

WPA 4111 of 2016
With
CAN 1 of 2020 (Old No: CAN 5930 of 2020)
With
CAN 2 of 2020 (Old No: CAN 5932 of 2020)

Nityaranjan Mandal
Vs.
State of West Bengal & Ors.

Mr. Sudipta Dasgupta,
Mr. Arka Nandi.
... For the Petitioner.

Mr. B.P. Vaisya,
Mr. Gourav Das.

.....For D.P.S.C (South 24
Parganas/Council)

An approved teacher, that is the writ petitioner, is aggrieved, that his appointment has been terminated without following the due process of law and the rules, which govern his service, that is, the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools Rules 2001). An order dated November 9, 2015, is under challenge in this writ petition. In the same, the respondent/Commissioner of School Education, West Bengal, has directed for cancellation of appointment of the petitioner. The petitioner has sought for the relief that the said impugned order dated November 9, 2015, be set aside.

On perusal of the office order under challenge, that is, dated November 9, 2015, it appears that another writ petition and order there of, is involved and has been dealt with by

the concerned authority, in the said impugned order. That is, W.P.No. 22459 w) of 2013 [Bapi Mondal vs State of West Bengal & Others]. That was a case filed by said Sri Bapi Mondal. The Court has disposed of the same vide order dated March 10, 2015, directing the Chairman, District Primary School Council, 24 Parghanas (South), to reconsider his prayer of empanelment, pursuant to his eligibility.

As a matter of fact, the said order of the Hon'ble Single Bench, dated March 10, 2015 was carried in an appeal to be disposed of vide order dated December 7, 2015. The same is relevant to some extent in this case. The Hon'ble Division Bench had directed that the order of the Hon'ble Single Bench would stand and that *"in case it is found that the petitioner secured higher marks than the last appointed candidate, the concerned chairman will give appointment to the petitioner by his order."* The Hon'ble Division Bench additionally said that *"in the event, the panel has expired, then supernumerary post has to be created for the petitioner because wrong done to the petitioner has to be remedied."*

Court's order as above was implemented vide the impugned order dated November 9, 2015. The respondent authority, by dint of the same, had incorporated said Mr. Bapi Mondal, in the panel by removing the writ petitioner there from, as he was the last candidate in the panel. One can't help but notice, that in doing so the concerned respondent had made a gross violation of the order of the Hon'ble Division Bench, which never directed for removal of any

candidate from the panel, but for creation of supernumerary post to accommodate said Bapi Mondal, in case he is found eligible on the basis of his marks. Be that as it may, in the name of implementation of the Court's order, the respondent thus had removed the petitioner from the service. However, it is also noted that the said person, Sri Bapi Mandal, has not been made a party, in this writ petition.

Mr. Dasgupta, who is representing the writ petitioner has said that a teacher, duly appointed, could not have been removed from the office in a slip shod manner like this, without following the procedure as prescribed under the governing rules and regulations. that, for removal of the petitioner. The authority was required to follow the due procedure under law and the principles of natural justice. None of the same have been followed in case of the petitioner, he says. He termed the order of removal of the petitioner from his service as an arbitrary one and dehors the law.

Mr. Dasgupta has relied on some orders of this Court delivered from time to time, in similar kind of matters, wherein it had directed for creation of the supernumerary posts, to accommodate such candidates, who were earlier dislodged from their respective posts, to accommodate others. Those are as follows :

- (i) W.P 28032 (W) of 2014, dated March 10, 2015 ;
- (ii) WPCRC 252 (W) of 2015, dated October 16, 2015;

- (iii) MAT 1813 of 2017 (The State of West Bengal & ors. vs. Bapi Sarkar & Ors.), dated January 18, 2024;
- (iv) W.P 4596 (W) of 2017 (Md. Alauddin Molla & Ors. vs. The State of West Bengal & Ors.), dated June 29, 2017.

Similar relief has been prayed for by the present writ petitioner, by Mr. Dasgupta.

The State respondent is not represented. Mr. Vaisya appears to represent District Primary School Council, 24 Parganas (South)/respondent No.5. The merit list and the waiting list have been submitted in Court, by the said respondent. Those are taken on record. The merit list contains names of 152 candidates, the last of whom secured a total score of 44.217. Name of the writ petitioner was empaneled in the waiting list of 8 candidates. First of those 8 waiting list candidates secured a total score of 43.789 and the last of them, that of 43.717. The writ petitioner was No.6 in the waiting list, having scored a total of 43.738. He has been ultimately appointed and joined school on February 22, 2012. On November 9, 2015, he was issued the said termination letter. Before that he has already worked in the school, as a permanent assistant teacher, for about 4 years.

As stated earlier, the impugned order dated November 9, 2015, cannot be counted as implementing the order of the division bench, in the case of Bapi Mondal, as stated above. Neither the writ petitioner was a party there nor

the Court had directed for termination of service of the petitioner, being the last candidate to be appointed, to accommodate the said other person. The said order of the Court in a proceeding, in which the present writ petitioner was not a party, cannot act adversely or prejudicially to the interests of the present writ petitioner. An order passed in a proceeding cannot be binding on and cannot in any manner prejudicially affect the rights of a person, who was not a party to such a proceeding. This is a tenet based on the principle of 'audi alteram partem' and a proposition of the principles of natural justice. This has been upheld by the Hon'ble Supreme Court, in the case of Poonam vs State of Uttar Pradesh reported in (2016) 2 SCC 779 and also an unreported judgment of the Hon'ble Division Bench of this Court, dated February 23, 2016, in WPST No. 487 of 2010 (Goutam Sarkar vs State of West Bengal & Others).

I have already stated that the Hon'ble Division Bench, in the case of Bapi Mondal, has never directed for termination of the petitioner's service. The petitioner, who have been appointed and working for four years, previous to the date of termination, has the benefit of accrual of valuable rights to the post, and that cannot be adversely affected, by any abrupt order of the respondent, which is not either in terms of the applicable rules or in compliance with the principles of natural justice. An order passed in a proceeding initiated by some other person, in which the petitioner has never been involved in any capacity whatsoever, could not have the

effect of terminating service of the petitioner or jeopardising his rights there to, in any manner whatsoever.

There is no challenge in this case, regarding the legality and validity of the appointment of the writ petitioner. In such view of the fact the Court cannot but notice that such appointment has given rise to the vital rights of the writ petitioner as to the said post. The writ petitioner has become amenable to the service rules, as applicable. Now his service cannot be made terminated excepting without compliance with the relevant rules of termination of a permanent teacher.

Contrarily, his service has been terminated not only without compliance with any rules or procedure, but also virtually, without any ground or reason. Absence of any justifiable cause, or rather any cause whatsoever for the stand taken by the respondent, renders such action of the respondent No.5 as nugatory, illegal and a non-est in the eye of law.

On the finding as above, the impugned order dated November 9, 2015, is set aside to the extent relatable to this case, that is, to the extent of the direction made to terminate the service of the present writ petitioner, that having been found to be arbitrary and illegal.

Mr. Dasgupta, for the writ petitioner has prayed for issuing necessary direction upon the respondent authority, to accommodate the present petitioner by creating supernumerary

post. He submits that in other cases of similar nature (as referred to by him and mentioned above), this Court has been pleased to direct for creation of supernumerary posts to accommodate the petitioners there in. The said orders, referred to by the writ petitioner, has been perused. The same would be, however, factually distinguishable. Also that the process to eradicate illegality and undertake a lawful, reasonable and just process, would be an act, predominantly within the administrative domain of the State and the Court would not normally be over enthusiastic to step in to the domain of the executive, in this way.

Hence, the Court allows this writ petition, with the following directions:

- (i) The impugned order dated November 9, 2015, is set aside to the extent relatable to this case, that is, to the extent of the direction made to terminate the service of the present writ petitioner;
- (ii) The concerned respondent authority is directed to immediately reinstate the petitioner and pay the arrear salary, which stands due from the date of his unlawful termination of service, till the date of his reinstatement;
- (iii) Expeditious necessary steps in this regard shall be taken up by the concerned respondent, within a period of two weeks from the date of service of the copy of this order.

The writ petition No. WPA 4111 of 2016 is allowed and disposed of, along with pending application, if any.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of requisite formalities.

(Rai Chattopadhyay, J.)