

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

**Present:
The Hon'ble Justice Rai Chattopadhyay**

WPA 2909 of 2014

**Sharmila Sen
Vs.
The State of West Bengal & Ors.**

For the Petitioner : Mr. Rivu Dutta,
: Mr. Rhitam Chatterjee.

For the respondent nos. 1-7 : Mr. Ranjan Saha,
: Md. Ziaur Rahaman.

For the respondent nos. 8 & 9 : Mr. Debdatta Sen,
: Mrs. Ledia Dasgupta.

**Heard on : 04/07/2024
Judgment on : 10/07/2024**

Rai Chattopadhyay, J.

(1) The petitioner is aggrieved with the enquiry report dated May 9, 2012, of the Assistant Director of School Education, West Bengal, and has challenged the same in this petition.

(2) The said report states that the enquiry team did not find any proof depending upon which a conclusion can be drawn that the petitioner had tendered her resignation on August 18, 2008, under compulsion. It mentions that rather evidence and

reasoning show, contrary to that possibility and it appears as a voluntary resignation tendered by the petitioner.

- (3) On the other hand, the petitioner's contention is that, she has been compelled and forced to submit her resignation on August 18, 2008, regarding which she has sought for redress in this case.
- (4) Hence, the petitioner has not been satisfied with the report of the enquiry committee, as above and filed the present writ petition.
- (5) It is found necessary that the facts leading to filing of this writ petition be stated in a nutshell.
- (6) The petitioner was appointed on February 18, 1984 at G.D.Birla Centre for Education (formally known as Ashok Hall). She has served there till August 18, 2008. Her relationship with the school as an employee and teacher was severed pursuant to a letter of her, that is, dated August 18, 2008, wherefrom it can be learnt that the petitioner, vide the same, has submitted her resignation to the school. Subsequently, she has received her retirement benefits.

- (7) The situation turned to be different, when on October 31, 2011, the petitioner wrote a letter of complaint to the Director of School Education, Government of West Bengal. In the same she has alleged inter alia of coercive treatment to have been meted out to her by the school authorities. As she has declined to follow irrational and arbitrary instructions, allegedly, she has been forced and compelled to submit a resignation letter immediately. Thus, the writ petitioner has contended that her resignation letter dated August 18, 2008, has not been a voluntary act of her but a result of threat, force and coercion.
- (8) Petitioner's letter dated October 31, 2011 was followed with another letter of her to the said authority, dated February 2, 2012.
- (9) The respondent State authorities have taken action upon the letters of complaint of the petitioner, as above and formed an enquiry committee, to enquire into the allegations made therein.
- (10) Impugned in this case, is the report of the said enquiry committee, dated May 9, 2012.
- (11) Decision of the enquiry committee through the said report would reflect inter alia as follows :

“1. Miss Sharmila Sen submitted resignation letter dt. 18.8.08.

2. On 18.8.2008 such resignation letter was accepted on behalf of the school.

3. On or about 26.8.08, the school management intimated Miss Sen as regards settlement of her dues amounting to Rs. 65, 181/-, Rs. 4,01,596/- and Rs. 90,681.

4. Miss Sharmila Sen duly acknowledged receipt of such amount and gave a declaration to the school that she has no claim whatsoever nature on any account against the school.

5. The enquiry team does not find any proof depending upon which a conclusion can be drawn that Ms. Sharmila Sen had tendered her resignation on 18.8.2008 under compulsion. Rather evidence & reasoning show contrary to that possibility wherein it may be counted as voluntary resignation.”

(12) The writ petitioner was dissatisfied and aggrieved with the same. Hence this writ petition.

(13) Mr. Dutta represents the petitioner. He has argued about the impropriety and illegality of the said enquiry report, for the reason of its alleged non-consideration of the attending facts circumstances. He says that had the enquiry committee conducted the enquiry in a proper manner, after considering all the attending facts circumstances, the result of enquiry would have been otherwise. He has particularly given stress to the ‘service manual’ governing the conditions of service of the writ petitioner. A condition thereof, that the service of a permanent teacher may be terminated either by the school or by the

teacher herself, without assigning reasons, but only after either expiry of notice period of one month or in lieu of one month's salary being paid, is relied on. He says that in case of the petitioner, neither of these conditions have been fulfilled. This itself, he says, is showing the involuntariness and unpreparedness of the petitioner to tender her resignation. That, had it been otherwise, the petitioner would have acted in terms of the stipulations in the '*service manual*'. According to him, the enquiry committee's report is unjust, mechanical, and far less to reach to the core of the allegations, to reveal the truth. On behalf of the petitioner, he has sought for the relief of setting aside of the impugned enquiry report and other consequential benefits for the petitioner.

(14) Mr. Saha represents the State. He is of the firm view that after acceptance of the resignation of the petitioner by the competent authority and the petitioner having received the terminal benefits without reserving any further rights of her as regards that, the contentions and the prayer of her in this case is only baseless, rather frivolous. He seeks dismissal of the case.

(15) Mr. Sen represents the school authority/ respondents No.8 and 9. He maintains two fold arguments. Firstly, he would say the petitioner's claim to have been stalled due to efflux of time.

According to him, after resigning on August 18, 2008, acceptance of her resignation by the school authority and after accepting all her terminal benefits immediately thereafter, she could not have come in October 2011, to raise her grievance as above. Thus her complaint is hopelessly barred due to efflux of time. Secondly, he submits, that even for the argument's sake, any force could be found as regards the grounds maintained by the petitioner in this case, the writ petition would ultimately emerge to be not maintainable, being no State action involved in this case. Mr. Sen would say that the respondent school is a private institution, being run and maintained by its own fund and administration. He would iterate the well established legal principle that no writ proceeding would be maintainable against a private entity, having no trapping of a State, as envisaged under Article 12 of the Constitution. To fortify his argument on this point, he would cite the following judgments :

- (I) ***Raj Kumar vs. Union of India*** reported in ***AIR 1969 SC 180***;
 - (II) ***Dr. Nirjhar Bar vs. Union of India & Ors. in W.P.O 2432 of 2022***;
 - (III) ***St. Mary's Education Society & Anr. vs. Rajendra Prasad Bhargava & Ors.*** reported in ***(2023) 4 SCC 498***;
- (16) Mr. Dutta would again reply to the point of maintainability of the writ petition, as put forth on behalf of the respondents No 8

and 9. He would say that to challenge a report of enquiry furnished by the Assistant Director of School Education, West Bengal, the only available forum would be a writ Court, as the impropriety of the action of the State instrumentality is amenable to jurisdiction of this Court, in exercise of power under article 226 of the Constitution. So far as the argument of the concerned respondent, as regards the delay caused by the petitioner in filing the said complaint, is concerned, he says that the averments of the petitioner on oath in the writ petition would show the same having happened for a sufficient reason and thus would not be fatal for her.

- (17)** The jural relationship of the petitioner and the respondent school has been severed sufficiently ago, three years and odd to be precise, since after her tendering resignation (allegedly forcefully), before she lodges a complaint as regards the alleged unlawful manner of such severance. Also, that the present case has been filed after about two years from the date of the alleged enquiry report. All this have happened, admittedly, after the petitioner has accepted her terminal benefits immediately after her resignation and without raising any protest at that point of time. The petitioner has averred in the writ petition about the threat and intimidation to which she has been subjected to, to refrain her from moving against the said authorities and that

only after assurance from the respective department, she has been able to lodge the complaint.

- (18)** Awareness and promptitude is the essence with which a person should move for redress of violation of his rights, claimed to be guaranteed under the Constitution or the law. Inordinate delay is a fetter for enforcement of such a right. Evidently the writ petitioner has not raised any protest immediately after submission of the resignation letter dated August 18, 2008. Also, she has accepted her retirement dues without reserving her rights to protest. In that event, filing of a complaint after a long period of time is only an afterthought. This can be fortified by the averments of the petitioner herself that only after she being advised like that, the complaint letter was submitted by her. The same vitiates bonafide and sanctity of the petitioner's action. The fatal effect of the delay in submitting complaint is unavoidable in her case. This Court may borrow from the decision of the Hon'ble Supreme Court, reported in **(2009) 1 SCC 768 [Tridip Kumar Dingal vs State of West Bengal]**, to state that if the petitioner wants to invoke jurisdiction of a writ Court, he should come to the Court at the earliest reasonably possible opportunity. Delay is to be discouraged. The court has held that the underlining object of this principle is not to encourage agitation of stale claims and matters which have already been

disposed off or settled. This principle applies even in case of an infringement of fundamental right, the Court has held.

- (19) Similarly, in the judgment reported in **2024 SCC Online SC 551 [Mrinmoy Maity vs Chanda Koley]** that, though there cannot be any waiver of fundamental rights, but while exercising discretionary jurisdiction under Article 226 of the Constitution, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant. That the extraordinary jurisdiction of the High Court should be invoked within a reasonable period of time and unless there be a sufficient explanation for the delay, a proceeding would be liable to be set aside only on the ground of delay alone.
- (20) The enquiry has been conducted as to the allegations of the writ petitioner, by a committee headed by the Assistant Director of School Education, Government of West Bengal. The committee has examined the allegations and circumstances leading to the same. In absence of any gross error or palpable illegality in the process, its decision may not be interfered into. Supreme Court's verdict may beneficially be referred to, that is, reported in **2022 SCC Online SC 567 [Muzaffar Husain vs State of UP]**, where the Court has held that it is trite to say that the power of judicial review of the constitutional Court is not that of an

appellate authority, but is confined only to the decision making process. It has been held further that only in case of violation of principles of natural justice or contravention of statutory regulations and in case of arbitrary or capricious decision, manifest error, the Court would interfere therein to remedy the same. There is no scope for reassessment of evidence, the Court has stated in that case and also earlier, in the case of ***State Bank of Bikaner and Jaipur vs Nemi Chand Nalwaya*** reported in ***(2011) 4 SCC 584***. The petitioner has pointed out that the committee should have taken into consideration that the resignation letter of her dated August 18, 2008, was not preceded by any notice of one month, given by her earlier, in compliance with the '*service manual*'. This fact, actually shall have no bearing at all, in view of acceptance of resignation by the school authority. The notice is meant to be for the preparedness of the institution to run in near future, with the shortage of that staff. With the acceptance of resignation by the authority, this purpose would be accomplished. At the cost of reiteration it can be stated that neither on acceptance of resignation, nor at the time of receiving the terminal benefits, the petitioner had protested or reserved her right to protest. That sufficiently expresses her voluntary and wilful performance. Under such circumstances the petitioner cannot

maintain her grievance of violation of her right or her being subjected to any illegality or arbitrariness.

- (21) Rest is with regard to the point of maintainability of the writ petition. Admittedly, the school where the writ petitioner has been serving till the time of her tendering resignation, is a private entity having no control of the State or any of its instrumentalities, in terms of funds as well as internal administration thereof. The petitioner's employment therein was governed by a contract, private in nature. As it has been categorically held in the case of ***St. Mary's Education Society (supra)*** that ***"Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under article 226"***. The court, in the said case has been pleased to hold that the action complained of has to possess public law element, in order to be enforced in exercise of the plenary power and extraordinary jurisdiction of the High Court under article 226 of the Constitution of India. In the present case the writ petitioner is desirous to invoke this plenary power of the Court, not to enforce any action having public law element but to enforce one of her conditions of service. It is the trite law that enforcement of service conditions emanating from a private nature of contract between the unaided school and its teacher, would not

be amenable to writ jurisdiction of this Court. Judgment of the Supreme Court in ***St. Mary's Education Society (supra)*** may be referred to in this regard. The following portion of ***St. Mary's Education Society (supra)*** may be quoted:

“75.3..... An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution.”

- (22) Similar view has been taken by the Hon'ble coordinate bench of this court in the case of ***Dr. Nirjhar Bar (supra)***. By relying on the case of ***St. Mary's Education Society (supra)***, the Court has held that even assuming that imparting education transforms a private unaided institution to a body discharging public functions, the act complained of must have a direct or even a discernible nexus with the discharge of the public function described as such. The Court mentions that the Supreme Court has held that writ of mandamus can only be issued against a private body which is not a State within the meaning of Article 12 of the Constitution, if there is a public law element in discharge of functions by the private body. Needless to mention that in this writ petition the petitioner has not complained about any such an action, which can be said to have a direct nexus with the discharge of function by the respondent school,

that is public in nature. The alleged act complained of by the petitioner relates only to her conditions of service regarding which illegality has been pleaded.

(23) Therefore, in view of the law as settled in the manner discussed above, the court finds the point of maintainability of this writ petition to have been rightly espoused. Over and above the other points on merit, which have been decided here against the writ petitioner, this Court finds it proper to hold that the writ petition should not be maintainable, for the reasons as discussed above.

(24) On the premise as above the writ petition being WPA 2909 of 2014 is dismissed.

(25) Urgent Photostat certified copy of this judgment, if applied for, be given to its parties on usual undertaking.

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(Rai Chattopadhyay, J.)