

Ml- 16.05.2023
189 Ct.15
rkd

W.P.A. 34188 of 2014

Jitendra nath Biswas

-vs-

The State of West Bengal & Ors.

Mr. Tapash Kumar Bhattacharya,
Mr. Aviroop Bhattacharya,
Mr. Bishnu Prosad Singha Roy

....for the petitioner.

Mr. Prabir Kumar Chaudhuri

....for the respondent nos.5 & 6.

Mr. Santanu Kumar Mitra

....for the WBBSE.

Matter relates to issuance of dismissal order against the petitioner dated 4th November, 2013 on completion of disciplinary proceeding conducted by the School Authority of Shiblool Ashutosh Chatterjee Memorial High School, District- Purba Burdwan (hereinafter referred to as the "said school").

The petitioner was the headmaster of the said school and it has been submitted by the learned advocate representing the petitioner as well as the said school authority that he has crossed the age of superannuation. The order of dismissal dated 4th November, 2013 was confirmed by the Appeal Committee of the Board while disposing of the appeal being No.2/2014 preferred by the petitioner questioning the order of dismissal. The order of the

Appeal Committee dated 4th September, 2014 and the initiation of the disciplinary proceeding against the petitioner is under challenge in the present writ petition.

This Court has heard the learned advocates representing the petitioner, said school authority and the West Bengal Board of Secondary Education.

During course of hearing it has been pointed out by this Court that enquiry report dated 17th November, 2012 which went against the petitioner was supplied to the petitioner along with second show cause notice as it emanates from letter dated 1st December, 2012 issued by the Secretary of the Managing Committee of the said school which is annexed to the supplementary affidavit affirmed on behalf of the petitioner pursuant to the leave granted by this Court.

Learned advocate representing the said school authority has also drawn attention of this Court to second show cause notice dated 1st December, 2012 which is at page 102 of the writ petition whereby the disciplinary authority proposed to impose punishment of dismissal from service against the petitioner.

However, it appears on perusal of the letter dated 1st December, 2012 of the Secretary of the

said school that both the documents namely second show cause notice dated 1st December, 2012 and the enquiry report dated 17th November, 2012 were supplied to the petitioner at the same time under the said covering letter dated 1st December, 2012. Such supply of the second show cause notice dated 1st December, 2012 along with enquiry report dated 17th November, 2012 demonstrates violation of natural justice. Observance of principle of natural justice postulates the disciplinary authority to supply enquiry report first in order to grant opportunity to the delinquent employee to make deliberation on such enquiry report. If after supply of written representation against the enquiry report disciplinary authority finds the explanations offered by the delinquent employee is not satisfactory then it will be open to the disciplinary authority to issue second show cause notice intimating proposed punishment to the petitioner in order to give another opportunity to the said delinquent employee to make deliberation. Such requirement under principle of natural justice is defied in view of supply of enquiry report dated 17th November, 2012 along with second show cause notice dated 1st December, 2012 vide covering letter dated 1st December, 2012 to the petitioner thereby denying

the right of the petitioner to make representation before the disciplinary authority against the enquiry report.

It further reveals a situation where the disciplinary authority without considering the response of the petitioner made against the enquiry report issued the second show cause notice indicating proposed punishment which vitiates the disciplinary proceeding from the stage of supply of enquiry report to the petitioner.

It further appears that West Bengal Board of Secondary Education without considering the aforesaid aspect issued memoranda dated 7th May, 2013 and 28th October, 2013 thereby approving the first stage and second stage of disciplinary proceeding in terms of Rule 28(8) of the Management Rules. While approving the two stages of disciplinary proceeding as contemplated under Rule 28(8) of the Management Rules the concerned authority of the Board failed to take into consideration the aforesaid departure made by the disciplinary authority while supplying the enquiry report to the petitioner. Accordingly, the approval of first stage and second stage of disciplinary proceeding as accorded vide memoranda dated 7th May, 2013 and 28th October, 2013 stand set aside.

Consequently, the order of dismissal dated 4th November, 2013 issued by the said school authority against the petitioner also stands set aside.

In view of setting aside of the order of dismissal dated 4th November, 2013 the order of the Appeal Committee of the Board dated 4th September, 2014 affirming the order of dismissal cannot be retained on record and the same also stands set aside.

The said school authority being the disciplinary authority is directed to supply enquiry report dated 17th November, 2012 to the petitioner within fortnight from date.

On receipt of said enquiry report the petitioner is directed to give reply within fortnight thereafter.

The disciplinary authority on receipt of reply to the enquiry report shall take an independent decision whether the contentions raised on behalf of the petitioner in response to the enquiry report is acceptable or not. The school authority is required to give brief reasons in support of the same. If the school authority finds that the response of the petitioner in reply to the enquiry report is not satisfactory the decision of the school authority shall be communicated to the petitioner

within fortnight thereafter.

In the event the school authority decides that there is necessity to conclude the proceeding initiated against the petitioner the school authority shall issue second show cause notice indicating proposed punishment. Such second show cause notice shall also be required to be supplied to the petitioner for making further deliberation on his behalf.

Petitioner shall be granted another fifteen days time to offer response to the second show cause notice in the event second show cause notice is issued against the petitioner.

On receipt of reply to the second show cause notice the school authority shall be at liberty to take final decision whether punishment to be imposed and if imposed the nature of punishment thereof.

Before concluding the proceeding against the petitioner said school authority is also required to obtain first stage and second stage approval from the West Bengal Board of Secondary Education afresh as contemplated under Rule 28(8) of the Management Rules.

The approval of first stage of disciplinary proceeding shall be obtained by the said school

authority after receipt of reply to the enquiry report from the petitioner and decision taken thereon by the said school Authority.

The school authority shall be at liberty to conclude the proceeding against the petitioner within a period of six months from date.

Board shall be intimated accordingly by the said school authority for taking decisions relating to grant of approval of first stage and second stage of disciplinary proceeding expeditiously.

However, it is made clear that petitioner shall not pray for extension of time to offer reply to the enquiry report as well as to the second show cause notice, if issued against him without the reasons beyond his control.

With the aforesaid directions, the writ petition stands 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 learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)