

Item no. 05

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 10713 of 2023

**Kartick Chandra Mandal
versus
State of West Bengal & ors.**

Appearance:

For the petitioner : Mr. Subir Sanyal
Mr. Uttiya Roy
Mr. Surojit Mukherjee
Mr. Trijit Mitra

For the State : Mr. Supriyo Chattopadhyay, Id AGP
Mr. Gourav Das

For the Respondents : Ms. Koyeli Bhattacharyya
(W.B.B.S.E.) Mr. Bibek Dutta

Heard on : 06.12.2024

Judgment on : 06.12.2024

Hiranmay Bhattacharyya, J.:

1. The petitioner who was the Headmaster of a high school in the District of Nadia has filed this writ petition praying for setting aside the order of the Commissioner of School Education, West Bengal dated 22.03.2023 affirming the order

of the President, Ad hoc Committee of W.B. Board of Secondary Education dated 20.07.2022.

2. While the petitioner was in service, he was served with an order of suspension dated 13.09.2018 thereby suspending him from service with immediate effect in contemplation of disciplinary proceedings. Thereafter a show cause notice vide memo dated 06.12.2018 was served. The petitioner submitted his reply to the said show cause notice. Subsequently, a Chargesheet vide memo dated 05.08.2019 was served upon the petitioner. The petitioner replied to the said Chargesheet. Aggrieved by the inordinate delay in concluding the disciplinary proceedings, the petitioner filed a writ petition being WPA 79 of 2021 which was disposed of by an order dated 12.01.2021 by directing the disciplinary authority of West Bengal Board Secondary Education (for short, "the Board") to conclude the proceedings within the time limit stipulated in the said order. Thereafter, the President of the Ad hoc Committee of the Board passed an order dated 20.07.2022 imposing a penalty of compulsory retirement with appropriate rate of pensionary benefit.

3. The petitioner preferred an appeal under Section 10 of the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-teaching staff) Rules, 2018 (for short, the 2018 Rules) challenging the order of the President of the Board dated 20.07.2022. The Commissioner of School Education being the appellate authority dismissed the said appeal by an order dated 22.03.2023.

4. Challenging the order of the Commissioner of School Education affirming the order of the President of the Ad hoc Committee of the Board, the petitioner has approached this Court.

5. By referring to the charge sheet, Mr. Sanyal, learned counsel appearing for the petitioner submits that the charges have not been framed in the manner as prescribed under Sub-rule 4 of Rule 5 of the 2018 Rules and, therefore, the initiation of disciplinary proceeding is bad in law. He further submits that no enquiry proceedings in the manner as contemplated under the said rules were conducted. The petitioner was not supplied with the documents/materials which the authorities sought to rely upon against the petitioner while imposing punishment against the petitioner. Mr. Sanyal further submits that no copy of any enquiry report was supplied to the petitioner. Mr. Sanyal further submits that specific grounds were taken in the appeal petition wherein the infirmity in the decision making process was canvassed. Mr. Sanyal submits that since the entire proceeding starting from the issuance of the charge sheet is bad in law, the same should be set aside and the petitioner should be reinstated in service with full back wages. Mr. Sanyal places reliance upon a decision in the case of **Swapan Kumar Mitra vs. South Bengal State Transport Corporation Ltd. & ors.** reported at **WBLR (2004) vol. 1 page 77** in support of his contention that in the event the disciplinary authority chooses to rely upon any documents/materials, the delinquent has to be given an opportunity to deal with such documents and materials.

6. Per Contra, Ms. Bhattacharya, learned counsel appearing for the Board submits that the petitioner was served with the notice of enquiry but the petitioner chose not to attend the enquiry. The Enquiry Officer after conducting the enquiry submitted his report which was forwarded by the Enquiry Officer to the disciplinary authority. The disciplinary authority gave full opportunity to the

petitioner to make his submissions on the materials that formed part of the enquiry report. She further submits that the scope of interference under Article 226 of the Constitution of India against the orders passed by the disciplinary authority is very limited and the petitioner could not make out any ground for interference by this Court in exercise of powers of judicial review. Ms. Bhattacharya submits that even assuming though not admitting that the disciplinary proceedings were not conducted in the manner as per the rules, the authority should be given liberty to start such proceedings denovo. She further submits that even if the orders of the disciplinary authority and the appellate authority are set aside and quashed, it does not automatically entitle the petitioner to be reinstated in service as under such circumstances, the status of the petitioner would be that of a suspended employee, since suspension of the petitioner was in connection with service related issues. She submits that the instant writ petition is liable to be dismissed with costs in limine.

7. Mr. Das, learned counsel led by Mr. Chattopadhyay, learned counsel represents the State. He submits that the disciplinary authority conducted the enquiry proceedings in accordance with law and forwarded the copies as per the 2018 Rules.

8. Heard learned counsel for the parties and perused the materials placed.

9. The petitioner was served with a show cause notice dated 06.12.2018. The petitioner duly replied to the said show cause by a letter dated 18.12.2018. Mr. Sanyal would contend that the petitioner was not served with any decision of the authorities which will go to show that the reply to the said show cause notice was not satisfactory. Ms. Bhattacharya would strenuously contend that such is not the

mandatory requirement. However, the charge sheet vide memo dated 05.08.2019 was issued. After going through the charge sheet, this Court finds that as against each of the allegations, it was recorded that the reply to the show cause was not satisfactory. Mr. Sanyal would contend that the charge sheet was not framed in accordance with the provisions of 2018 Rules.

10. In this regard, it would be relevant to take note of rule 5(4) of the 2018 Rules which states that the disciplinary authority shall frame charge(s) containing a statement of imputations of misconduct including any admission or confession made by the teaching and non-teaching staff with annexures of a list of documents and a list of witnesses by which and/or by whom the charge(s) is/are proposed to be substantiated.

11. After going through the charge sheet, this Court finds that the same neither contains any list of documents nor any list of witnesses by which and/or by whom the charge(s) is/are proposed to be substantiated. The Memo dated 05.08.2019 states that the reply given by the petitioner to the allegations contained in the show cause notice is not satisfactory. From the said Memo, it does not appear that the charges against the petitioner have been framed as per Rule 5(4) of the 2018 Rules.

12. Mr. Sanyal would contend that the petitioner was not intimated about the holding of the enquiry proceedings by the Enquiry Officer. Pursuant to the direction passed by this Court on 02.12.2024, Ms. Bhattacharya produced the records. After going through the records, this Court finds from the memo dated 11.02.2022 that the District Inspector of Schools wrote to the Administrator of the School concerned that the enquiry will be held on 16.02.2022. Though from the said memo, it appears that the copy was forwarded to the petitioner also but there is nothing on record to

show that the said memo was served upon the petitioner. It would be relevant to point out that the petitioner was under suspension at the relevant point of time and was not attending the school. Therefore, the memo communicated to the Administrator of the said school cannot be deemed to be a communication made to the petitioner. This Court is, therefore, of the considered view that the petitioner was not intimated about holding of enquiry proceedings.

13. A bunch of documents were annexed to the memo dated 22.02.2022. Ms. Bhattacharya would submit that the same is the report of the Enquiry Officer. After going through the said document, this Court finds that the same was signed by three persons, namely two Assistant Inspectors of Schools (S.E.) and a Sub-Inspector of Schools (S.E.) on 16.02.2022. It further appears therefrom that as per the instructions of the District Inspector of Schools (S.E.), Nadia the aforesaid persons have made an in-situ enquiry at the high school on 16.02.2022 when the petitioner was absent. After going through the said document, this Court is of the considered view that the same may be an enquiry made by such Officers at the School but the same cannot be construed to be an enquiry as contemplated under Sub-rule 9 of Rule 5 which states that after completion of the enquiry, the enquiring authority shall prepare a final report containing charge(s), the defence of the teaching or non-teaching staff in respect of the charge(s) an assessment of evidence in respect of the charge(s), his finding on each charge alongwith reasons and send the copy to the disciplinary authority. The D.I. was appointed as the enquiry officer in the case on hand. No enquiry report of the District Inspector of Schools (S.E.) has been placed before this Court. No report as contemplated under Rule 5(9) of the 2018 Rules has been placed before this Court.

14. Ms. Bhattacharya, in her usual fairness, submits that the report of the said in-situ enquiry alongwith other materials were considered by the disciplinary authority while passing the order of punishment. On a query of this Court, Ms. Bhattacharya could not satisfy this Court that the said report of the in-situ enquiry or other materials which were relied upon by the disciplinary authority were supplied to the petitioner prior to the petitioner being afforded with an opportunity of hearing by the disciplinary authority. Though Ms. Bhattacharya would submit that the petitioner was given an opportunity to respond to such materials in course of hearing before the disciplinary authority but the same cannot be said to be an effective and adequate opportunity to the petitioner as the materials on which the authorities sought to rely upon against the petitioner were not supplied to the petitioner prior to the date of hearing before the disciplinary authority.

15. There is nothing on record to show that the in-situ enquiry report as well as other materials which were relied upon by the disciplinary authority, while passing the order, were supplied to the petitioner and thus the petitioner was deprived of the opportunity to deal with the same. As observed by the Hon'ble Division Bench in **Swapan Kumar Mitra (supra)** the disciplinary authority has to allow an opportunity to the delinquent to deal with the documents and materials which were relied upon in course of the disciplinary proceedings.

16. Neither the disciplinary authority nor the appellate authority took note of the aforesaid infirmities in the decision making process though the petitioner has specifically raised such points before the appellate authority in the appeal petition.

17. This Court has already held that there was no proper framing of charges as contemplated under the 2018 Rules. The enquiry proceedings were not conducted in the manner as contemplated under the 2018 Rules. No effective opportunity was afforded to the petitioner to deal with the in-situ enquiry report as well as other reports and documents which were used against the petitioner in course of the disciplinary proceedings.

18. Thus, it is clear that there has been gross violation of the principles of natural justice in conducting the disciplinary proceedings.

19. The appellate authority being the last authority to decide on facts as well as law ought to have considered these factual issues while passing the order. However, such authority also failed to consider the aforesaid issues. It is well settled that the scope of interference in exercise of powers of judicial review against the orders of the disciplinary authority is very limited. While exercising powers of judicial review, the High Court should not act as an appellate court. Judicial review is a review of the decision making process. Since there is an infirmity in the decision making process, this Court is inclined to interfere with the orders passed in the disciplinary proceedings while exercising powers under Article 226 of the Constitution of India. This Court, therefore, holds that the orders of the disciplinary authority and the appellate authority call for interference.

20. At this stage, it would be relevant to take note of the provisions laid down in Rule 6 of 2018 Rules. Rule 6 provides for suspension of a teaching and non-teaching staff when they are under detention in lawful custody for more than 48 hours or for any alleged misconduct or if there is any reason to believe that the teaching or non-teaching staff is not suspended, it may result in tampering of the documents,

materials or may cause undue influence in disciplinary proceedings pending or contemplated. Sub-Rule 2 of the Rule 6 provides that in all cases the disciplinary proceedings is to be drawn and concluded as required under the 2018 Rules.

21. In the case on hand, the petitioner was suspended in contemplation of disciplinary proceedings. The disciplinary proceedings were initiated and the same was brought to its logical end by inflicting the order of punishment upon the petitioner. The purpose of the suspension as would be evident from Clause (C) of Sub-Rule 1 of Rule 6 is to prevent tampering or destruction of the evidence by the delinquent or from causing undue influence in the disciplinary proceedings pending or contemplated. The disciplinary proceedings have reached its logical end. There is nothing on record at this stage for this Court to hold that the authorities have contemplated any disciplinary proceedings against the petitioner. For such reason, this Court is of the considered view that the order of suspension passed against the petitioner in contemplation of disciplinary proceedings could not have been continued any further.

22. For the reasons as aforesaid, the entire disciplinary proceedings starting from its initiation by way of issuance of charge memo dated 05.08.2019, the orders of the disciplinary authority and the appellate authority are set aside and quashed.

23. Since the order of the appellate authority affirming the order of the disciplinary authority has been set aside and quashed, the petitioner should be reinstated in service and shall be entitled to full back wages with all consequential benefits after deducting the allowance that may have been paid to the petitioner

during the period of suspension. It is however, made clear that it will be open to the authorities to take steps in accordance with law.

24. The respondent authorities are directed to allow the petitioner to join immediately after he reports to the concerned authority expressing his intention to join. The School authority is directed to prepare and submit the bills in terms of this judgment to the appropriate authority within four weeks from the date of receipt of the server copy of this judgment. Upon receipt of the same, the concerned D.I. of Schools shall release the payments to the petitioner within a period of six weeks from the date of receipt of the bills from the School authorities.

25. In the result, the writ petition stands **allowed**.

26. There shall be, however, no order as to costs.

27. Urgent certified Photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)

Amitava (AR. CT.)