since, the petitioner claimed that the same was to be done by the clerks and not by the Librarian, according to Kalyani University Statute, was also recorded in the said resolution.

h. By the said resolution it was unanimously agreed that the petitioner **must** be discontinued for her service.

i. The content of the resolution dated January 17, 2017 shows that the Governing Body already acted in a predisposed manner prior to issuance of the Show Cause notice on January 25, 2017. The Reply of the petitioner dated January 27, 2017 was held to be irrelevant by a letter dated January 28, 2017 issued by the Principal.

j. In the Reply dated January 27, 2017 the petitioner sought to explain why she was hesitating to take up the additional responsibility of discharging duties under “Kanyashree Prokalpo”. She prayed for forgiveness. She explained that she felt that managing and organising the Library was her primary responsibility.

k. No reason was assigned by the Respondent no. 2 why such Reply to the Show Cause notice was considered to be irrelevant.

l. From the extract of a document annexed at page 16 of the Affidavit-in-Opposition, it is not possible to decipher whether the said document was a Resolution of the Governing Body dated March 7, 2017 or a Resolution issued prior to the Reply dated January 27, 2017 given to the show cause notice, by the petitioner.

m. Assuming that the said document is a Resolution dated March 7, 2017 this Court finds that several imputations were made against the petitioner by the said Resolution.

n. It was held that the petitioner *disobeyed* the Principal’s instructions, *provoked* the Library Staff, and created a situation of *turmoil* in the library.

o. Relying on the resolution dated January 17, 2017, it was held that the discipline of the College/Library should be protected at any cost and the petitioner should not be allowed to enter the College. Furthermore, it was

decided that the petitioner's service should be terminated with immediate effect and the entire incident should be informed to the College Service Commission in writing. The unequivocal intention to punish the petitioner becomes apparent from such a resolution taken by the Government Body.

p. The language of the purported resolution dated March 7, 2017 creates a distinct impression in the mind of this Court that the termination of the petitioner from service was not a termination '*simpliciter*'. It was a termination where severe imputations were made against the petitioner. Such allegations would impact the petitioner's chances of future employment.

q. There is no mention of the Replies dated January 27, 2017 and also February 8, 2017 in the purported Resolution dated March 7, 2017.

r. Therefore, this Court draws a conclusion that the said Replies were not considered in the purported Resolution.

s. The Governing Body on March 7, 2017 proceeded to act in terms of the Resolution dated January 17, 2017, which proceeded to treat the petitioner's case in a predisposed manner.

t. Issuance of a Show Cause Notice was only an eyewash. No actual consideration of the defence sought to be made out in the Replies to the Show Cause was made.

u. It is a well settled principle of law that the service of a ***probationer*** can be lawfully brought to an end before the expiry of the period of probation

by way of '*simpliciter*' termination. Termination will be illegal if it was really brought about to punish the employee for *misconduct* or the termination casts a *stigma* on the **probationer**, if the same was done without compliance of the principles of Natural Justice.

v. The transitory character of a *probationary* appointment carries with it the necessary implication that it is terminable any time. Beneficial reference may be made to a Judgment reported in AIR 1958 SC 36 (**Parshotam Lal Dhingra vs. Union of India**).

w. It has been consistently held that a **probationer** who has been terminated for "*unsuitability*" of the job cannot complain about such termination.

x. Had the termination being termination '*simpliciter*' then the authorities could have acted within the provision of Section 5(2) of the 1975 Act.

y. The employer had the authority to assess the quality/performance of the work and duties of the petitioner as a Librarian before terminating her service due to unsatisfactory performance. The Employer/College would have been entitled to terminate her service without conducting any enquiry had it be termination *simpliciter*.

z. No opportunity of hearing was required to be given to the probationer for discharge from service during the *probationary* period. There

would have been no question of violation of principles of Natural Justice in the event, the case is one of termination '*simpliciter*'. Assessment of the work for the purpose of discharge would not amount to *stigma*.

aa. This Court cannot accept the contention of Mr. Mukherjee that despite being appointed on *probation* the petitioner had to be given the opportunity of hearing and entire disciplinary proceedings applicable to the teachers whose services have been confirmed was required to be conducted in respect of the petitioner, in terms of the 1975 Act and the 1977 Rules.

bb. There is no dispute with regard to the fact that a Librarian of a Government College or Assistant Librarian or Deputy Librarian of a Government College should be considered as teaching staff of the Colleges.

cc. The issue for determination here is whether a ***probationer*** can be put at par with an employee whose service has been confirmed.

dd. There is no dispute with regard to the principles laid down in **Whirlpool Corporation** (supra). Therefore, the present writ petition has been taken up for adjudication on merits by this Court.

ee. Mr. Basu, also in his fairness submitted that the point of maintainability of the writ petition was not being urged anymore.

ff. In **Suresh Chand Jain** (supra) the issue was whether the performance of the petitioner during the period of *probation* was unsatisfactory or whether he lacked interest in the discharge of duties. The petitioner was

given several verbal warnings. The petitioner regularly absented himself from the office. In such a case it was held that setting up of an enquiry would defeat the very purpose of concept of *probation*. The period of *probation* furnishes a valuable opportunity to the employer to closely observe and monitor the work and efficiency of the *probationer* **for** the **job**.

gg. In the present case, there is no assessment by the management/Respondent no. 2 of the petitioner's work as a Librarian. There is no *assessment* of the **job** for which the petitioner was appointed.

hh. In **L.A. Balakrishna** (supra) it was held that during the period of *probation* the suitability of a recruit/appointee has to be seen. If the petitioner was not found suitable for the job **for** which she was **engaged** during the period of *probation* then without assigning any reason such service could be terminated. It was held that if the employer held that the job proficiency of an employee was not upto the mark the same could not be held to cast a *stigma* or held to be termination by way of *punishment*.

ii. In **Sanjay Gandhi's** case (supra) it was held that an employer is entitled to satisfy itself as to the competence of a *probationer* before confirming his service. A simple termination is not *stigmatic*. In order to amount to a stigma the Order must be in a language which imputes something over and above mere unsuitability of the job. In that case, several Judgments were referred to where allegations apart from unsuitability of the job have been

recorded. In cases where termination was held to be *stigmatic* such termination could not be done in violation of the principles of Natural Justice.

jj. In **Chaitanya** (supra) the Respondent was terminated from service from the post of Executive Director with Hindustan Photo Films Manufacturing Company Limited, during the period of *probation* as his work was not found to be satisfactory. A detailed report was prepared by the Company with regard to the assessment of the work of the respondent. The Board of Directors upon assessing performance of the respondent terminated his service.

kk. Thereafter, the respondent applied for the post of Managing Director at Spices Trading Corporation Limited. The petitioner was not allowed to appear in the interview, before the Selection Board since the performance of the Respondent in the previous company was not satisfactory. In that case, the Supreme Court held that the termination by the First Company was not *stigmatic*.

ll. In **Mathew P. Thomes vs. Kerala State Civil Supply Corporation Ltd & Others** reported in (2003) 3 SCC 263 it was held whether an Order of termination, is termination '*simpliciter*' or '*punitive*' would ultimately have to be decided having due regard to the facts and circumstances of the case. On the facts of this case this Court finds that the resolution to discharge of petitioner from service was taken only after the petitioner worked for little over a month. The authorities concerned hardly had time to assess the work of the petitioner as a 'Librarian'.

24. In the light of the discussion herein above, this Court holds that the language of the First Governing Body's Resolution dated January 17, 2017 and the purported Second Governing Body's Resolution dated March 7, 2017 coupled with the fact that the conduct of the petitioner was sought to be informed in writing to the College Service Commission clearly indicated that her '**termination**' was not only '**stigmatic**' but also '**punitive**'. The allegation of insubordination, creation of turmoil etc. indicated that the termination of the petitioner's service was **stigmatic**. It in effect refers to *misconduct* of the petitioner.

25. Therefore, Respondent no. 2/the Governing Body of College in issue was under an obligation to comply with the principles of Natural Justice. The principles of *Audi Alteram Partem* should have been complied with. No one should be "condemned unheard". Beneficial reference may be made to a judgment reported in (1999) 3 SCC 60 (**Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Others**) for the aforesaid proposition.

26. Accordingly, the Termination Order dated March 9, 2017 is set aside and or quashed. The Respondent no. 2/College Authorities are directed to reinstate the petitioner in the post of 'Librarian' with immediate effect. The period of *probation* from December 8, 2016 till the date of purported termination on March 9, 2017 will be excluded from the initial period of

probation of one year as stated in the letter of appointment of the petitioner dated December 7, 2016.

27. With the direction aforesaid **W.P.A 646 of 2018** is **disposed of**.

28. All parties to act on server copy of this Order as downloaded from the official website of this Hon'ble Court.

29. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Lapita Banerji, J.)