

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

**WPA 3271 of 2019
Soumendranath Mia
Vs.
State of West Bengal & Ors.**

For the petitioner	: Mr. Ashis Kumar Chowdhury, : Mr. Rajib Ghosh, : Mr. Babhru Bahan Bera, : Mr. Avishek Chatterjee.
For the State	: Mr. Bhaskar Prasad Vaisya, : Mr. Suman Dey.
For the respondent Nos. 4,6,7	: Mr. Saikat Banerjee, : Mr. Subhas Chandra Pal.
For the respondent nos. 13 & 14	: Mr. Juin Dutta Chakraborty, : Mr. Bidan Modak.
For the WBBSE	: Ms. Koyeli Bhattacharyya, : Mr. Bibek Dutta.

Heard on : 24/06/2024

Judgment on : 24/06/2024

Rai Chattopadhyay,J.

1. The writ petitioner is aggrieved due to the inaction on the part of the respondent District Inspector of Schools (Secondary Education), Birbhum/respondent No.3 as well as the West Bengal Board of Secondary Education/respondent No.10, against whom he has alleged gross inaction as regards taking necessary steps pursuant to his letter dated July 3, 2018.

- 2.** In short, the factual background of the case is as follows:- that after joining in the school in the year 2011, the writ petitioner was assigned with the duty of the teacher-in-charge with effect from October, 2017. During that period and allegedly as a result of his protest against the illegal activities of the Managing Committee, rift and discordance had developed between him and the Managing Committee. As a result, the petitioner submitted resignation on April 28, 2018 to the Secretary, Managing Committee of the school. There he narrated about him being forcefully restrained to join in duties, having been subjected to threat and dire consequences, due to his protesting the unlawful activities of the Managing Committee of the school. He has named the respondents No. 13 and 14 as the main perpetrators of such mischief.
- 3.** Subsequent thereto, vide another letter dated July 3, 2018, the petitioner wrote to the President of the West Bengal Board of Secondary Education/respondent No.10, so that he may be transferred to some other school, in view of the animosity developed between himself and the Managing Committee rendering the work environment not conducive of peaceful dispensation of his duties. He has also mentioned there about him having forcefully been restrained to join in the school and also he having been threatened with dire consequences.
- 4.** On both the occasions, the petitioner has expressed apprehension about his safety, security and well being, due to such threat to his life, as allegedly extended towards him by the school authority, particularly the respondents No.13 & 14. Subsequently the petitioner's salary has been stopped, with effect from February, 2018.
- 5.** Since thereafter, neither the petitioner has been allowed to join in the duties nor has been released his salary. His application dated July 3,

2018 has never been considered by the respondent No.10. Thus allegedly, the writ petitioner has been illegally and unfairly deprived of his constitutional right to life and livelihood. Hence, this writ petition.

6. Mr. Chowdhury, Learned Advocate appears for the writ petitioner. He submits that the petitioner has been subjected to glaringly unfair treatment and gross illegality, by the respondents. He says that the writ petitioner is an approved permanent teacher and at the relevant point of time he was assigned with the duties of the teacher-in-charge of the school. There he protested illegal activities of the authority in the functioning of the school and invited rage of the authorities including respondent Nos. 13 and 14. That, as a result, he has been restrained to join in the school and so threatened that he has been compelled to submit his letter dated April 28, 2018. It is submitted that subsequently, vide letter addressed to the President West Bengal Board of Secondary Education, dated July 3, 2018, he has virtually withdrawn his resignation tendered vide the earlier letter and sought for transfer. However, the same has never been considered. Though in the meantime, with effect from February 2018, the writ petitioner's salary has been stopped.
7. It has further been submitted that the authorities have acted illegally by not allowing the petitioner to join in duties and withholding his salary without any rhyme and reason, most unjustly, unfairly and arbitrarily, though at the same time treating him on the roll, he has been directed to discharge certain duties etc, as assigned to him. The writ petitioner has sought for an appropriate order to redress his grievance.
8. Mr. Banerjee is representing the school authority. He is vehemently opposing the prayer of the writ petitioner. He has placed enough reliance on the order dated May 10, 2023, passed by the Hon'ble Coordinate

Bench, in this matter. He says that there has been materials available against the writ petitioner with allegation against him involving moral turpitude. He says further that there has been written letters from the guardian of the wards, regarding the petitioner's involvement in incidents of advancing indecent proposal to the minor girl students. He indicates that considering grievous nature of the misconduct of the writ petitioner so alleged and its debilitating effect on the mental health and wellbeing of the students, the authorities have taken steps against the writ petitioner. Mr. Banerjee has insisted that any proximity of the students with the petitioner, who nurtures perverse mind and mala fide intentions, would jeopardize possibilities of healthy school environment and render student's wholesome development as noxious and deleterious.

9. He has specifically indicated that in its order dated May 10, 2023, the Hon'ble coordinate Bench has taken this concern into consideration, has been pleased to ask for report, that if any interim relief could be granted to the petitioner. But still, the Court has declined to allow the petitioner to join for duty.
10. The respondents State and West Bengal Board of Secondary Education are virtually on the same footing, in raising objection to the petitioner's contention and prayers. On behalf of the Board it has been submitted that a process has already been undertaken, pursuant to the complaints submitted against the writ petitioner, as mentioned by Mr. Banerjee. In doing so the Board has called for report from the respondent/District Inspector of Schools (Secondary Education) Birbhum. On behalf of these respondents, Mr. Banerjee's submissions have been supported.
11. All the respondents have unequivocally insisted for dismissal of the writ petition.

12. Admittedly, in spite of being an approved and permanent teacher, the writ petitioner has not been paid salary, since from the month of February, 2018. He says that he has been restrained to join in the school, to what there is virtually no objection. Admittedly neither he has been suspended till date nor any disciplinary proceeding has been initiated against him, on the basis of any allegation whatsoever. It is required to see if withholding of salary of the writ petitioner or restraining him to join in duty without suspending him, amounts to any illegality or not. It is also required to be seen if without suspending a permanent approved teacher, he can lawfully be not allowed to join in duty or if can his salary be withheld. The Court is also to see if the writ petitioner can be kept apart indefinitely from the school activities without any disciplinary proceeding having been initiated against him. And that if his salary can be withheld for indefinite period, without showing any reason for the same. Also that, if otherwise the action of the authorities would be termed as nothing but sheer act of unreasonableness and arbitrariness, subject to redress by exercise of the extraordinary power of judicial review by this Court.
13. A citizen's right of life is guaranteed as his fundamental right by Article 21 of the Constitution of India. Right to livelihood is an intrinsic and integral part of the right to life guaranteed under the said Article. No one can be deprived from such a right except according to the procedure established by the law. In the case of **P.G. Gupta vs State of Gujarat** reported in **1994 Supp 6 SCR 628**, the Hon'ble Supreme Court has held that right to life under Article 21 includes right to livelihood and so if deprivation of livelihood is effected without reasonable procedure established by law, it would be violative of Article 21.

- 14.** This being the settled legal position, now it is to be examined if the petitioner has been deprived of his right guaranteed under the Constitution, in accordance with the procedure established by the law.
- 15.** The service rules have provided the modes of suspension and termination upon proof of any misconduct, as the established procedures through which the petitioner, an approved permanent teacher, could have been kept apart from the activities of the school or his salary been withdrawn. Admittedly for all these long years no process has been initiated against the writ petitioner, on the allegation of whatever misconduct. Rationally the obvious conclusion can be arrived at that the writ petitioner, has been restrained to join in school or not paid his salary, without any basis or cogent ground whatsoever, much less than in compliance with any lawful means.
- 16.** A story of alleged misconduct by the writ petitioner has been brought in by the respondents. Admittedly however, no steps has been taken by the respondent authorities as regards the same. It is not disputed that the writ petitioner is not suspended ever. Allegation, even if it is considered to be there against the petitioner, has not yet been proceeded with by the respondent authorities. Here, except in compliance with the statutory mode of suspension, the writ petitioner could not have been kept apart from the regular school activities, lawfully and reasonably. The act of the respondent keeping the writ petitioner deprived of the right to join his duty appears to be de hors the law and arbitrary.
- 17.** Similar is with regard to stoppage of salary of the writ petitioner. Following the settled law, the Court would not have any hesitation to find that right to salary apart from being guaranteed under Article 21 of the Constitution, is also a right guaranteed to the writ petitioner under Article 300 A of the Constitution of India. Salary of a person can be

varied or withheld only in accordance with the law and for no other reason. Suspension of a person might have been a reason for withholding salary of a person though in that case he would be entitled to the suspension allowance, for sustenance. However, in the petitioner's case, there has not been any suspension. Has there been any reason shown for withholding of salary of the writ petitioner? The answer would be definitely in negative. Therefore, unreasonableness, arbitrariness and illegality is manifest, in withholding writ petitioner's salary.

18. The State respondent is however not agreeable that the salary of the writ petitioner has been withheld only unreasonably. It is submitted that since for all these years, the writ petitioner has not been discharging his duties, he would not be entitled to any salary. This is not a submission based on the facts and circumstances of the case but a stray comment only, perhaps in desperation. The facts of the case would show no role of the writ petitioner in his not joining in the school but that he has been restrained and not allowed to join. The proposition "*no work and no pay*", would not therefore be applicable in the particular facts and circumstances of the present case.
19. The Supreme Court in the case of the ***State of Andhra Pradesh vs Smt Dinavahi Lakshmi Kameswari*** reported in ***(2021) 11 SCC 453*** held the direction for the payment of the deferred portions of the salaries is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries, in other words constitute the rightful entitlement of the employees and are payable in accordance with law. In the celebrated judgment of ***Kapila Hingorani vs State of Bihar*** reported in ***(2003) 6 SCC 1*** Supreme Court held that the right to get salary is a fundamental right and there cannot be any curtailment upon it.

- 20.** The respondent Board has also submitted that the process on the basis of the alleged misconduct by the writ petitioner as above, has been initiated by it. However, upon perusal of the documents this court is of the opinion that there has not been any serious approach by the concerned authorities in this regard. Instead since thereafter, there has been like a game of passing bucks between the Departments and the so called 'process' appears to be an eyewash only. Sometimes the Board writes to the District Inspector of Schools seeking report and sometime the school authority delays the matter urging pendency of any decision by the higher authorities. In this regard, the letter written by the Deputy Secretary Academic, West Bengal Board of Secondary Education to the District Inspector of Schools (Secondary Education) Birbhum dated July 16, 2018 may be mentioned. Another letter of the school dated October 12, 2018 may also be mentioned in this regard wherein school authority waits and seeks order from the District Inspector of Schools. No less relevant in this regard is the letter dated September 25, 2019, issued by the disciplinary authority, West Bengal Board of Secondary Education written to the District Inspector of School (Secondary Education) Birbhum. The Board writes with regard to an almost a year old enquiry report of the District Inspector of Schools (Secondary Education) Birbhum dated December 12, 2018, that the same has not found to be a conclusive one, and directs for a fresh enquiry to be conducted. Inconclusiveness of the earlier enquiry report shows the negligent, sloppy and oscitant manner in which the respondent authorities have acted.
- 21.** Admittedly since October, 2017, writ petitioner has neither been allowed to join in duty nor is receiving salary. However, there is no dispute as

regards the fact that writ petitioner is still in the roll of the school and controlled by the District Inspector of Schools (Secondary Education) Birbhum and the Board. The allegation of misconduct of the writ petitioner of extending indecent proposal to the girl students, having not yet been acted upon, even after such a long period of time, raises serious doubt about the truthfulness of such allegation. On the other hand, as per the WBBSE (Appointment and Confirmation etc.) Rules, 2018, that is, Rule 5 Sub-rule 3, first proviso thereof, the disciplinary proceeding could normally be initiated within the period of three years from the date of alleged misconduct known to the Board, if not the time is extended by specific order. The said provision seems to have been flouted since the records do not reveal about any order of the concerned authority extending such period. It is worth mentioning that the exact time or date of receiving any complaint as regards the alleged misconduct by the writ petitioner is not available in this case. Even assuming that the statutory time limit for initiation of disciplinary proceeding is not yet over, no explanation can be found as to the grounds for not allowing the writ petitioner to join in school since from the year 2017 and stoppage of his salary since from the year 2018.

- 22.** Therefore, after considering the facts and circumstances of the present case this Court finds that the petitioner has been unduly, unreasonably and arbitrarily kept out of service and deprived of his legitimate dues as regards the salary and emoluments for the entire period starting from the respective dates when he was not allowed to join in duty and stoppage of his salary. There would be no justifiable ground for such action of the respondent authorities. Such alleged inaction by the respondent authorities is unsustainable in the eye of law and is liable to be set aside.

23. For the reasons as above this Court finds it proper to allow the present writ petition, with the following direction :

- I. The writ petition being WPA No. 3271 of 2019 is allowed.
- II. The writ petitioner shall immediately be allowed to join in duties in the school, in the capacity as he was last placed there.
- III. The writ petitioner shall immediately be released the arrear salary and other emoluments with effect from the April 18, 2018. He shall be also paid interest over the arrear amount of salary and other emoluments, at the rate of savings bank interest of a Nationalized Bank.
- IV. It is however, made clear that the concerned authority on the basis of a well founded and cogent complaint against the writ petitioner, if any, shall be at liberty to proceed in accordance with law.

24. The writ petitioner being WPA 3271 of 2019 is disposed of, along with the application pending, if any.

25. Urgent Photostat copy, if applied for, be given to the parties expeditiously after complying all legal formalities.

(Rai Chattopadhyay, J.)