

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 19544 of 2013

With

CAN 1 of 2019 (Old CAN No. 9309 of 2019)

With

CAN 2 of 2023

Reserved on : 15.09.2023

Pronounced on: 21.12.2023

Kalyan Saha

...Petitioner

-Vs-

West Bengal Board of Secondary Education & Ors.

...Respondents

Present:-

Mr. B. Biswas

Mr. Y. Mondal

....for the petitioner

Ms. Koyeli Bhattacharyya

... for the WBBSE

Rajarshi Bharadwaj, J:

1. The instant writ application has been preferred challenging, inter alia, an order dated June 19, 2013 vide Memo No.21/G/1(Appeal), issued by Appellant Authority of the West Bengal Board of Secondary Education herein respondent No.2 (hereinafter referred to as the 'appellant authority') affirming the order of disciplinary authority to dismiss the writ petitioner from service.

2. The facts in a nutshell are that the petitioner assumed the role of a Group 'D' employee at Krishnapur Jadunath Madhav Chandra High School (hereinafter referred to as the 'said school') on January 01, 1979. In 2004, due to certain financial difficulties the petitioner sought personal loans, one from Sagar Gramin Bank, Jungra Branch, amounting to Rs.50,000/- and another from Samata Co-Operative Bank, amounting to Rs.20,000/-. Subsequently, the petitioner received a Charge-sheet on February 09, 2004, which revealed that the Managing Committee, through a resolution dated February 07, 2004, initiated disciplinary proceedings against him, alleging forgery of the Headmaster's signature on the loan application from Samata Co-Operative Bank, leading to his dismissal from employment. This prompted the Headmaster, herein respondent No.5 of the said school to file a complaint at the Rajarhat Police Station (PS) under case number. 67, dated February 26, 2004, invoking sections 465, 468, and 471 of the Indian Penal Code (IPC) against the petitioner.

3. The petitioner, thereafter, initiated an appeal before the respondent No.2. The appellate authority, through an order dated July 03, 2008, as per Memo No. 182/G/1 (Appeal), invalidated the previous disposition made by the Managing Committee. It thereby conferred the school authority herein the respondent No.1 with the prerogative to continue proceedings but mandated that they afford the petitioner a fair opportunity to present his case before any further action was taken. Moreover, ordered that incase the school decides to continue with the proceedings, it shall be incumbent upon the said school to either permit the petitioner to rejoin his position within the institution or, in the event the school opts to keep the petitioner at bay, to provide him with his full salary entitlements.

4. In adherence to the aforementioned directive, the Managing Committee of the school proceeded to recommence the disciplinary process against the

petitioner, informing the same to him by a letter dated November 11, 2008. This recommencement involved the appointment of an Enquiry Officer and the observance of other prescribed procedures delineated in The West Bengal Board of Secondary Education Act, 1963. The said enquiry officer submitted his report before the Managing Committee of the school on March 30, 2009. Concurrently, the school authority contested the order issued by the appellate authority on August 3, 2007, by filing a petition before the Hon'ble High Court of Calcutta, identified as WP no. 8247(W) of 2010. The Learned Single Judge pronounced that-

“Since in the instant case the school authority has not yet crossed the first stage of the disciplinary proceeding, an proposal for grant of approval to the first stage of such disciplinary proceeding is still awaiting consideration before the Board, the school authority, in my view, cannot be asked to furnish the specific proposal regarding the punishment to be awarded against the said charged employee, before the first stage of the proceeding is approved by the Board. Such proposal for awarding punishment can only be taken by the school authority at the second stage of such disciplinary proceeding which can only be initiated after approval of the first stage of the proceeding Since the permission to initiate the second stage of the proceeding has not yet been granted by the Board, specific proposal regarding the nature of the punishment to be awarded against the charged employee, cannot be invited from the school authority.

The said committee is thus directed to consider the paper submitted to it by the school authority and if on such consideration the Board and/or its said committee forms an opinion that there are sufficient grounds for taking disciplinary action against the said charged employee, the Board shall accord first approval to the school's proposal for initiating disciplinary proceeding against him as per law and communicate its decision at the earliest but positively within a fortnight from the date of taking such decision.”

5. Pursuant to the Judgment mentioned above, dated March 31, 2011, the Managing Committee, by an order dated November 17, 2011, sanctioned the initiation of the First Stage of the disciplinary proceeding against the petitioner. This decision was based on a thorough review of the Enquiry Report dated March 30, 2009 , which instructed the disciplinary authority to proceed with the second stage of the disciplinary process and issue the requisite orders. In adherence to the directive from the Committee instituted under section 24 of The West Bengal Board of Secondary Education Act, 1963, the Managing Committee/Disciplinary Authority rendered the dismissal order of the petitioner from his position as a Group 'D' staff member of the school, as documented in Memo No. 1/JUNE/DIS-PRO/12 dated June 20, 2012.

6. Following this, the petitioner proceeded to file a statutory appeal with the Appeal Committee of the Board in order to contest the determination made by the Disciplinary Authority. The Appellate Authority, in accordance with Memo No. 21/G/1 (Appeal) dated June 19, 2013, upheld the decision rendered by the disciplinary authority. Consequently, in light of this adverse ruling, the current petition has been initiated by the petitioner, reflecting his dissatisfaction with the said order.

7. The Learned Counsel representing the petitioner has advanced the following arguments:

- I. Rule 28(8) of the Management Rules of the West Bengal Board of the Secondary Education Act, states that the specific proposal for awarding punishment and/or the nature of punishment proposed to be awarded against the petitioner, is required to be intimated by the school authority to the petitioner at the second stage of the disciplinary proceeding which can only be initiated by the school authority after the approval of the first stage of the proceeding by the Board after considering the entire materials of the first stage of the disciplinary

proceeding. In the present case, the respondent authorities without having approved the first stage of proceeding had awarded punishment to the petitioner.

- II.** The Hon'ble Court by its Judgment in W.P. No. 8247 (W) of 2010 dated March 31, 2011 directed the Board to consider the proceeding against the petitioner de novo, however the Managing Committee/ Disciplinary Committee proceeded with the disciplinary proceeding against the petitioner taking into account the earlier report which is not permissible in the eye of law.
- III.** The petitioner instituted the present writ petition in 2013. While the writ petition was ongoing, the petitioner was acquitted in a criminal case, specifically, G.R. Case no. 5661/2014 (New) (T.R. No. 1183/2007), on July 13, 2018, by the Learned Chief Judicial Magistrate in Barasat, North 24 Parganas. This criminal case and a disciplinary proceeding initiated by the Headmaster and Secretary of the school stemmed from the same underlying facts and allegations, particularly regarding the purportedly forged signature of the Headmaster for loan purposes. Since the criminal case resulted in an acquittal by a competent criminal court, the disciplinary proceeding launched by the Managing Committee, as well as the subsequent decision upheld by the Appellate Authority, were influenced by the ongoing criminal case. Therefore, the orders issued by the disciplinary authority and the Appellate Authority should not be sustained and should be set aside.
- IV.** The Apex Court in the case of **G. M. Tank v. State of Gujarat and Others** report in **(2006) 5 SCC 446** held that when a department issues a charge-sheet upon the petitioner on the same material, criminal proceedings were also initiated, the charge being the same. On the same basis of the same charges and the same evidence, the Department

passes the order of dismissal whereas the criminal court honorably acquitted. It is important to note that the acquittal of the petitioner in the special case is a relevant factor, as the petitioner has been acquitted on merits and the acquittal is clean and not based on benefit of doubt or any technical proposition. The same evidence was led in the departmental enquiry and, therefore, the dismissal order is bad in law.

- V.** Owing to the petitioner's exoneration in the criminal case, it was asserted that he should be entitled to reinstatement with full salary, allowances, and pensionary benefits. This claim was made on the basis that since the appellant had been cleared of the charges, his career should not have suffered as a result of the departmental proceedings.
- 8.** Learned Counsel on behalf of the respondent no.1 has contended that:

 - I.** The committee constituted under section 24 of the West Bengal Board of Secondary Education Act, 1963 has approved the first stage of disciplinary proceedings after considering all necessary documents and reports as required under law which had been submitted by the school authority. The petitioner even participated in the enquiry without any demur. Therefore, he cannot be permitted to bring forth the allegations after the appeal stage is over.
 - II.** The enquiry was conducted by the enquiry authority scrupulously following the principles of natural justice and by weighing the evidence adduced by the petitioner as well as by the disciplinary authority as per the directions of the Hon'ble High Court. The enquiry report is therefore, a properly reasoned document. The enquiry officer has given definite findings in each and every charge after considering the pros and cons of the evidences including the issue of forging of the signature. It was held by the enquiry authority that even if the petitioner did not forge the signature of the headmaster he knew very well how this has been done.

It is however pertinent to note that the petitioner had built up a story of one Dulal Roy in order to escape his liabilities. Therefore, petitioner cannot shrink of his responsibility been the beneficiary of the loan received from the bank.

- III. The petitioner participated in the enquiry because he found that the charges framed against him were not identical with the criminal cases. Therefore, after submitting himself to the jurisdiction of the disciplinary authority, he cannot turn round on the plea that in the criminal case he has been acquitted by the Hon'ble Court. Consequently, seeking annulment of the disciplinary proceeding cannot be sustained.
- IV. On November 18, 2011, the Deputy Secretary (Administration), herein the respondent No.3 issued an order, wherein the initial phase of the disciplinary proceedings was sanctioned. This decision was made based on the determination that the allegations against the petitioner were of a serious nature and appeared to have prima facie merit. Consequently, the dismissal of the petitioner from his employment was carried out in compliance with the law, while respecting the judgment of the Learned Single Judge rendered on March 31, 2011.
- V. Relying on a Judgment rendered by the Supreme Court in **State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya** reported in (2011) 4 SCC 584 it has been submitted that a court while considering whether the punishment of "termination from service" imposed by the employer upon its employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. Thus, it is justified in contending that not only the employee is dishonest, but is also guilty of gross negligence and not fit to continue in his service.

9. On perusal of the documents brought to the Court and considering the submissions made on behalf of the parties, it is an established rule that the Courts will not assume the role of an appellate body, re-evaluate the evidence presented during a domestic inquiry, nor will it intervene merely because an alternative interpretation of the available evidence is conceivable. When a domestic inquiry has been conducted fairly and appropriately and its conclusions are grounded in substantiated evidence, challenging the sufficiency or reliability of the evidence will not suffice as grounds for judicial interference. Consequently, this Court will refrain from intervening into the factual determinations made in the disciplinary proceeding, unless these determinations rest on a complete absence of evidence or are evidently irrational. To determine such irrationality, the Court shall assess whether a reasonable tribunal could have arrived at the same conclusion or determination based on the available record. Nevertheless, this Court has not identified any such instance of irrationality. Therefore, there exists no justification for intervening in the determinations made by the Disciplinary Committee.

10. The Supreme Court in **B. C. Chaturvedi v. Union of India** reported in **(1995) 6 SCC 749**, held that Courts will step in to review findings in disciplinary matters if there has been a breach of the natural justice principles or statutory regulations, or if the disciplinary order is deemed arbitrary, tainted by bad faith or influenced by extraneous considerations. This Court therefore opines that re-appreciation of evidence and determining the nature of punishment is best left to the appellate authority and only when the conclusion, upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of the record that is based on no evidence at all, the order of dismissal passed by the disciplinary authority could be set aside.

11. It is pertinent to note that the subsequent acquittal of the petitioner by a criminal court, based on the principle of giving a benefit of doubt, does not in any manner invalidate the completed disciplinary proceedings nor does it impact the validity of the earlier determination of guilt or the corresponding disciplinary measures. The Supreme Court in **State Bank of Bikaner and Jaipur (Supra)** held that the standard of proof required in criminal proceedings differs from the standard of proof necessary in departmental inquiries. Consequently, the same charges and evidence may yield divergent outcomes in these two processes, namely, a determination of guilt in departmental proceedings and an acquittal due to the benefit of doubt in criminal proceedings. This distinction is particularly pronounced when departmental proceedings are conducted in closer proximity to the incident in question compared to the timeline of criminal proceedings. The verdicts rendered by the criminal court do not retroactively affect previously concluded internal investigations.

12. For the foregoing reasons, this Court refrains from interfering with the order passed by the disciplinary authority thereby holding that the writ petition is devoid of any merits and is consequently dismissed. All pending applications are accordingly disposed of. However, there will be no order as to costs.

13. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

21.12.2023

PA (BS)