

FMA 1327 of 2022
with
IA No. CAN 1 of 2022
(Shri Abhishek Prasad Vs. The State of
West Bengal & Ors.)

Mr. A. K. Gayen
Ms. A. A. Gayen
..... For the appellant

Mr. Subir Sanyal, Sr. Adv.
Mr. Ratul Biswas
..... For the DPSC, Howrah

Mr. Sanjib Das
.... For the State

The present appeal has been preferred challenging an order dated 02.09.2022 passed by the learned single Judge in a writ petition being WPA 12693 of 2022 which was preferred by the appellant herein, namely, Abhishek Prasad (in short, Abhishek) challenging *inter alia* an order dated 08.06.2022 passed by the disciplinary authority. By the order impugned, the learned single Judge dismissed the writ petition upon arriving at a finding that the Court had not found any anomaly in the decision-making process and accordingly, it cannot sit in appeal over the said decision.

Mr. Gayen, learned advocate appearing for the appellant argues that the appellant's absence in the school was neither deliberate nor intentional. He could not attend his duties as he was suffering from severe stomach and spinal ailments which stand supported by certificates issued by the competent medical practitioner. Neither the enquiry officer

nor the disciplinary authority, even after such medical documents having been submitted, did consider the same and as such, there had been blatant violation of the principles of natural justice.

Drawing our attention to the order of dismissal, Mr. Gayen argues that the order of punishment had been given retrospective effect. By an order was passed on 08.06.2022, the appellant was dismissed with effect from 01.04.2019. The order, thus, suffers from a jurisdictional error since no power has been conferred upon the disciplinary authority by the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001 (hereinafter referred to as the 2001 Rules) to pass any order granting retrospective effect to an order of punishment.

He contends that the period prescribed for completion of training was relaxable and Abhishek ultimately completed such two years' training in 2021. The authority ought to have taken into consideration such fact prior to issuance of the drastic order of dismissal. An order of dismissal is the severest punishment in civil jurisprudence and the same affects Abhishek's fundamental rights.

Mr. Sanyal, learned senior advocate appearing for the Council and its functionaries denies and disputes the contention of Mr. Gayen and submits that there had been no error in the decision-making process. Abhishek was issued a show cause as he was continuously absenting himself on and from 14.06.2017 after joining the concerned post on 05.02.2017. His reply was considered and

thereafter, a charge sheet was issued in consonance with the 2001 Rules. An enquiry officer was appointed and Abhishek was granted opportunity of hearing by the said officer. Abhishek was served an enquiry report and he duly replied to the same. Thereafter, the disciplinary authority passed the order of dismissal. In the said conspectus, the allegation of violation of the principles of natural justice is not sustainable.

Records would reveal that Abhishek absented himself from 14.06.2017 without any prior intimation to the school authorities and such absence commenced barely within four months from the date of appointment. As regards such absence, Abhishek had tendered unqualified apology, as would be explicit from the written statement filed by him. In the charge sheet itself it was mentioned that an Assistant Teacher has to complete the training course by 31.03.2019. Admittedly, Abhishek did not acquire such qualification within the said period. The certificates annexed, however, reveal that he acquired his qualification upon conducting a course in Swami Vivekanand University in the year 2021, which is beyond the time stipulated for completion of training. In the said conspectus, the competent authority passed the impugned order of dismissal with effect from 01.04.1999.

An appellate power interferes not when the order appealed is not right but only when it is clearly wrong. It is true that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion

and not one of compulsion. In an appropriate case, in spite of availability of an alternative remedy the writ court may exercise its writ jurisdiction. In the event the writ petitioner seeks enforcement of any fundamental right or where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction, the writ Court may interfere. The facts and circumstances of the present case do not attract the applicability of the above three contingencies.

In view thereof, the appeal and the connected application are dismissed.

It is, however, made clear that dismissal of the appeal will not prevent the appellant to prefer a statutory appeal against the order of dismissal before the competent authority, in accordance with law and that such statutory appeal, if filed, shall be decided by the competent authority without being influenced by the observations made in the present order.

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

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)