

Item-
SL-1. 21-09-2023

sg

Ct. 8

MAT 1051 of 2023
CAN 1 of 2023

Sri Jitendra Nath Biswas
Versus
The State of West Bengal & Ors.

Mr. Tapash Kr. Bhattacharya, Adv.
Mr. Aviroop Bhattacharya, Adv.
...for the Appellant.
Mr. Rajarshi Basu, Adv.
Mrs. Tapati Samanta, Adv.
...for the State.
Mrs. Koyeli Bhattacharyya, Adv.
...for the W.B.B.S.E.
Mr. Madhu Jana, Adv.
...for the Respondent Nos.5 and 6.

1. By consent of the parties, the appeal and the application are heard together and disposed of by this common order.
2. The appeal is arising out of an order dated 16th May, 2023 passed in connection with a writ petition in which the order of dismissal of the writ petitioner dated 4th November, 2013 was challenged.
3. The learned Single Judge, upon arriving at a finding that there has serious breach of natural justice in the second stage of disciplinary proceeding, namely, that the petitioner was served with second show cause notice along with enquiry report issued by the Secretary of the Managing Committee of the School without giving an opportunity to the petitioner to reply to the findings of the Inquiry Officer, set aside the second show cause notice and the approval of the Board with regard to first and second stage of disciplinary proceedings in terms of Rule 28(8) of the Management of Recognised Non-Government Institutions (Aided and Un-Aided) Rules, 1969.

4. The appellant was served with the letter of dismissal from service on 4th November, 2013 based on the inquiry report and without giving an opportunity to reply to the adverse findings of the Inquiry Officer and without issuing any second show cause notice. It is elementary that the delinquent should be given opportunity to deal with the inquiry report and the second show cause notice in justification of his claim that he is innocent of all charges.
5. Admittedly, this procedure was not followed. The Board has completely overlooked the serious procedural lapses and accepted the order of dismissal. The letter of approval was, accordingly, set aside along with the order of dismissal of the Managing Committee with a direction upon the School Authority to decide as to whether there is a necessity to conclude the proceeding initiated against the petitioner and if it is in the affirmative, to issue second show cause notice indicating proposed punishment. This order would have been perfectly justified provided the 1969 Management Rules was in vogue at the time when the writ petitioner was decided.
6. The learned Single Judge was not aware of the changes that had taken place in the meantime as would be reflected from the order as direction was given to the school authorities to obtain approval in terms of the 1969 Rules from the Board after receiving the reply to the inquiry report and the decision taken thereafter by the school authority.
7. Admittedly, the State respondents or the Council did not bring it to the attention of the learned Single Judge that the writ petitioner had retired from service on 30th April, 2014.

Thereafter the question arises as to whether in the absence of any Rule permitting continuation of disciplinary proceeding fresh direction can be given to the school.

8. This aspect of the matter also was not considered by the learned Single Judge.
9. Mrs. Koyeli Bhattacharyya, learned Counsel for the West Bengal Board of Secondary Education has submitted that in view of coming into force of the West Bengal Board of Secondary (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staff) Rules, 2018, disciplinary authority would now consists of an officer of the Board not below the rank of Deputy Secretary to the Board in terms of Rule 2(h) of the 2018 Rules. The disciplinary authority earlier was the Managing Committee and by reason of 2018 Rules, the Board is now the disciplinary authority. Similarly, the inquiry authority would be an authority appointed by the disciplinary authority not below the rank of District Inspector of Schools and Additional District Inspector of Schools for the purpose of causing an inquiry into the charges against the teaching and non-teaching staff falls under the said Rules.
10. In the instant case, inquiry was conducted on the basis of the approval obtained from the Board under the 1969 Rules. However, due to flagrant violation of the principles of natural justice, the order of dismissal being approved by the Board mechanically without noticing the serious lapse was set aside.
11. In view of the decision of coordinate Bench in *Durgadas*

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reported in **2007 (4) CHN 382** concerning issue similar to the issue raised in the writ petition the fresh proceeding cannot be initiated or continued. The coordinate Bench held that if a teacher is retired, there is no question of removal or dismissal after retirement and at the same time, there is no scope of obtaining prior permission or approval from the Board for such removal or dismissal after retirement in terms of Rule 28(8) of the 1969 Rules. Similarly, Sub-Rule (8a) of Rule 28 of 1969 Rules was considered in paragraph 7 of the judgment in which it is stated that having regard to the nature of punishment that can be inflicted after retirement, none of the three said punishments like, removal or dismissal or stoppage of increment or reduction of pay, could not be passed. The said judgement has clearly indicated that continuation of disciplinary proceeding after retirement is not permissible.

12. However, we must add that it depends upon the service Rules governing the service condition of an employee. There is a concept of deemed continuation of employment for the purpose of initiation or continuation of disciplinary proceeding and in some service Rules, provisions have been made and on the basis of such Rules, disciplinary proceedings can be allowed to be continued.
13. We do not find any saving clause in the 2018 Rules where similar power was conferred for continuation of disciplinary proceeding that may have abated by reason of retirement of an employee. The only saving power would be Rule 5 sub-

Rule (3) of the second proviso which reads “provided however that in case of retired teaching and non-teaching staff, disciplinary proceeding may, with the approval of the State Government, be instituted within three years from the date of retirement, if the misconduct becomes known to the Board after retirement”. However, the said proviso is not applicable in the present case.

14. In view of absence of any power of Managing Committee to implement the order passed by the learned Single Judge, the direction for considering the representation of the petitioner against the inquiry report and the second show cause notice, if the school authority proposed to issue, also could not and does not arise.
15. In view thereof, the direction passed by the learned Single Judge for continuation of the disciplinary proceeding for the limited purpose of imposition of punishment if proposed by the school authority on consideration of the representation of the writ petitioner is set aside.
16. Moreover, it appears that the writ petitioner was exonerated by the first charge forming the charge-sheet in CRA 14 of 2011 (Jitendranath Biswas vs. State of West Bengal) on 6th March, 2020.
17. In view thereof, retiral benefits admissible to the writ petitioner may be released subject to compliance of all formalities within three months from the date of submission of all required papers.
18. The school authorities are directed to comply with the direction forthwith.

19. The appeal and the application are disposed of accordingly.
20. Urgent photostat certified copy of this order, if applied for,
be supplied to the parties upon compliance of all required
formalities.

(Prasenjit Biswas, J.)

(Soumen Sen, J.)