IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

Before:
THE HON'BLE JUSTICE SAUGATA BHATTACHARYYA

W.P.A. 12345 OF 2023

Tenpur Thakumoyee Vidyapith (H.S.) & Anr.
VS.
The State of West Bengal & Ors.

For the Petitioners	:	Mr. Anindya Lahiri (via video) Mr. Arkadipta Sengupta Ms. Aayushi Mukherjee
For the WBBSE	:	Ms. Koyeli Bhattacharyya Mr. Bibek Dutta
For the respondent no.7	:	Mr. Kalyan Kumar Chakraborty Mr. Gopal Krishna Sarkar Mr. Vivek Kumar Pandey
For the respondent no. 6	:	Mr. Samiran Mondal Mr. S.C. Dhara

Heard on: 23.08.2024

Judgment on: 23.08.2024

SAUGATA BHATTACHARYYA, J:

Report filed on behalf of the Managing Committee of the School is taken on record.

Matter relates to allegations levelled by the school authorities of Tenpur Thakumoyee Vidyapith (H.S.), Paschim Medinipur (hereinafter referred to as "said school") against a retired Assistant Teacher who superannuated on 31st May, 2023.

It is submitted by Mr. Lahiri, learned advocate representing the petitioner that the said teacher being respondent no. 6 was acting as Teacher-in-Charge till the date of her retirement and there are serious allegations on defalcation of funds which compelled the President of the Managing Committee to come forward with the present writ petition seeking direction to modify the order passed by the Commissioner of School Education, West Bengal vide memo dated 20th April, 2023 which would enable the President of the Managing Committee to get the benefit of appointment of an independent auditor for procuring further report relating to allegations levelled against the respondent no.6.

The order of the Commissioner of School Education as contained in memo dated 20th April, 2023 is at pages 116 to 121 of the writ petition. Relevant part of the said order is reproduced below:-

> *"In the above backdrop, keeping in mind allegation and counter-allegation against each other, M/S Rajib Das & Co, was initially requested to audit the accounts of school in issue namely Tenpur Thakamoyee Vidyapith (H.S.) upto the*

finalcial; year March 2022-23 from the financial year 2019-20 with a month from the date of issue of Memo No. 9A/1/GA/90(Part -1)/5018 dated 20/03/2023. But the said CA Firm expressed its inability to conduct the audit within the stipulated time due to some personal reason and declined the order of Audit of Tenpur Theakamoyee Vidyapith (H.S.). Then, M/S N. Chatterjee & Associates, 40/6, Dharmadas Kundu Lane, Howrah -711102 was engaged to the audit the accounts of the school upto March, 2022-23 from the financial year 2019-20 within a month from issue of memo no. 9A/1/GA/90(Part-I)/5025 dated 31/03/2023.

After getting the Audit report, the President, Managing Committee of Tenpur Thakamoyee Vidyapith (HS) must place it before the Managing Committee of the school for discussion. After thorough discussion in the Managing Committee, the President of Tenpur Thakamoyee Vidyapith (HS) may decide to forward his allegation afresh along with the audit report to the "Disciplinary Authority" i.e. West Bengal Board of Secondary Education for taking necessary action in terms of West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching staff) Rule, 2018 *as stipulated in Notification No. 214-SE/S/10M-01/18 dated 08th March, 2018."*

Having considered the submissions made on behalf of the President of the Managing Committee being the petitioner, this Court has posed a query to Mr. Lahiri that how the President without backed by the Managing Committee Resolution can espouse the cause of the school authority? Query is also made to the learned advocate representing the President of the Managing Committee as to whether any Managing Committee Resolution has been adopted authorizing its President to file the present writ petition seeking modification of the order of the Commissioner of School Education dated 20th April, 2023.

Although it is submitted that present writ petition is the second writ petition and the first writ petition was entertained by a Coordinate Bench which was filed by the President of the Managing Committee of the School, but this Court does not find any satisfactory answer with regard to the Managing Committee Resolution whether at all adopted authorizing the President to come up before this Court with the present writ petition. However prayer has been made to adjourn the matter in order to satisfy this Court on the point of authority which the President of the Managing Committee is possessing to maintain the writ petition and the same is refused on the count that this is not the first date the writ petition is being considered by this Court, previously Coordinate Bench heard the matter on number of occasions. Furthermore, due to pendency of this writ petition respondent no. 6 is not receiving retiral dues including pension since the said school authority is not issuing 'No Liability Certificate' in favour of the petitioner in spite of her retirement on 31st May, 2023.

It has been submitted on behalf of the respondent no. 6 that Pension Payment Order has already been issued vide memo dated 23rd May, 2023.

Notwithstanding allegations levelled against the respondent no. 6 concerning financial embezzlement question arises for consideration whether retiral dues of the petitioner can be stalled upon withholding 'No Liability Certificate' which the said school authority is required to issue in order to facilitate release of such benefits.

In pursuit of finding answer the Court is required to consider Clause 19(5) as provided in the Government Memorandum No. 136 EDN(B) dated 15th May, 1985 (DCRB Scheme, 1981). Release of retrial dues including pension to an approved teacher of a government aided secondary school is governed by the provisions of DCRB Scheme, 1981, for better understanding of the issue Clause 19 is reproduced below:-

"19 (i) The full pension admissible under this scheme is not be given as a matter of course or unless the services rendered has really been approved by the competent authority.

(2) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

Provided that in cases where the authority sanctioning pension is other than the appointing authority, no order regarding reduction of the amount of pension shall be made without the approval of the appointing authority.

Note. No pension shall be liable to seizure, attachment or sequestration by process of Court in India at the instance of the creditor, for any demand against the pensioner.

(3) The measure in the reduction in the amount of pension under this Scheme should be the extent by which the employee's service as a whole has failed to reach a thoroughly satisfactory standard, and any attempt to equate the amount of reduction with the amount of loss caused to the Institutions is incorrect.

(4) <u>The service of an employee against whom a charge of corruption has been proved whether in a specific case or by any presumption based on recorded facts</u>

cannot be considered to be thoroughly satisfactory within the meaning of this Scheme. Any action under this Scheme should, however, be taken only after a charge of corruption has been proved.

(5) Final pension, gratuity etc, shall not be sanctioned to an employee against whom departmental/judicial/proceedings have been instituted/continued. In case of misconduct of the pensioner, the pension sanctioning authority has the power to withhold pension or reduce the pension.

Where any departmental or judicial proceeding is instituted or where a departmental proceedings is continued against an employee who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period of commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying services up to the date of retirement, or if he was under suspension on the date of retirement up to the date immediately proceeding the date on which he was placed *on suspension, but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon.*

Payment of this provisional pension shall be adjusted against the final retirement benefits sanctioned to such employee upon conclusion of the aforesaid proceeding but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Note: The grant of pension under this sub-para shall not prejudice the operation of sub-para 2 when final pension is sanctioned upon conclusion of the proceeding."

(emphasis supplied)

In consideration of Clauses 19(4) and 19(5) of the DCRB Scheme of 1981 pension and gratuity can be withheld even after superannuation of an approved teacher provided on the date of superannuation either disciplinary proceeding or criminal proceeding is pending against the said teacher. In the present case, nothing has been found on record which would demonstrate that on the date of superannuation of the petitioner on 31st May, 2023 any such proceeding was pending against her. The said school authority may have found certain materials against the respondent no. 6 but that would not cause any hindrance in releasing retiral dues to the respondent no. 6 in consideration of the relevant provisions of the DCRB Scheme, 1981 since on the date of retirement of respondent no. 6 no proceeding was pending against her.

Learned advocate representing the petitioner submits that a show-cause notice was issued against the petitioner on 22nd June, 2022 which was prior to retirement of petitioner on 31st May, 2023. Therefore, it ought not to be concluded while deciding this writ petition that there was no disciplinary proceeding pending on the date of superannuation of respondent no. 6. This Court is required to consider the steps taken by the authority in issuing show-cause notice dated 22nd June, 2022. In addition thereto, it is also submitted that respondent no. 6 retired on 31st May, 2023 whereas present writ petition was instituted on 17th May, 2023. Therefore, according to the petitioner, it is not a case where straightway the provisions of Clause 19(5) of DCRB Scheme, 1981 applies.

Learned advocate representing the Board submits that this show-cause notice dated 22nd June, 2022 was issued by the Additional District Inspector of Schools (SE), Ghatal and in terms of West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staff) Rules, 2018 the disciplinary authority of the Board is authorized to issue show-cause and charge-sheet against the delinquent teacher, not District Inspector of Schools or Additional District Inspector of Schools.

Though submission is made on behalf of the petitioner that show-cause notice was issued against the respondent no. 6 prior to her superannuation but taking note of the submission made on behalf of the Board it transpires that said show-cause notice was improperly issued since Additional District Inspector of Schools is not authorized to issue show-cause notice against a teaching staff prior to initiation of disciplinary proceeding, rather it is within the domain of the Board in terms of Rule 5 of the 2018 Rules to take steps.

In any event issuance of show-cause notice cannot be treated as commencement of disciplinary proceeding since it is well settled that the disciplinary proceeding starts from the date of issuance of charge-sheet and in the present case nothing has been found on record that on the date of superannuation of the respondent no. 6 on 31st May, 2023 charge-sheet was issued against her.

Relating to other limb of submissions made on behalf of the petitioner that pendency of the writ petition on the date of superannuation of the respondent no. 6 does not appear to be fetal since this Court has found that the present writ petition is not maintainable since the President of the Managing Committee is the petitioner in the writ petition and no Managing Committee Resolution has been produced whereby President has been authorized to file the present writ petition.

Before parting with it needs to be recorded even at the cost of repetition that at the time of hearing court does not get satisfactory clarification with regard to authority of the President of the Managing Committee to file this writ petition as no resolution of the Managing Committee is found whereby the President is authorized to take steps against the order of the Commissioner of School Education dated 20th April, 2023 vis a vis stalling of pensionary benefits of respondent no. 6 by not issuing 'No Liability Certificate'.

In the above conspectus, the writ petition stands dismissed.

Said school authority is directed to issue 'No Liability Certificate' in favour of the respondent no. 6 by 48 hours from date of communication of this order. On receipt of 'No Liability Certificate' the concerned State respondents are directed to release retiral dues including pension in favour of respondent no. 6 by fortnight thereafter since Pension Payment Order has already been issued in favour of the petitioner.

However, this order shall not prevent said school authority and the Board to take steps against the respondent no. 6 if any adverse material is found on completion of audit in accordance with law.

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

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(SAUGATA BHATTACHARYYA, J.)

Later

Mr. Lahiri, learned advocate representing the petitioner has prayed for stay of operation of this judgment and order which is considered and refused.

(SAUGATA BHATTACHARYYA, J.)