

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

Present:

The Hon'ble Justice Jay Sengupta

WPA 10016 of 2020

Dipak Samanta

Vs

Governing Body Sundarban Mahavidyalaya & Ors.

For the petitioner : Mr. Kamalesh Bhattacharyya
Mr. Ashim Kr. Halder
.....Advocates

For the respondent no.1 : Mr. Subir Sanyal
Mr. Kamal Mishra
Mr. Pratap Sanfui
.....Advocates

For the Calcutta University : Ms. Nandini Mitra
.....Advocate

For the State : Mr. Rajarshi Basu
Mr. Anirban Dutta
.....Advocates

Heard lastly on : 17.01.2025

Judgment on : 05.05.2025

Jay Sengupta, J:

1. This is an application challenging termination of the petitioner's service as a part time teacher in a College on 30.11.2015.

2. Learned counsel appearing on behalf of the petitioner submitted as follows. The petitioner was appointed as Part Time Teacher of the Sundarban Mahavidyalaya (the college in question) on 21.11.2007. The said appointment was approved by the Director of Public Instructions, West Bengal by an order being No. 2011/01.03.2011 in terms of the Government order and/or Circular being No. 177Edn(CS) dated 18.02.2011. In supersession of all existing Government orders and/or Circulars, the Higher Education Department, Government of West Bengal by issuing the Government order and/or Circular being No. 751-Edn(CS)5P-46/99 dated 21.09.2010, fixed the remuneration of the Part Time Teacher at Rs.9450/- per month on and from 01.10.2010 and to be enhanced @ 5% at the interval of three years' continue service and continued to remain engaged till they attained the age 60 years and entitled to get a Gratuity of Rupees One Lakh only in life time when he became 60 years. There was a clarification of workload that in no circumstances the College Authority would be allotting more than ten classes/periods to Part Time Teachers in a week and Part Time Teachers were no more liable to perform the assignment of University duty (e.g., Examination/paper setter/moderator, etc.) as well as College examination with effect from the publication of the said Circular being No. 751-Edn(CS)-5P-46/99 dated 21.09.2010. In violation of this Circular the Teacher-in-Charge allotted and/or forced the Part Time Teachers including

petitioner to perform the assignment of University duty (e.g., Examination/paper setter/moderator, etc.). Objections were raised. The Teacher-in-Charge in order to take revenge withheld the arrear salaries. Objections were raised. The Teacher-in-Charge not only refused to release the arrear salaries and monthly salaries of the Part Time Teachers, but also used abusive language to the Part Time Teachers including petitioner and forced them to perform University Examination Duties, in violation of Circular being No. 751-Edn(CS)-5P-46/99 dated 21.09.2010. The petitioner raised objection. Hence, petitioner become eyesore of the Teacher-in-Charge and was threatened by the Teacher-in-Charge that he would dismiss the petitioner from service. The Teacher-in-Charge purportedly allotted answer scripts of B.A. Part-II Examination of Calcutta University for evaluation and invigilation duty in the University and College Examination violating the Government order and/or Circular being No. 751-Edn(CS)-5P-46/99 dated 21.09.2010. The petitioner was not entitled to act as evaluator of answer scripts of Calcutta University's Examination. Show Cause Notice being Memo No. 09/MISC/PTT/14 dated 07.04.2014 was issued by the Teacher-in-Charge, whereby petitioner was asked to give reply within ten days from the date of receipt of the same. Challenging the said show cause notice, the petitioner along with another Part Time Teacher moved a writ petition being W.P. No. 12461 (W) of 2014. During pendency of the said writ petition being W.P. No. 12461 of 2014, the petitioner gave reply to the said purported show cause notice on 21.04.2014, denying all the allegations made therein. The petition being W.P. No. 12461 (W) of 2014 was dismissed for default on

05.02.2016 and application was still pending adjudication before this Hon'ble Court. The Teacher-in-Charge stopped the salaries of the petitioner from the month of March, 2014 illegally. The petitioner received a purported Charge Sheet being Memo No.SM/PTT/ Chargesheet/02/2015 dated 18.05.2015 issued by the Teacher-in-Charge based on purported Show Cause Notice dated 07.04.2014, informing that the reply submitted by the writ petitioner on 21.04.2014 in answer to the purported Show Cause Notice was not satisfactory and/or lacked adequate explanation to justify the misconduct committed by the writ petitioner. Copy of the (1) Memorandum of Charge Sheet, (2) Article of Charges, (3) list of documents and (4) list of witness were served upon the petitioner. From the purported Charge Sheet it would be found that prior to initiation of disciplinary proceeding the Teacher-in-Charge [the complainant] himself purportedly held the petitioner guilty of the charge of misconduct. Hence, the foundation of initiation of purported disciplinary proceeding as well as issuance of purported Charge Sheet were based on arbitrary, biased, prejudged and/or with a malafide intention, only to dismiss petitioner from his service by any means. The petitioner gave his reply dated 05.06.2015 to the purported charge sheet denying all the charges levelled against him. After submission of reply to the purported Charge Sheet, the Teacher-in-Charge by his letter being Memo No. SM/PTT/Enq/02/15 dated 29.06.2015, asked petitioner to appear before the Enquiry Committee on 11.07.2015, as if the Teacher-in-Charge himself has acting as the Enquiry Officer. Neither any information in respect of appointment of Enquiry Officer /Enquiry Committee was received by

petitioner. Nor petitioner received any notice from the alleged Enquiry Officer to appear before Enquiry Committee for alleged enquiry. Hence, the question of conducting any Enquiry by the alleged Enquiry Committee did not arise at all. Notice from the Enquiry Committee for hearing was mandatory as per law. In reply to the letter No. SM/PTT/Enq/02/15 dated 29.06.2015 issued by the Teacher-in-Charge, the petitioner by his letter dated 10.07.2015 informed the Teacher-in-Charge that it was not possible for him to appear before the Enquiry Committee until and unless he had been informed the details of the allegations and the members of the Enquiry Committee. No reply came either from Teacher-in-Charge or from the alleged Enquiry Committee till date. The petitioner received a letter being No.SM/PTT/GB/02/2015 dated 08.10.2015 was purportedly written by the Teacher-in-Charge, whereby petitioner was informed that the alleged Enquiry Committee had come to a definite finding that all the charges levelled against the petitioner in the Charge Sheet issued on 18.05.2015 stood proved. Accordingly, the Governing Body in consideration of gravity of offence committed by petitioner as levelled against him decided to terminate petitioner from his service. Thereby Second Show Cause Notice being Memo No.SM/PTT/GB/02/2015 dated 08.10.2015 was issued and directed to give Reply within three days, why the writ petitioner should not be terminated from his service with immediate effect. Though admittedly no enquiry was conducted by the alleged Enquiry Committee on the basis of the alleged Charge Sheet being Memo No. SM/PTT/ Charge sheet/02/2015 dated 18.05.2015 till date. Neither any information in respect of appointment of

Enquiry Officer was received by petitioner. Nor any initiation in respect of any enquiry proceeding was ever received by petitioner. No papers and document as relied in the list of documents of the Charge Sheet being Memo No.SM/PTT/Charge sheet/02/2015 dated 18.05.2015 was ever supplied to petitioner. Nor any examination and/or cross-examination of any witness from the list of witness of the purported charge sheet was done. Then how and when the alleged Enquiry Committee had concluded its enquiry and how could it come to definite finding that the entire allegation levelled against petitioner stood proved. As such the purported finding of the alleged Enquiry Committee, if any, was wholly imaginary, baseless and/or nullity in the eye of law and was liable to be quashed. The Disciplinary Authority never supplied any documents relied upon before the alleged Enquiry Committee nor any deposition of the alleged witnesses. Moreover, said respondent authority also did not even chose to supply copy of the alleged Enquiry Report of the alleged Enquiry Committee before and/or at the time. Purported second Show Cause Notice being Memo No.SM/PTT/GB/02/2015 dated 08.10.2015 issued by the Teacher-in-Charge (having no jurisdiction) was itself bad, illegal and/or nullity in the eye of law and was liable to be quashed. The Teacher-in-Charge by a letter being Memo No.SM/Misc/05/2016 dated 14.03.2016 informed the petitioner that verbally the petitioner was informed that the governing body of the said College terminated petitioner from his service with effect from 01.12.2015 though no copy of purported termination order was served upon the petitioner. However, a copy of the alleged termination letter being Memo

No.SM/PTT/02/2015 dated 30.11.2015 issued by the Teacher-in-Charge was enclosed in the said letter dated 14.03.2016 after lapse of three months from the date of issuance of said termination order. The Teacher-in-Charge purportedly issued a notice being Memo No. SN/PTT/Eng/02/15 dated 29.06.2015, asked the petitioner to appear before the Enquiry Committee, on 11.07.2015 treating him as Enquiry Committee, having no jurisdiction to issue such notice. The Enquiry Committee never issued any notice to the petitioner to appear. Under the provisions of Rule 4 of the West Bengal College Teacher (Security of Service) Rule 1977 the Enquiry Committee should have issued a notice to the teacher through registered post for appearance before the Enquiry Committee for enquiry. No such notice was ever issued by the Enquiry Committee. The alleged Enquiry Committee for initiation of departmental proceeding never sent any notice to the petitioner even after a letter was written by the writ petitioner on 10.07.2012 to appear before the Enquiry Committee in respect of departmental proceeding. No opportunity was granted to the petitioner to examine, cross examination the witness as mentioned in the list of witness as well as no purported Enquiry Report of the alleged Enquiry committee was served upon the petitioner to defend his case in violation of the provisions of natural justice as well as the ratio as led down in Union of India -VS- Mohd. Ramzan Khan reported in AIR 1991 SC 471. As no departmental proceeding was conducted, the entire process of alleged departmental proceeding was wholly bad, illegal and liable to be quashed and the order of termination being Memo No. SM/PTT/Charge Sheet/02/2015 dated 18.05.2015 was also liable to be quashed. Government

order and/or Circular being No. 751-Edn(CS)-5P-46/99 dated 21.09.2010 did not recommend invigilation duty and examination of answer scripts. The invigilation duty and examination duty of answer scripts by the Part Time Teachers were only introduced by a circular Government order and/or Circular being No. 1139-Edn(CS)4A-01/2014 dated 10.12.2015, which had seen the light of the day after issuance of final order of termination by the College authority against the petitioner was passed.

3. Learned senior counsel appearing on behalf of the respondent no. 1 submitted as follows. The petition suffered from inordinate and unexplained delay, laches and negligence in view of the fact that the order of termination was passed on 30.11.2015, whereas the present writ petition has been affirmed on 02.12.2020 and filed before this Court thereafter. No plausible explanation for filing the present writ petition after expiry of more than five years was assigned in the writ petition except at paragraphs 103 and 104 thereof where the petitioner faintly took the plea that he came to know about the dismissal of the earlier writ petition in the month of February, 2020 without any material in support thereof and even thereafter he could not approach this Court due to pandemic situation of Corona and lock down. The aforesaid explanation of the petitioner was ex-facie not tenable in view of the fact that after commencement of the pandemic situation in the month of March, 2020 the petitioner filed the present writ petition in the month of December, 2020. Therefore, this explanation did not hold good in view of the fact that pandemic situation prevailed even in the month of December, 2020 when the petitioner came before this Court and filed the present writ petition

and there was no explanation whatsoever prior to the commencement of the pandemic from the month of November, 2015 till the month of March, 2020. Therefore, the writ petition suffered from the vices of inordinate delay, laches and negligence and therefore, the same was liable to be rejected. Reference on this point was made to the judgement reported at (2005) 6 SCC 493 and (2006) 4 SCC 322. The petitioner was engaged as a part time teacher in Political Science on purely temporary basis. Such engagement of a part time teacher was not against any post. Service of the petitioner as a part time teacher of the college was not governed by any statutory Rules. Service of a part time teacher might be terminated by the college authority at any time without assigning any reason and this had been stipulated in the engagement letter dated 21.11.2007. Therefore, there was no violation of any legal or statutory right of the writ petitioner so as to invoke writ jurisdiction of this Court which was sine-qua-non to maintain a writ petition. However, in this present case, the College authorities, on its own and without any statutory requirement, took a reasonable and fair stand in the matter by extending him a reasonable opportunity to defend himself against serious allegations, but he failed and neglected to avail of such opportunity. It was trite law that in the absence of any statutory rule or regulations, the service of a permanent employee might be terminated by the employer upon compliance of the requirements of the principles of natural justice, and in the absence of any Rule or specific provision in the Rules, an employer itself/himself could enquire into the misconduct of the delinquent employee and take appropriate decision in the matter. Normally, the function of such

enquiry of an Enquiry Officer was to ascertain the facts relating to misconduct of the delinquent employee so as to reach a final conclusion in regard to the alleged misconduct of the employee concerned by the employer. If the employer could act as an Enquiry Officer, he could also, even in the event of appointing an Enquiry Officer to go into the allegation against the employee, inform in writing to the delinquent employee to appear before the Enquiry Officer and to make his submissions appropriately. Therefore, in the instant case, the letter of intimation to the petitioner was issued to and served upon by the Teacher-in-Charge of the college who was the Ex-officio Secretary of the Governing Body of the college asking him to appear before the Enquiry Committee on 11.07.2015 and 03.08.2015, but he refused to appear, was not and/or could not be without authority in view of the proposition of law that the employer itself or himself could make an enquiry. Pertinent to point out that the Enquiry Committee was consisted of the members who were not in any way related to the College. Requirement and observance of the principles of natural justice in this case, though not required in law as he was a temporary employee, had been completely fulfilled in view of the fact of issuance of the letter intimating allegation/charges, filing his written eligibility to the allegations and opportunity of defending his case before the Enquiry Officer, but he refused and neglected to appear. The Enquiry Officer filed his report and on the basis of such report, order of termination was passed. Thereafter, all the papers and documents relating to termination were sent to the Director of Public Instructions and such termination was accepted by the Government by not

renewing his engagement. It was settled principal of law that a disciplinary proceeding could be conducted by the employer in complying with the requirements of the principles of natural justice, which had been complied with in the instant case and therefore, no interference was called for in the present writ petition by this Court and the writ petition was liable to be dismissed.

4. Learned counsel appearing on behalf of the State submitted as follows. The writ petitioner was appointed as a Part Time Teacher (PTT) in the respondent non Government State aided college in the year 2007. The engagement of PTTs on a fixed monthly remuneration in terms of G.O. no. 751-Edn(CS) dated 21.09.2010 in different Colleges in the State was exclusively a time bound arrangement at the discretion of the concerned authority. The liability and/or obligation of the State was limited to the extent of issuing guidelines regarding engagement of PTTs. The College authority being the Appointing Authority, was the Competent Authority to take any decision regarding service of PTTs i.e., engagement, continuation and/or termination of any incumbent. In the instant case, the writ petitioner was Terminated from the assignment as a PTT on 30.11.2015 and the writ petition was affirmed on 02.12.2020. The writ petitioner, without having any explanation whatsoever regarding inordinate delay in approaching this Court, made prayers for his re-instatement as a PTT. But, this unexplained and inordinate delay, as the petitioner was never reasonably diligent in prosecuting the matter, disentitled him from discretionary relief(s) as prayed for. The impugned order dated 30.11.2015 was arising out of a show cause

notice dated 07.04.2014 being the subject matter of WPA 12461 of 2014, which has been dismissed for default by this Court. The instant proceeding was barred under the principles of constructive res-judicata since the earlier lis had been dismissed by this Court and issues involved herein were directly and substantially under adjudication before this Court in the earlier round of litigation. Under the service related guidelines of PTTs, it was the discretion and responsibility of the concerned college authority to take any decision in the service related dispute of any PTT. In the instant case, apparently the concerned college had acted in due diligence while Terminating the service of the writ petitioner.

5. I heard the learned counsels for the parties, perused the writ petition and the affidavits as well as the written notes of submissions.

6. It appears that the petitioner was appointed as a Part Time Teacher (PTT) in the respondent non Government State aided college in the year 2007. The terms of engagement were made clear in letter of appointment. A show cause notice dated 07.04.2014 was purportedly issued to the petitioner. He challenged the same in a writ petition being WPA 12461 of 2014. However, the same was dismissed for default. The said application has not been restored. Thereafter, the writ petitioner was terminated from the assignment on 30.11.2015, but the said termination has now been challenged by way of this writ petition which was affirmed by the petitioner on 02.12.2020.

7. The engagement of PTT's on a fixed monthly remuneration in terms of G.O. no. 751-Edn(CS) dated 21.09.2010 in different Colleges in the State was exclusively a time bound arrangement at the discretion of the concerned authority. The liability and/or obligation of the State was limited to the extent of issuing guidelines regarding engagement of PTT's. The College authority being the Appointing Authority was the competent authority to take any decision regarding the service of PTT's like engagement, continuation and/or termination of any incumbent. Clearly, the engagement of the petitioner as a Part Time Teacher in Political Science was on purely temporary basis and was not against any post.

8. As the service of the petitioner as a Part Time Teacher of the College was apparently not governed by any statutory rules, therefore, it cannot be said that any statutory rule has been violated in terminating the service of the petitioner.

9. It further appears that the college authorities on their own extended an opportunity to the petitioner to defend himself against the allegations made against him. But, the petitioner neglected and refused to avail of such opportunity. In the instant case, a letter of intimation was issued to him and served upon by the Teacher-in-Charge of the College who was the Ex-officio Secretary of the Governing Body of the College asking him to appear before the Enquiry Committee on 11.07.2015 and 03.08.2015. But, he refused to appear. As contended on behalf of the College, the Enquiry Committee consisted of the members who were not in any way related to the College. Therefore, the principles of natural justice were complied with by the College

authorities in as much as a reasonable opportunity of hearing was offered to the petitioner.

10. It cannot be said that the entire procedure would have to get stalled simply because a noticee refuses to respond. Thus, the Enquiry Officer purportedly filed a report and on the basis of the same an order of termination was passed. Significantly, all the papers and documents relating to the termination were purportedly sent to the DPI and the termination was accepted by the Government by not renewing the petitioner's engagement.

11. Therefore, it appears that the College authorities complied with all the requirement of adhering to the principles of natural justice, first by granting the petitioner an opportunity of hearing, then by having the enquiry conducted by independent persons and lastly, by having the termination approved by the Government. Therefore, I do not find any infirmity in the process undertaken by the College authorities that culminated in the termination of the assignment of the petitioner as a PTT in the College and the same being accepted by the Government.

12. Pertinently, the earlier writ petition filed by the petitioner challenging the issuance of notice was dismissed for default and there was no liberty granted to re-agitate the issues taken up till then.

13. Moreover, in the present case an order of termination passed in the year 2015 has been challenged in the year 2020 by the petitioner without providing an adequate explanation regarding the cause for delay. The Corona pandemic came up only at a later stage. In fact, the present writ petition was

filed in the month of December, 2020 during such pandemic. Thus, there is no cogent explanation about the inordinate delay in moving the writ application.

14. In view of the above discussions, I do not find any merit in this application.

15. Accordingly, the same is dismissed, albeit, without any order as to costs.

16. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)