

WPA 11462 OF 2021

Indrani Raha Sarkar

Vs.

The State of West Bengal & Ors.

Mr. Sabyasachi Mukherjee
Ms. Debarati Choudhury
Mr. Bibek Dey
Mr. Syed Neaz Ahmed.

...For the Petitioner

Ms. Chumki Chowdhuri.

...For the Respondent
Nos.4 to 7

This is a hearing matter after completion of affidavit.

Before this Court, all along, the respondent nos. 4 to 7 were represented through one learned advocate.

On March 1, 2023 the said learned advocate appeared and filed affidavit-in-opposition on behalf of the respondent nos. 4 to 7 and the petitioner had also filed her affidavit-in-reply. Then on the prayer of the said learned advocate appearing for the respondent nos. 4 to 7, the hearing of the writ petition was adjourned. On the next day, i.e., April 17, 2023, when the writ petition was taken up for consideration, on the prayer of the same learned advocate representing the respondent nos. 4 to 7, the hearing was adjourned and the writ petition was fixed for further consideration under the heading '**For Orders**' on **April 27, 2023**.

Today, when the writ petition was taken up for consideration, Ms. Chumki Chowdhuri, learned advocate appeared and prayed for an adjournment on behalf of the respondent nos. 4 to 7 on the ground of Mr. Supratim Dhar, learned advocate being indisposed.

On the query of the Court, it was submitted that, he is the only arguing counsel in the matter. On the further query of the Court as to the said learned advocate, who appeared before this court and obtained adjournment repeatedly, nothing could be informed to this Court. Thus the matter was taken up for consideration today.

This is the second round of writ litigation initiated by the writ petitioner. The petitioner had joined ***Salt Lake School (English Medium)*** (for short the school) as an ***Assistant Teacher for the subject – Bengali***. The petitioner was appointed on ***March 3, 2010***. The petitioner then suffered an ***Order of Dismissal dated July 15, 2013***, issued by the school.

In the first round of writ petition, i.e., ***WPA 13372 (W) of 2014***, the petitioner had challenged her dismissal from service. By a judgment and order delivered by a coordinate Bench dated ***May 8, 2019***, the dismissal of the petitioner was set aside with the following observation:

“ I hold that the petitioner’s service has been terminated illegally.

For the reasons as aforesaid, the dismissal order passed by the School dated 15th July, 2013 dismissing the service of the petitioner with effect from 16th July, 2013 is set aside and quashed.

It is evident from the pleading of the affidavit-in-opposition used by the School that there was no such serious dereliction of duty on the part of the petitioner for which disciplinary proceeding could have been initiated against the petitioner by the School. The School has not been able to show anything against the petitioner for which disciplinary action could be initiated against the petitioner by the School.

As there was no disciplinary action against the petitioner under the Code no order is and can be passed for initiating fresh disciplinary action against the petitioner for the period of her service up to the date of her termination i.e. 16th July, 2013.

It is a case where the petitioner is not at all at fault for not performing her duty as a teacher of the School. It is the School which most illegally debarred the petitioner from discharging her duty, as a Teacher of the School. And for this reason the petitioner has to be reinstated in service with full back wages from the date of her termination.

The School is directed to reinstate the petitioner as an Assistant Teacher of the School with all benefits from the date of her dismissal and to pay all the back wages to the petitioner and other benefits, monetary or otherwise, from the date of dismissal of the petitioner.

It is directed that the petitioner has to be reinstated in service by 30 days from the date of this order and all money that is to be paid by the School to the petitioner must be paid within a period of 60 days from the date of this order. The entire amount of money to be paid to the petitioner shall carry an interest @6% per annum from the date of her termination to the date of payment of the entire money to the petitioner. If any payment has been made by the School to the petitioner as has been mentioned in the termination letter issued by the School dated 15th July, 2013 that amount of money is to be deducted from the entire amount of money to be paid as has been directed above to the petitioner.

The writ application is allowed with a cost of Rs.5000.00 to be paid by the School

authority to the West Bengal State Legal Services Authority within a period of one month from the date of this order and the receipt thereagainst has to be filed by the School to the Registrar General's office of this Court for keeping the same with the record of this case.

The writ application is allowed with the above order."

(emphasis supplied)

Being aggrieved by the said judgment and order dated **May 8, 2019** the respondent nos. 4 to 7 herein, being the school authority had preferred an appeal being **MAT 819 of 2019**. The **Hon'ble Division Bench finally decided the said appeal by a Judgment and Order dated August 2, 2019** with the following observations :

"On the materials on record, we are of the firm opinion, that the order of dismissal could not have been passed. We have perused the materials on record and we are satisfied that the order of dismissal was arbitrary and unjustified. We are of the view that a person who has admitted her laches for not being able to take recitation test of a student and not of the entire class could not have been punished with dismissal. We think this is not a major misconduct which would attract dismissal. At the same time, we are alive to the occasion that discipline has been maintained. Moreover, it appears that there was no past complaint against the writ petitioner. The writ petitioner could have been left with the caution or reprimand or any other similar punishment but certainly not with dismissal.

The Disciplinary Authority is accordingly directed to impartially consider the matter and decide on the question of quantum of punishment and pass a reasoned order after giving an opportunity of hearing to the writ petitioner within a period of three weeks from the date of the communication of this order. the period of termination would be treated as period of suspension and the appellant would be entitled to receive subsistence allowance for the aforesaid period in accordance with Rules

till the decision is communicated to the writ petitioner by the Disciplinary Authority.

The judgment of the learned Single Judge stands modified to the aforesaid extent. However, this observation is prima facie and shall not influence the Disciplinary Authority in arriving at his own conclusion.

This appeal is allowed in part.

CAN 5891 of 2019 is accordingly, disposed of.”

From the judgment and order dated **August 2, 2019** passed by the Hon’ble Division Bench the respondent nos. 4 to 7 herein, viz. the school authority preferred a Special Leave Petition being **Special Leave to Appeal (C) No(s). – 26535/2019** before the **Hon’ble Supreme Court**. By an order dated **November 18, 2019 at page 87** to the writ petition the said **Special Leave Petition was dismissed**.

The school authority then preferred review before the Hon’ble Supreme Court, by an order dated **February 25, 2020** the review was dismissed, **Annexure-P16 at pages 85 and 86** to the writ petition.

The school authority then took a decision for removal of the petitioner and issued the impugned order of removal dated **February 9, 2021, Annexure-P18 at pages 93 to 97** to the writ petition with the following observation :

“Therefore, as the Hon’ble Division Bench has directed the Disciplinary Authority to reconsider the matter afresh and has given liberty to the Disciplinary Authority to pass an appropriate order of punishment save and except dismissal, we are of the opinion to remove you from your service with effect from 9th February, 2021 as the Hon’ble Division

Bench has given liberty to the school authority to reconsider your matter afresh and to pass appropriate order of punishment other than dismissal. As per the Hon'ble Division Bench's order the period of your termination of service would be treated as period of suspension and you would be entitled to receive subsistence allowance for the aforesaid period in accordance with rules till the decision is communicated to you by the School Authority."

The petitioner, then, in this second round of writ petition had challenged the said impugned order of removal dated **February 9, 2021, Annexure-P18 to the writ petition.**

Mr. Sabyasachi Mukherjee, learned counsel appearing for the petitioner submitted that, prior to issuance of the said order of removal, there was no disciplinary proceeding initiated in accordance with law by the school authority and the petitioner who was alleged to be a delinquent was never granted an opportunity of hearing to avail of her defence against the purported charges on the basis whereof the order of removal was issued. The entire action on the part of the school authority for removing the petitioner from her service was arbitrary, wrongful and illegal.

Learned counsel for the petitioner further submitted that, initially the petitioner was dismissed from her employment with a stigma and after the said decision for dismissal was set aside by the Court, which was upheld by the Hon'ble Supreme Court the school authority had issued the said impugned **Order of**

Removal dated **February 9, 2021** without following the due process of law and, as such, the entire process for removal of the petitioner was vitiated and the same should be set aside.

Ms. Chumki Chowdhuri, learned advocate appearing for the respondent nos. 4 to 7 had placed a communication dated March 3, 2020, the same was taken on record. On the strength of the said communication, she submitted that, the petitioner at present is working as a teacher at **ST. JOAN'S SCHOOL** and the petitioner cannot claim for reinstatement of her service by seeking setting aside of the said impugned **Order of Removal**. She further submitted that, opportunity of hearing was granted to the petitioner.

After considering the submissions made on behalf of the parties and after considering the materials on record this Court, at the outset, thought it fit to quote the relevant averments made in the writ petition challenging the said impugned **Order of Removal** dated **February 9, 2021**, which were as follows :

“16. Petitioner states that the order passed by the Hon’ble Court is peremptory in nature so the compliance of this order is highly required and too much mandatory. In the hearing of contempt application before the Court of Hon’ble Justices Their Lordships Soumen Sen and Ravi Krishan Kapoor the then contemnors presently respondent nos. 6 and 7 appeared before the Hon’ble Court. On 13/02/2021 the school authority issued a cheque being amount of Rs.8,75,165/- for the subsistence allowances of the petitioner and the petitioner duly received the same. According to order respondent school

authority again started disciplinary proceeding and it was most astonishing fact that in spite of the order of Lordships that any punishment might be pronounced upon the petitioner save and except order of dismissal, the respondent school authority particularly the respondent no.6 removed your petitioner from her service w.e.f. 09/02/2021 vide order dated 09/02/2021. Same was communicated to the petitioner. After that on 19/03/2021 the contempt application was taken up for final hearing by the Hon'ble Justices Their Lordships Soumen Sen and Ravi Krishan Kapoor and on the same day contempt application was disposed of. It is also de rigueur to mention here that in order dated 19/03/2021 in connection with CPAN No.1294 of 2019 Lordships made it clear that petitioner may take appropriate steps against the order of removal dated 09/02/2021.

The photo copy of the order of removal dated 09/02/2021 and final order of contempt application dated 19/02/2021 are annexed herewith and collectively marked with the letter "P-18".

17. Petitioner states that the impugned order of termination, in form of removal, dated 09/02/2021 is unreasoned and same is over to decision of Hon'ble High Court. The Hon'ble High Court by its judgment dated 02/08/2019 passed in MAT 819 of 2019 specifically observed that the Writ Petitioner has not committed any misconduct. The dismissal or removal of service can only be passed where there is a proof of major misconduct. In that instant case such observation of this Hon'ble Division Bench rather specific findings of Hon'ble Division Bench was not set aside by the Hon'ble Supreme Court in Special Leave Petition vide SLP (c) No.26535/2019.

18. Petitioner states that the Enquiry, conducted by the school authority in terms of the Judgment of Hon'ble Division Bench of High Court, Calcutta, was farce and it has a clear reflection of perfunctory exercise of power. The enquiry was not done in accordance with the rules of principle of the natural justice. The Learned Lawyer, who appeared in this matter, has also taken part in the enquiry and also interrogated the petitioner. NO enquiry officer was appointed. Petitioner was not aware of the

procedure at any point of time as to how such the enquiry would be conducted. It is made clear that the school authority being the complainant had conducted the enquiry without appointing any enquiry officer and thus became the Judges of their own cause. No cross examination was called and no documents were allowed to be proved. Petitioner was threatened that if she would not accept their proposal then petitioner would not be allowed in any school. In this regard some voice records are available in the hands of the petitioner.

19. Petitioner states that against the removal order dated 09/02/2021 your petitioner preferred one representation vide representation dated 05/05/2021 with a prayer to withdraw the same. It is most astonishing and marvellous fact that the school authority is showing their colossal impertinence by depriving the petitioner from her justified right. It is also episodic to mention here that one prolonged conspiracy was going on against the petitioner.

The photo copy of the representation dated 05/05/2021 is annexed herewith and marked with the letter "P-19".

The respondent nos. 4 to 7 had filed its affidavit affirmed on June 9, 2022. The relevant averments made on behalf of the respondent nos. 4 to 7 on oath dealing with the aforesaid contentions of the writ petitioner are quoted below :

"11. That with reference to the contained made in paragraph 13 to 19 of the said petition the same are matter of record and anything contrary thereto and/or inconsistent therewith are strongly denied and disputed."

On a plain and meaningful reading of the relevant averments made in the writ petition as quoted above, it appeared that, those were in sync and line with the contention raised by the petitioner and submitted by the

learned counsel for the petitioner but not denied by the respondent nos. 4 to 7 as it was required to be done in law. Inasmuch as, from the materials on record it was also not available that, a disciplinary proceeding following due process of law was initiated against the petitioner. It was also not available on record that, the petitioner was granted an opportunity of hearing to defend the purported charges levelled against her on the basis whereof she was removed from her employment.

From the averments made in the affidavit-in-opposition it appeared that, initially a hearing was allegedly scheduled on **March 23, 2020 at 5-30 p.m.** which was postponed in the prevailing the then **COVID** situation and ultimately on **December 21, 2020** a personal hearing was allegedly conducted by granting an opportunity to the petitioner but in support of those contentions, the respondent nos. 4 to 7 had not disclosed an iota of evidence in the instant proceeding.

On a scrutiny of the impugned **Order of Removal** dated **February 9, 2021** it appeared that, the school authority had contended that, in terms of an order dated February 28, 2020 passed in a contempt proceeding being **CPAN 1294 of 2019** which was initiated at the instance of the petitioner the order for removal was issued. However, no such material was available on record. Affidavit-in-opposition filed on behalf of the respondent nos. 4 to 7 was also silent on this score.

From the impugned **Order of Removal** dated **February 9, 2021** it also appeared to this Court that, the school authority had exercised its power in terms of **Regulation 8(g)** of the **Regulation of Association of Salt Lake School (English Medium) Society** (for short the said Regulation) and issued the said impugned **Order of Removal** dated **February 9, 2021**.

Regulation 8 of the said Regulation provided for powers and functions of the Council. **Sub-Regulation (g)** to the said **Regulation 8**, *inter alia*, provided that the Council being the deemed Managing Committee of the school can take disciplinary measures, such as suspension, removal or dismissal from service against any staff of the school, as per the **Government Rules for professional misconduct, criminal offence, moral turpitude and any other in-disciplinary action** detrimental to the Institution. On the previous writ petition, it was finally decided that, the dismissal from employment was disproportionate against the purported charges alleged against the petitioner and the dismissal of the petitioner was set aside.

From the said document dated **March 3, 2020** submitted by Ms. Chumki Chowdhuri, learned advocate appearing for the respondent nos. 4 to 7 it appeared that, the same was related to one Invigilator, viz. **Indrani Sarkar** for invigilation of the subject – **Mathematics** who was described as an Assistant Teacher of the said **ST**.

JOAN'S SCHOOL and was deputed as an ***Invigilator*** at the said school for the ***ISC 2020 Examination***. This Court has failed to understand the significance and relevance of this document and is of the view that, the same had no relevance in the matter. Inasmuch as, if the petitioner was described as an employee of **ST. JOAN'S SCHOOL** then, in any event, no step for removal of the petitioner from the employment of the said ***Salt Lake School*** could have been taken. If this communication is taken to be correct then, in that event, the ***Salt Lake School*** could not have issued the said impugned ***Order of Removal*** against the petitioner.

From a meaningful reading of the ***Regulation 8*** of the said ***Regulation***, this Court is of the firm view that, the provisions of natural justice by granting an adequate and meaningful opportunity to a delinquent employee were in-built in the ***Regulation***, which ought to have been granted to the petitioner free from any doubt and in a clear manner. In such an event, when the impugned ***Order of Removal*** was challenged through this writ petition, it was the duty on the part of the relevant school authority to demonstrate that, a meaningful and adequate opportunity of hearing was granted to the petitioner to defend herself and then the impugned ***Order of Removal*** was passed.

This Court is of the firm view that, such an adequate and meaningful opportunity of hearing was not

made available to the petitioner by the school authority before exercising its power to remove the petitioner from her employment.

There was no disciplinary proceeding or validly initiated disciplinary proceeding against the petitioner.

For those reasons and discussions, the impugned ***Order of Removal dated February 9, 2021, Annexure-P18 at page 93 to the writ petition cannot sustain in law and, accordingly, the same stands set aside and quashed.***

In view of the above, insofar as the career record in the employment of the petitioner was concerned, the same should be read and understood as if ***there was no Order of Removal*** suffered by the petitioner at all and all the service benefits should be calculated on such basis to the credit of the petitioner.

The ***petitioner shall be reinstated by the School within 48 working hours from the date of communication of this order, without any stigma.***

However, this order shall not preclude the school authority to proceed against the petitioner, if it is so advised, but strictly in due process of law and after taking all steps in accordance with law.

It is also made clear that this Court had not gone in to the merits of the rival contentions of the parties raised against each other on the issue of removal of the petitioner from her employment in any manner.

Resultantly, this writ petition, **WPA 11462 of 2021** stands allowed, without any order as to costs.

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

(Aniruddha Roy, J.)