

19.07.2023
SL No.13
Court No.8
(gc)

**MAT 1576 of 2022
CAN 1 of 2022**

**Sri Shyam Salone Upadhyay
Vs.
The State of West Bengal & Ors.**

Mr. Malay Bhattacharyya,
Mr. Subhrajyoti Ghosh,
...for the Appellant.
Mr. Dibyendu Chatterjee,
Mr. Pritam Majumdar,
Mr. Rahul Deb Goenka,
...for the Respondent/School.
Mrs. Koyeli Bhattacharyya,
...for the W.B.B.S.E.
Mr. Avishek Prasad,
...for the State.

By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.

The appellant although won before the learned Single Judge is aggrieved by denial of back wages upon reinstatement and an observation that the school authorities may take steps as may be advised having regard to the fact that the Management Rules of Aided and Unaided School, 1969 which was applicable to the appellant at the relevant point of time has undergone a change with effect from 18th March, 2018, that is to say, after the show cause notice was issued followed by an order of suspension and in terms whereof a disciplinary proceeding was initiated. It appears that the school

authorities initiated a disciplinary proceeding and imposed punishment without obtaining prior approval of the Court. Plainly, the initiation was unauthorized and improper. Prior approval was *sine qua non*.

The learned Single Judge rightly has not considered the matters on merits and the quality of the punishment imposed and set aside the order only on the ground that it was initiated without approval of the Board.

In the aforesaid background, the learned Single Judge directed the school authorities to pay on an ad hoc basis five months of his last drawn salary. It is not in dispute that the present appellant has been paid the last drawn monthly salary for five months on an ad hoc basis in terms of the order dated 7th February, 2023 and he reported on 8th February, 2023 and had resumed duty as an assistant teacher.

We have been informed lately a fresh show cause notice followed by an order of suspension has been issued against the teacher concerned. However, we are not concerned presently with the proceeding initiated by the school authorities. It is being argued on behalf of the appellant that the said proceeding was initiated pursuant to the observations made by the learned Single Judge while disposing of the earlier writ petition. In our

view, there is nothing to suggest that the earlier disciplinary proceeding was revalidated by the learned Single Judge. We are not going into the question as to whether the initiation of the subsequent proceeding was in accordance with law or not.

However, we need to answer the question of the appellant with regard to the back wages.

The learned Counsel for the appellant has submitted that since the termination was held to be invalid and the appellant was reinstated, he is entitled to back wages. In this regard reliance has been placed on the decision in ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyala (D.ED.) & Ors.*** reported at ***(2013) 10 SCC 324.***

In opposing the said prayer, Mr. Dibyendu Chatterjee, learned Counsel representing the school authorities has submitted that since he has not taken any class and there was *prima facie* evidence of misconduct and charges are serious in nature and the fact that the earlier proceeding was quashed not on merits but due to absence of permission, the principle of entitlement to full back wages could apply in the instant case. In this regard, he has relied upon the Division Bench judgment of our Court in ***Sujit Das Vs. The West Bengal Board of***

Secondary Education & Ors. reported at **1996 SCC OnLine Cal 163 : (1997) 2 Cal LJ 497.**

In ***Deepali Gundu*** (supra), the Hon'ble Supreme Court was considering the case of a teacher in a primary school. The service of the teacher was terminated. The Tribunal allowed the appeal and quashed the termination of the appellant's service and directed the management to pay full back wages to the appellant. The Tribunal considered the appellant's plea that she had not been given reasonable opportunity of hearing and took cognizance of the fact that the appellant was kept under suspension from 14th November, 2006 and she was not gainfully employed after the termination of her service and declared that she is entitled to full back wages. It was observed that the very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money.

In laying down the principle with regard to the back wages it was observed that in cases of wrongful termination of service, reinstatement with

continuity of service and back wages is the normal rule. The said rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

In **Sujit Das** (supra) no enquiry was conducted except granting an opportunity to the writ petitioner to file a reply to the show cause and that too when given him an opportunity to take inspection of all the relevant documents. The second show cause notice was served upon obtaining an approval of Section 24. Noting was placed before the Writ Court or before the Appellate Court to show as to on what basis the approval of the Board was obtained for initiation of the disciplinary proceeding. The Hon'ble Division Bench held that the principles of natural justice have been completely floated and the writ petitioner was condemned almost unheard. However, keeping in view the fact that the writ petitioner has filed several writ applications and he had engineered one writ application filed by the guardian of the school, the relief for back wages was denied with the observation that such claim for back wages shall depend upon the ultimate result in the

departmental proceeding which may be held against the appellant in terms of the said judgment.

Mr. Chatterjee has also relied upon a decision of the Hon'ble Supreme Court in ***Paramjit Singh Vs. Director, Public Instructions (Schools) & Ors.*** reported at ***(2010) 14 SCC 416*** which pertains to the termination of service of a probation. It is submitted that in the said decision the principle of "no work, no pay" was applied by the Hon'ble Supreme Court and an ad hoc amount towards compensation was allowed because the termination was found to be unjust and illegal.

Both the judgments referred by Mr. Chatterjee are distinguishable on facts. We are not concerned with the case of a probationer. The petitioner was appointed as an assistant teacher from 2004. Unlike ***Sujit Das*** (supra) the petitioner did not orchestrated any proceeding being launched to cover up the issues involved. He only filed one writ application in which he was able to establish that there were serious procedural lapses. There cannot be any doubt that the charges levelled against the writ petitioner, if proved, would attract punishment but surprisingly, the school authorities did not ask for post-facto approval of the Board and did not make any endeavour to cure the procedural lapses by giving an opportunity to the writ petitioner to make a representation against the proposed

punishment. This conduct is inexcusable and inexplicable. The action appears to be arbitrary.

In view of the fact that the appellant was able to establish that her service was wrongfully terminated and the absence of the willingness of the School to cure the defect that was available to the school authorities if they were really serious about the outcome of the disciplinary proceeding, we are of the view that the petitioner shall be entitled to 50 percent of back wages from the date of termination till he was allowed to join and the same be paid within two weeks from date.

This order, however, shall not have any bearing on the proceeding recently initiated against the appellant.

Accordingly, the appeal and the application stand disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)