

25.06.2024.
Court No.13
Item No. 126
pk

W.P.A. No. 7569 of 2017

**Barnali Mondal
Versus
The State of West Bengal & Ors.**

Mr. Ekramul Bari,
Sk. Intiaj Uddin

...For the petitioner.

Mr. Bhaskar Prasad Vaisya
Mr. Suman Dey

...For the DPSC Bankura.

1. The writ petitioner was appointed as an Assistant Teacher in Satbhaya Primary School under Ranibandh (North) Circle, Dist. Bankura by an order of the DPSC, Bankura on 07.01.2010. The petitioner joined service but went on leave from 08.03.2010 till 17.05.2010. The petitioner sent a letter to the Sub-Inspector of Schools, Ranibandh (North) Circle on 17.05.2010 enclosing therewith a General Physician certificate dated 08.03.2010 that the petitioner was suffering from ailments and was advised rest and treatment. Admittedly, there was no other document supplied by the petitioner.

2. The petitioner was issued notice of unauthorized absence on 11.02.2011 by the DPSC, Bankura. She was called for a personal hearing and a penalty of reduction of withholding annual increments of two years was imposed upon her on 11.02.2011. The petitioner made a representation against the same on

16.09.2014 three years after the order of punishment. The writ petition was filed in 2017.

3. This Court notes that by reason of making a representation against an order of penalty three years after the same and challenging the same by a writ petition three more years thereafter would render such proceeding and the challenge barred by delay and laches.

4. Learned Counsel for the petitioner however, argues that the respondents violated West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001. Any proceeding or allegation of unauthorized absence must be enquired into in terms of the said Rules, by issuance of charge sheet, appointment of enquiry officer and disciplinary authority, a formal enquiry. Only then a punishment could be imposed in terms of the said Rules.

5. This Court however, notes while the Rules may not have been complied with, in letter and spirit. The petitioner was given an opportunity to explain her unauthorized absence. What was imposed on the petitioner is minor penalty.

6. It is now well settled not every infraction of Rule or procedure automatically vitiates a quasi-judicial proceeding. The petitioner must be able to demonstrate the prejudice caused to her.

7. Nowhere in the writ petition has the petitioner been able to demonstrate specifically as to what was

her defence outside the findings and records of the enquiry that she could have produced had the Rules in question been followed in letter and spirit. The petitioner clearly understood the charges against her. Reference in this regard is made to the decision of the Supreme Court in the case of ***State Bank of Patiala vs. S. K. Sharma*** reported in ***(1996) 3 SCC 364***.

8. The aforesaid discussion is even otherwise rendering academic in view of acceptance by the petitioner of the final order against her. Raising the issue three years after the penalty is imposed and acted upon, filing a writ petition six years after such order is passed would negate any cause of action that the petitioner may have had. The principles of waiver acquiescence and estoppel would apply against the petitioner.

9. Hence, no relief can be granted in the instant proceedings to the writ petitioner.

10. Accordingly, the writ petition fails and is hereby dismissed.

11. There will be no order as to costs.

12. Let urgent xerox server copy of this order, if applied for, be given to the parties on usual undertaking.

(Rajasekhar Mantha, J.)