

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

FMA 426 of 2022

with

IA No. CAN 1 of 2021

with

IA No. CAN 2 of 2022

Seth Soorajmull Balika Vidyalaya & Ors.

-vs

Smt. Asha Gupta & Ors.

For the Appellants : Mr. Soumya Mazumdar
Mr. Indranil Roy
Mr. Suvradal Choudhury
Mr. Rijit Chakraborty

For the Respondent No.1 : Mr. Animesh Paul

Writ petitioner

For the State : Mrs. Chama Mookherji

Respondents Mr. Parikshit Goswami

Heard On : 24.04.2023

Judgement Delivered On : 03.07.2023

TO COURT:-

1. The appellant herein has challenged the impugned order passed by the Hon'ble Single Bench dated 07.09.2021 in WPA 11387 of 2021.
2. The appellants herein were the respondents No. 7, 8 and 9 in the writ petition while the respondent No.1 was the writ petitioner and the respondents no. 2 to 7 were the respondents No. 1 to 6 in the writ petition.
3. Through the writ petition the writ petitioner had prayed for a writ in the nature of a mandamus directing the educational institution in question to immediately reinstate and grant further renewal of contracts for the year 2020 and 2021 and as Assistant Teacher.
4. Through the impugned Judgement and order the Hon'ble Single Bench has set aside the termination order of the school issued to the writ petitioner on the ground of failure to observe the principle of natural justice and has further directed the school-in-question to pay full salary and other financial benefits if any from the date the writ petitioner was terminated from service.
5. The fact of the case is that the appellant/writ petitioner was an Teacher in the said Soorajmull Jalal Balika Vidyalaya for 11 years. The contract

between the school and the appellant writ petitioner was not renewed. The appellant/ writ petitioner had sent a letter to the school authority through her Ld. Counsel and in reply to the said letter, the school-in-question raised several allegations against the appellant/ writ petitioner. The appellant/ writ petitioner was stated the reasons for termination of her service.

6. The Ld. Counsel appearing on behalf of the appellants submitted that the writ petitioner was initially appointed on contractual basis on 16.6.2010 the said contract was extended after expiry of each year. He has further submitted that the school management introduced the system of evaluating the performance of teachers from 2017-2018 onwards. The Ld. Counsel has further submitted that the writ petition is not maintainable against the private unaided school and has further submitted that the appellant/ writ petitioner does not have a legally enforceable right to get the contract renew. He has further submitted that the delay in institution of the writ petition has resulted in the school making a replacement for the appellant/ writ petitioner. Considering the aforesaid facts and circumstances the Ld. Counsel has prayed for dismissal of the instant appeal.
7. The Ld. Counsel appearing on behalf of the private respondent that is respondent No.1 has submitted that the school in question is a Government aided educational institution provided with dearness allowance. She has further submitted that the school performs public

duties such as providing education to the children as such the school comes within the ambit of Article 226 of the Constitution of India. The Ld. Counsel has further submitted has not abided by the principle of natural justice while terminating the service of the teacher. Considering the aforesaid facts the Ld. Counsel has prayed for dismissal of the instant appeal.

8. On going through the facts and circumstances of the instant lis this Court feels that the moot point for consideration is as to whether the principle of natural justice were adopted or not during the process of terminating the service of the respondent writ petitioner.
9. On going through the facts and circumstance of this case and after considering the submission of the Ld. Counsels it reveals that the writ petitioner was initially appointed on contractual basis during the year 2010 and since then the said contract has been extended from year to year. There was no allegation against the teacher prior to 2019. On 21.1.2019 there arose an allegation of leaving the children of the school unattended in a bus while coming back from an excursion.

Inquiry as regards to the aforementioned incident is never said to have taken place as such there is no inquiry report. No show cause notice has been found to have been issued by the school authority seeking explanation from the respondent/writ petitioner. Except a single allegation of leaving the children unattended in a bus while returning from an excursion that too during the month of January 2019 there is no

other allegation against the respondent/ writ petitioner. In this respect no disciplinary proceeding was ever started against the respondent/ writ petitioner.

Only in response to the letter issued by the Ld. Advocate of the respondent /writ petitioner the school-in-question informed the respondent/ writ petitioner about the termination.

On behalf of the school authority the managing committee decided not to renew the writ petitioner's contract but prior to taking such decision the respondent writ petitioner was neither stated about the allegation against her nor she was given the opportunity to give any reply. The teacher in question was never given the opportunity to explain her position.

From the aforementioned facts and circumstances this Court feels that natural justice was not performed by the school authority as the respondent/ writ petitioner was neither issued a show cause notice nor any constructive allegation was brought against her nor she was given the opportunity of producing her stance in respect of the said situation.

Thus there is gross violation of natural justice.

This Court is aware of the principles laid down, as regards to the maintainability of writ petition, by the Hon'ble Apex Court in the case between *St. Mary's Education Society and Another vs. Rajendra Prasad Bharghava and others*, reported in (2023) 4 SCC 498.

Abiding by the principles laid down in the aforementioned judgement this Court is of the view that where the basic principles of law is not followed that is where there is violation of natural justice by not issuing show cause notice and terminating the service of a teacher without hearing her thus there being violation of the principles of *audi alteram partem* which the school-in-question has violated, the said school cannot seek the protection on the ground of maintainability which has been laid in the *ST. Mary's* Judgement (*supra*).

It would not be improper to mention that the school in question by raising the question of maintainability cannot evade the basic rules of natural justice. The school in question has never gone into the allegation against the teacher concerned. There being no inquiry, no show cause and not even the basic rules of law being followed that is giving the person, against whom there is allegation, the opportunity of explaining her position, instead her service has been directly terminated. This blatantly violates the basic rules of natural justice.

Where natural justice has not been followed by the school the school does not deserve to have the benefit on technical ground. One who seeks equity must come in clean hand. In this instant case the school authority wilfully blatantly did not follow the basic principles of natural justice as such the benefit on technical ground cannot be extended in favour of the school.

This Court finds no reason to interfere with the impugned Order and Judgement passed by the Hon'ble Single Bench.

FMA 426 of 2022 with IA No. CAN 1 of 2021 with IA No. CAN 2 of 2022 stands accordingly dismissed.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(Subrata Talukdar, J.)

(Supratim Bhattacharya, J.)