

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

MAT 1605 of 2022

With

IA No. CAN 1 of 2022

Ashish Kumar Tiwari

-Vs-

The State of West Bengal & Ors.

MAT 1606 of 2022

with

IA No. CAN 1 of 2022

Sushil Kumar Rai

-Vs.

The State of West Bengal & Ors.

MAT 1607 of 2022

with

IA No. CAN 1 of 2022

Sushil Kumar Rai

-Vs.

The State of West Bengal & Ors.

MAT 1610 of 2022**with****IA No. CAN 1 of 2022****Ashish Kumar Tiwari-****Vs.****The State of West Bengal & Ors.**

For the Appellants : Mr. Subir Sanyal

Mr. Sutirtha Das

For the Respondent NO. 6 & 7 : Mr. Piush Chaturvedi

Mr. Tarun Kumar Das

For the State : Ms. Chaitali Bhattacharyya

Mr. Kartik Chandra Kapas

For the WBBSE : Ms. Koyeli Bhattacharyya

Heard On : 17.01.2023

Judgement Delivered On : 30.06.2023

TO COURT:-

1. These appeals have been preferred against the Judgement and Order passed by the Hon'ble Single Bench on the 7th day of September, 2022 in the writ petitions being No. 2561 of 2020 filed by Ashish Kr. Tiwari, WPA 2562 of 2020 filed by Sushil Kr. Rai, WPA 22714 of 2018 and WPA 22721 of 2018 have been filed by the Managing Committee of Shree Balkrishna Vithalnath Vidyalaya and another.

2. For the sake of convenience all the four appeals being MAT 1605 of 2022, MAT 1606 of 2022, MAT 1607 of 2022 and MAT 1610 of 2022 are dealt analogously.

3. Through the impugned Judgement and order the Hon'ble Single Bench has dismissed WPA No. 2561 of 2020 and WPA NO. 2562 of 2020 and has allowed WPA NO. 22714 of 2018 and 22721 of 2018.

4. The lis involves common questions of law that is whether by the notification no. 214-SE dated 8.3.2018 issued by the School Education Department of West Bengal, the jurisdiction and authority of the West Bengal Board of Secondary Education (in short the Board) in respect of disciplinary proceedings against the two employees stood extinguished and in consequence to that whether the order dated 5.9.2018 is legal and sustainable.

5. The fact of the instant lis is that two employees writ petitioners in WPA 2561 of 2020 and WPA 2562 of 2020 were teachers of Shree Balkrishna Vitalnath Vidalaya.

Both the teaching and non teaching staff of the school receive dearness allowance from the State and the school is an aided school within the meaning of the West Bengal Board of Secondary Education Act 1963 and the Management of Recognized Non-Government Institutions (Aided and Unaided) Rules 1969.

Disciplinary proceedings were instituted against both the employees/writ petitioners.

Initially approval for suspending the employees and the first stage of disciplinary proceedings was declined by the Board vide order dated 10.7.2018.

As per the orders dated 10.7.2018 passed in writ petition 15242(W) of 2018 and writ petition 15243 (W) of 2018 the order of the President of the Ad-hoc Committee of the Board was set aside and the matter was remanded back for consideration afresh by the Ad- hoc committee of the Board.

Pursuant to the said direction of this Court the Board once again disapproved the proposal of the first stage of the disciplinary proceedings against both the employees as also the orders of suspension. The employees sought for reinstatement in service in the school and other consequential reliefs.

The School in question filed WPA 22714 of 2018 and WPA 22721 of 2018 challenging the Board's order dated 25.9.2018.

6. The powers of a Managing Committee of aided and non aided institutions to deal with their employees have been defined under West Bengal Board of Secondary Education Act 1969. (for short the 1969 Act)

Rule 28 (8) of the said Act lays down as follows:

““28. *Powers of Committee*.....

28(1).....

28(2).....

28(3).....

28(4).....

28(5).....

28(6).....

28(7).....

28(8) *Both in aided and un-aided Institutions the Committee shall have the power, subject to the prior approval of the Board, to remove, or dismiss permanent or temporary teachers and other employees. For this purpose the Committee shall first draw up formal proceedings and issue charge-sheet to the teacher or the employee concerned, and offer him reasonable facility for defending himself. The teacher or the employee proposed to be proceeded against shall submit his explanation, ordinarily, within a fortnight of the receipt of the charge-sheet, explanations submitted by the teacher or the employee concerned and the reasons for which the Committee decides in favour of taking disciplinary action. If the5 Board considers that there are sufficient grounds for taking disciplinary action the Committee shall issue formal notice calling upon the teacher or the employee considered to show-cause, ordinarily within a fortnight, why he should not be dismissed or removed from service. The Committee shal,*

then, send again to the Board all relevant papers including the explanation submitted by the teacher or the employee concerned and the recommendations of the Committee for the action proposed to be taken. So far as the Committee is concerned, the decision of the Board shall be final: Provided that the Board may delegate to any Committee constituted under section 24 of the Act the powers and functions conferred on the Board by this sub-rule.”

From the aforesaid rule it is evident that the Managing Committee of the institutions shall have the power to remove or dismiss permanent or temporary teachers and other employees subject to the prior approval of the Board. For this purpose the Committee shall first draw up formal proceedings and issue charge sheet to the teacher or the employee concerned and offer him reasonable facility for defending himself. The teacher or the employee shall submit his explanation within a fortnight of the receipt of the charge sheet. If the Board considers that there are sufficient grounds for taking disciplinary action the committee shall issue formal notice upon the teacher to show cause why he should not be dismissed from service. The Committee shall then send again to the Board all relevant papers including the explanation submitted by the teacher and the recommendation by the Committee for the action proposed to be taken. So far as the Committee is concerned decision of the Board is final.

7. In the instant case after the two teachers were suspended the approval for such suspension came to be considered by the Board and it received the submission of the school on 26.2.2018 and 9.3.2018. The school had formally sent proposal to the Board for approval of the disciplinary proceedings against the two teachers on 26.4.2018 and 9.7.2018.

8. The State Government on 18.3.2018 published the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staff) (Rules of 2018)

9. On 18.3.2018 another notification no. 216-SE certain amendments were made to the "Management of Recognized Non-Government Institutions (Aided and Unaided) Rules 1969". Through the said notification *inter alia* Rule 28 (8) of 1969 Rules came to be omitted and in its place Rule 28 A and 28 B came to be introduced.

10. The Ld. Counsel appearing on behalf of the school submitted that by the omission of Rule 28(8) of the 1969 Rules the authority of the Board to approve suspension and the first stage of disciplinary proceedings as laid down under the original Rule 28(8) stood extinguished with immediate effect. Ld. Counsel has further submitted that orders passed by the Board dated 25.9.2018 has become ineffective.

11. The Ld. Counsel appearing on behalf of the teachers has submitted that the proceedings instituted by the school under Rule 28 (8) of the 1969 Rules have become ineffective by the notification No.216-SE dated

18.3.2018. He has further submitted that the proceedings instituted prior to the aforementioned notification have become infructuous the disciplinary proceedings against the teachers have thus come to an end. The Ld. Counsel has referred to Section 6 and Section 24 of the General Clauses Act, 1897 and submitted that where this Act, or any Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

12. From the understanding of the law laid down earlier this Court is of the view that with the omission of the Rules in a Statute the proceedings initiated in accordance with the Rules prevalent then becomes ineffective or infructuous.

It is trite that the powers of the Managing Committee and Board qua disciplinary proceedings as existing under Rule 28(8) of the 1969 Act prior to the Notification dated 8.3.2018, must be holistically construed. As would be evident from the facts of this case, the disciplinary proceeding against the said two teachers was initiated by the Mangaing Committee to be valid upon fulfilment of the role to be exercised by the Board under the pre existing Rule 28(8) (*supra*).

In such view of the matter with the role of the Board extinguished by the Notification dated 8.3.2018 (*supra*) the disciplinary proceedings cannot stand partially modified to the extent that the Managing

Committee would now complete *this* disciplinary proceedings from the stage the Board stood left out.

Undoubtedly, from the point of the view of the said two teachers, they acted on the notion that the disciplinary proceedings would be governed and completed under the pre amended Rule 28(8)(supra). With the amendment ushered by the notification dated 8.3.2018, neither of the parties could be placed at a more or less advantageous position vis-a-vis the other in relation to *this* disciplinary proceeding. It cannot be denied that the Managing Committee initiated the disciplinary proceeding for fulfilment of the mandate under Rule 28(8)(supra) and, if the original Rule 28(8) does not survive during the pending of the disciplinary proceeding, the same cannot be allowed to be completed in part under the amended Rule but, must go as a whole.

Accordingly, in this instant case the entire proceeding will have to be construed in a holistic manner and not in part. With the omission whatever benefit has been acquired by any of the parties does not remain effective. Along with the omission of the Rules the effect of the said Rule what has taken place till then extinguishes. One cannot have the benefit without taking the negative aspect of the same.

So in this instant case, proceedings against both the teachers up to what extent it has taken place which was in accordance with the earlier Rule does not remain as such the school in question if it feels can

take steps in accordance with the present prevalent Rules *de novo* from the inception.

Thus, the Judgement and order passed in WPA 22714 of 2018 WPA 22721 of 2018 and WPA 2561 of 2020 and WPA 2562 of 2020 are set aside the disciplinary proceeding impugned in the writ petition stands set aside as a whole. However the school may proceed *de novo* under the new Rules if and so advised

MAT 1605 of 2022 with IA No. CAN 1 of 2022,

MAT 1606 of 2022 with IA No. CAN 1 of 2022,

MAT 1607 of 2022 with IA No. CAN 1 of 2022 and

MAT 1610 of 2022 with IA No. CAN 1 of 2022 stand accordingly disposed of.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)