

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 8658 of 2020

Harisankar Khatua

v.

The State of West Bengal & Ors.

Mr. Loknath Chatterjee

Mr. Apurbo Ghosh

... For the petitioner

Mr. Indranil Roy

Mr. Sunit Kumar Roy

... For the School Authorities

By this writ petition, the petitioner has called in question the defensibility and/or sustainability of the order of punishment and the order dated 26.02.2020 passed by the Commissioner of School Education, West Bengal.

The petitioner while rendering his services as a Headmaster of Baipatna Vidyasagar High School (HS) (hereinafter referred to as “the School”) was placed under suspension in contemplation of a disciplinary proceeding against him. Subsequent thereto, the proceeding was concluded and a final order of termination from service was passed against him on 15th June, 2016. Challenging the said order of punishment, he preferred a writ petition, *vide*. WP no. 15608 (W) of 2016 before this Court. A coordinate Bench of this Court while disposing of the writ petition observed that there was a provision of statutory appeal to impugn the order of punishment and hence, the

fora available to the writ petitioner should have been exhausted before assailing the order of termination in invocation of the jurisdiction of a writ Court. In such sequence of fact, liberty was granted to the petitioner to prefer an appeal before the Appeal Committee.

Accordingly, the petitioner preferred an appeal but the appeal has not been disposed of. The petitioner was constrained to file a contempt petition, being CPAN 1023 of 2019 and a Rule, being WPCRC 276 (W) of 2019, was also issued. However, during the pendency of that contempt petition, the Commissioner of School Education, West Bengal, disposed of that appeal.

Mr. Loknath Chatterjee, learned advocate representing the petitioner submits that no notice in connection with the enquiry proceedings has been given and the entire enquiry proceedings has been concluded *ex parte* and no evidence, either oral or documentary, has been adduced and even no second show cause notice has been given to the petitioner before awarding the punishment of termination from services. He further submits that even without exhausting alternative remedy, the petitioner can approach this Court since the entire disciplinary proceeding had been contemplated, continued and concluded in violation of the principles of natural justice and also in derogation of the statutory rules. To buttress his argument, he places reliance upon a judgment delivered in the case of *Narinder Mohan Arya v. United India Insurance Co. Ltd & Ors.*, reported in (2006) 4 SCC 713.

Mr. Indranil Roy, learned advocate appearing for the School Authority vociferously denies and disputes the contentions canvassed by Mr. Chatterjee. He contends that the Appeal Committee constituted by the Board as per the relevant provision of the West Bengal Secondary Act, 1963 (in short, the Act of 1963), is the appropriate authority to dispose of the appeal. According to Mr. Roy, the Commissioner has been empowered to dispose of such appeal by virtue of subsequent Rules of 2018. In the given case, before the subsequent Rules of 2018 came into effect, the disciplinary proceedings was initiated and order of termination was passed and hence, the Appeal Committee constituted by the Board is required to dispose of the appeal. He submits that direction can be given to the Appeal Committee to dispose of the appeal preferred by the petitioner.

A Coordinate Bench of this court upon consideration of the materials on record and having heard the learned advocates for the respective parties held that the petitioner was required to prefer appeal before the concerned Appeal Committee. I concur the view taken by Coordinate Bench. The petitioner also accepted the order and preferred the statutory appeal but an authority having no jurisdiction to entertain the appeal has disposed of the same. This Court is interested to ensure so that the order passed by the Coordinate Bench is complied with in its letter and spirit. There is no scintilla of doubt regarding binding effect of the principles laid down in the judgment relied upon by Mr. Chatterjee but

such judgment shall come in aid of the petitioner at this stage.

In view of such facts and circumstances, liberty is given to the petitioner to prefer an appeal afresh before the Appeal Committee constituted by the Board under the Act of 1963 within a period of 15 days from date and if such appeal is preferred within the time stipulated, the Appeal Committee shall dispose of the appeal after affording opportunity of hearing to the petitioner and all concerned including the representative of the School Authority by passing a reasoned order within a period of six weeks thereafter and the Appellate Authority shall communicate its order to the petitioner within two weeks from the date of taking such decision.

Liberty is given to the petitioner to raise all the points available to him in fact and in law before the Appellate Authority and the Appellate Authority shall address all those issues, which would be raised by the petitioner, in accordance with law.

With the aforesaid observation and order, this writ petition is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously, on compliance of usual legal formalities.

(Partha Sarathi Chatterjee, J.)