

WPA 25382 of 2017

Madhurima Das

Vs.

The State of West Bengal & Ors.

Mr. Ashis Kumar Chowdhury,

Mr. Rajib Ghosh,

Mr. Babhru Bahan Bera,

Mr. Avisek Chatterjee.

... for the petitioner

1. Mr. Ashis Kumar Chowdhury, learned counsel has appeared for the petitioner. None appears for the respondent in spite of due service. Hence the instant matter is taken up for adjudication, in absence of the respondents.
2. The petitioner's case is that she is a permanent approved school teacher, who has suffered mental illness due to certain untoward incident happened in her school. Details thereof shall be discussed later in this order.
3. That the petitioner has been forced to be absent for her duties in the school due to her mental illness, since October 2010. Later on, she has been declared as fit by the doctor vide certificate dated August 23, 2017. Immediately thereafter, vide her letter dated August 29, 2017, she expressed her willingness to join in the school and resume her duties. The said letter is still unattended and not considered by the addressee thereof.

4. Mr. Chowdhury, learned counsel for the petitioner has submitted by referring to the following judgments of the Hon'ble Supreme Court and also this Court, that the petitioner cannot be made subject to any punishment, pursuant to her disability acquired during her service period.

5. Mr. Chowdhury, learned counsel for the petitioner has relied on the following judgments:-

(i). *Geetaben Ratilal Patel vs. District Primary Education Officer* reported in (2013) 0 AIR (SC) 3092;

(ii). *Anil Kumar Mahajan vs. Union of India through Secretary, Ministry of Personnel, Public Grievances and Pensions & Ors.* reported in (2013) 6 ADJ (NOC) 91;

(iii). *Braja Gopal Ghosh vs. Central Coalfields Limited & Ors.* in W.P. (S) No. 5388 of 2006 decided on 08.02.2013; and

(iv). *Soumendranath Mia vs. State of West Bengal & Ors.* reported in 2024 Supreme (Online) (CAL) 4123.

6. He has further submitted that by not allowing the writ petitioner to join in her duties at the time when she has recovered and is physically and mentally fit to discharge her duties in the school, the respondent authorities have deprived the petitioner of her rights of life and livelihood guaranteed under the Constitution.

7. Mr. Chowdhury, learned counsel has further stated that during the entire period of absence of the writ petitioner, there has not been any show cause or disciplinary proceeding initiated or even contemplated against the petitioner, for alleged unauthorized

absence, if any. That the respondent sitting tight over the payer of the petitioner to allow her to join in the said school, is also an act of arbitrariness thereof, he says. He seeks that an appropriate order be passed in the present writ petition.

8. It is found that the petitioner has been an approved permanent teacher of the respondent school. An incident happened sometimes in the year 2010. The dispute has cropped up amongst the writ petitioner and the Managing Committee of the school, with regard to the attire being used by the petitioner, in the school. The petitioner, who had to travel through a long route to the school, wanted to use '*salwar-kameez*' for her convenience, whereas the Committee desired to enforce only '*sari*' for her, as the usual and daily attire for her to come to the school. Allegedly, over this issue and at the instance of the school managing committee, there has occurred a huge uproar, humiliation and stigmatisation of the petitioner, so much so, that she has been forcefully made to shave her head and paraded in the locality with shaved head. Unfortunately, as a fall out of the entire incident as above, the writ petitioner had become mentally unstable and ill, which prevented her to participate in the duties of the school any further, till the time she has been declared as fit by the competent medical person.

9. The medical certificate dated August 23, 2017 declares the petitioner as 'fit' to resume her duties.

10. Hence, she has prayed before the Headmistress/Secretary of the School along with other competent authorities, by dint of a letter dated August 29, 2017 to allow her to join in her duties.

11. The writ petitioner has produced in this case medical documents/certificate, in support of her mental disability, for which she states that she has not been able to perform her duties in the school, till the date she has been declared as 'fit' by the doctor. It appears that mental incapacity of the petitioner, during all these years of her absence has been within the knowledge of the respondent authorities, in so far as there is nothing to record to show that the respondents have ever made any endeavour to take steps against the petitioner for any charge whatsoever, including that of unauthorized absenteeism.

12. Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is relevant in this regard. Let that be quoted as below:

47. Non-discrimination in Government Employment - (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service: Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post

with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section

- 13.** Therefore, disability acquired during the service of a Government employee shall not be a bar for him to further resume his job, after recovery with adequate pay scale and service benefits. His service cannot be dispensed with or he cannot be reduced in rank, though as per his suitability after recovery, he may be shifted to some other post with same pay scale and service benefits or a supernumerary post, until a suitable post is available for him. The statute, has stipulated that promotion cannot be denied to a person merely on the ground of his disability.

Section 2(i) of the 1995 Act has defined disability to mean mental illness of a person.

- 14.** On the basis of this statutory provision, the Supreme Court has held in the case of ***Geetaben Ratilal Patel (Supra)*** that on proof of disability of the Government servant and resultant absenteeism of her for about 1360 days shall make the provisions under Section 47(1) of the 1995 Act to come into play and, therefore, an order of dismissal of

her should be treated as void. The Court has held further that since during the intermittent period of her absence, no show-cause notice was issued or charges were framed or departmental proceeding was initiated, the said employee could not have been dismissed in violation of the rules of natural justice.

15. In another case of **Anil Kumar Mahajan (Supra)**, the Supreme Court again had an occasion to deal with the provisions of the said 1995 Act and has held that due to the disability acquired by the appellant during his service period, it was not open to the authorities to dispense with the service of the appellant in any manner whatsoever, including making him retire compulsorily. The appellant therein was allowed full salary for the absence period. In the case of **Braja Gopal Ghosh (Supra)**, the Court has taken into consideration mental illness of the appellant and directed in his favour.

16. The Court finds it proper to mention a few more words, in this case. Man is known to be a 'social animal', of course should be that of the contemporary society and not a primitive one. Traditionally, in our society, a school teacher beholds a position, next to the parents of a child. No doubt she is required to maintain high values and honourable and graceful disposition, which includes her attire too. Service of a teacher is not amongst 'uniformed services', as we generally know. Therefore, there is no provision, under

any statute, providing any dress code for the school teachers, in the country. Formal attire which does not breach the boundaries of honor and dignity, should be sufficient for a teacher to maintain in school regularly. An interference, with the independent choice of a teacher as regards her attire, unless the same traverses thorough the acceptable limits of honor, morality or dignity of a contemporary person of ordinary and reasonable prudence, can never be exercised under any circumstances. A civil society is duty bound to give space to its citizens. Within the broad spectrum of the Constitutional framework of the right and liberties granted to the citizens of this country as fundamental for their existence, falls the right, to exercise their independent choices in their personal lives, particularly that with regard to the clothes, dresses and apparel to be used by him/her. Any orders, instructions, acts having effect of limiting this independent space in the society would amount to foreclosure of the constitutional as well as natural rights of a human being, who is also citizen of a State. Whether by subjecting the petitioner to such restrictions, the concerned respondents have violated her human rights or that guaranteed to her under the Constitution or have acted unbecoming of an administrative head and should be subjected to necessary disciplinary/punitive action for that is the question before the respondent/State, the answer of which still lies deep down within unknown and uncertain future, but this Court has no hesitation to

hold that in a modern day society, the petitioner has been treated in a manner as primitive as it can be, with barbaric blotches of utmost cruelty. The petitioner having been compelled to follow a direction as regards her wearing apparel, which might not have been as per her choice or convenience, though without any apparent reason, particularly as regards how, apparel chosen by her has not been acceptable, has been subjected to gross arbitrariness and the fallout of such difference of opinion, as described above, is a glaring example of lawlessness, unfortunately, which even thereafter, has failed to appeal the State machinery to take action against the wrong doers.

17. The Court finds that there would not be any impediment for the said respondent to duly consider the petitioner's application requesting to allow her to join in the school to discharge her duties.

18. Therefore, it is found proper to dispose of the writ petition by directing the District Inspector of Schools, Secondary Education, South 24 Parganas to immediately consider the petitioner's application dated August 29, 2017 and decide thereupon by dint of a reasoned order, in the light of the statutory provision as above as well as the ratio decided in the judgments as mentioned above and the findings of this Court in the present case.

19. In doing so, the respondent no. 5 herein shall afford a reasonable opportunity of hearing to the petitioner and any other persons/authority as it think fit and proper and conclude the entire exercise as above within a period of four weeks from the date of communication of copy of this order.

20. Its decision shall be communicated to the petitioner within one week from the date of its order.

21. Since no affidavit is invited, the allegations contained in the petition are deemed to have been denied by the respondents including the private respondents.

22. With the above observations and directions, the writ petition being No WPA 25382 of 2017 is disposed of, along with the pending applications, if any.

23. Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)