

DL. December
23. 15, 2020

F.M.A. 612 of 2020

Re: CAN 1037 of 2020 (stay)
filed on January 28, 2020.

Mr. Kamalesh Bhattacharya,
Ms. Rama Halder,
...for the appellant.

Mr. Susanta Pal,
Mr. Pinaki Bhattacharjee,
...for the State respondent.

Ms. Koyeli Bhattacharya,
...for the Board.

Although the matter is appearing under the heading application, by consent of the parties, the appeal itself is taken up for hearing by treating the same as on day's list.

The matter relates to suspension of an Assistant Teacher of Janardanpur High School in the district of Paschim Medinipur. The suspension order has been issued as per the decision of the President of the West Bengal Board of Secondary Education dated July 25, 2019 based on the proposal forwarded by the District Inspector of Schools (Secondary Education), Paschim Medinipur, containing certain allegations against the writ petitioner/appellant, the suspended assistant teacher of the said school.

In the present appeal, the order of the learned Single Judge dated January 13, 2020 has been challenged by the writ petitioner, namely, Kamal Kanta Datta, on the ground that the procedure, as contemplated under Rule 6 of the West Bengal Board

of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staff) Rules, 2018 has not been followed before issuance of order of suspension. It has been contended by the appellant before this Court.

The appellant contended that on the basis of the proposals sent by the concerned District Inspector of Schools (Secondary Education), Paschim Medinipur, the President of the Board is not empowered to take decision on suspension and initiation of disciplinary proceeding against teaching and non-teaching staff in terms of the said Rules of 2018.

On February 20, 2020, on the basis of a letter produced by the learned advocate appearing on behalf of the school authority dated March 7, 2019 along with annexures pertaining to the alleged misconduct of the writ petitioner, we took a view that the order passed by the President of the Board on July 25, 2019 did not show that such materials were taken into consideration by the Board while taking decision on suspension of the writ petitioner/appellant.

Ms. Koyeli Bhattacharya, learned advocate appearing on behalf of the Board, on the earlier occasion submitted that the disciplinary proceeding has already been initiated and a charge sheet has also been issued. For better understanding as to whether proper procedure in initiating the disciplinary proceeding under the relevant rules, namely, Rule 5 of the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staff) Rules, 2018 has been followed or not, we directed the Board to produce records of the proceedings based on which the impugned order dated July 25,

2019 in the writ petition was passed by the President of the Board.

Today, Ms. Bhattacharya has produced the records of the proceedings in court.

Mr. Kamalesh Bhayttacharya, learned advocate appearing on behalf of the appellant, has submitted that the disciplinary proceeding in the instant case has not been initiated in accordance with Rule 5(1) of the said Rules, as no preliminary investigation was carried out by any officer of the Board against the writ petitioner/appellant on the basis of any communication by the school authority with regard to the alleged misconduct of the writ petitioner to the Board. It is submitted that Rule 6(2) of the said Rules specifically stipulates that in all cases of suspension, a disciplinary proceeding has to be drawn and concluded as required under the rules. In view thereof, the issuance of charge sheet and/or continuation of the disciplinary proceeding is *ex facie* without jurisdiction and is required to be set aside.

Per contra, Ms. Bhattacharya, learned advocate appearing on behalf of the Board, has submitted that consequent upon the complaint received from the school, the District Inspector of Schools (Secondary Education), Paschim Medinipur, upon consideration of materials produced before him by the school authorities as well as the Block Development Officer, Kharagpur-II Block, opined that behaviour of the writ petitioner was improper and unbecoming of a teacher which invites punishment. The District Inspector of Schools also recorded that the managing committee of the school has unanimously resolved to transfer the writ petitioner to any other school for maintaining peace and healthy academic

atmosphere in the school in question.

The communication of the District Inspector of Schools to the Secretary, West Bengal Board of Secondary Education was a proposal for granting transfer of the writ petitioner/appellant on administrative ground. It appears that the Board did not take any step in the matter. On March 7, 2019, the Secretary of the school addressed a letter to the President of the West Bengal Board of Secondary Education requesting him to take necessary steps on administrative ground against the writ petitioner/appellant. In the said letter, the Secretary/Headmaster of the school has reiterated the view expressed by the District Inspector of Schools concerned. It appears that following the said communication, the President of the Board passed order dated July 25, 2019, which is impugned in the writ petition, approving the suspension of the writ petitioner. This was followed by a charge sheet issued by the Board on September 19, 2019 against the writ petitioner. the charges are reproduced below :-

- a) You have imparted arrogant, indisciplined and unbecoming behaviour to your colleagues, guardians and the school authority of several occasions.
- b) You have tried to run a parallel administration in the school.
- c) Your such activities are vitiating the atmosphere of the school.
- d) You have not replied against the show cause notice issued by the Disciplinary Authority of

the Board.

Ms. Bhattacharya, learned advocate for the respondent, tries to defend the said charges by referring to Rule 5(12) of the aforesaid Rules of 2018, which reads as follows :-

“(12) The Board may *suo moto* initiate disciplinary proceeding against a teaching or non-teaching staff if there is reason to believe that any misconduct has been committed by a teaching or non-teaching staff. In all cases of *suo moto* proceedings, a preliminary investigation has to be conducted, and follow up action is to be taken as mentioned hereinbefore.”

Mr. Bhattacharya, however, joins issue here as it is contended that the records would not reflect that exercise of power by the Board against the writ petitioner is under Rule 5(12) of the said Rules inasmuch as the said Rules contemplates a preliminary investigation to be conducted and thereafter follow up action to be taken which has not been followed.

We have considered the records produced before us and the submissions advanced on behalf of the respective parties. Admittedly, in the instant case the Board did not exercise power under Rule 5(1) of the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staff) Rules, 2018. However, as the learned Judge pointed out that *prima facie* there were documents to form an opinion that the conduct of the writ petitioner could not be conducive, at this stage, when the court is considering the exercise of power by the Board, the only scrutiny that is available to the

court is to find out whether proper procedure has been followed and if there are materials to support the action of the Board either under Rule 5(1) or Rule 5(12) of the said Rules of 2018. Taking into consideration the comprehensive report of the District Inspector of Schools concerned, who is certainly an authority above the Sub Inspector of Schools in terms of Rule 5(1) of the said Rules, we are of the prima facie view that action taken by the Board in exercising power under Rule 5(12) of the said Rules was proper and does not call for any interference.

However, there is a much larger issue involved in this case. It seems from the records that the school is suffering due to clash between the writ petitioner, who was the teacher in-charge at the relevant point of time and now the Assistant Teacher and the present headmaster. Even the school had proposed his transfer to some other school to maintain discipline and the academic atmosphere of the school. This problem has also been highlighted by the District Inspector of Schools concerned through his letter dated November 29, 2018 written to the West Bengal Board of Secondary Education. The letter of the school authority dated March 7, 2019 echoed the same problem. The President of the Board also opined that the root cause of the problem is the enmity between the assistant teacher and the headmaster. There is no observation by any of the authorities, either by the District Inspector of Schools or the school authority, that the writ petitioner/appellant is ineligible or incompetent.

On such consideration, we would direct the Board to consider the recommendation of the District Inspector of Schools

(Secondary Education) and the request of the concerned school and, if possible, to transfer the writ petitioner to some other school. In that case, the disciplinary proceeding should not be continued.

Mr. Kamallesh Bhattacharya, learned advocate appearing on behalf of the writ petitioner/appellant, has candidly submitted that the writ petitioner has no objection if he is transferred to some other school.

This is a relevant consideration which the President of the Board has to take in deciding whether the Board shall continue with the disciplinary proceeding as it will not be for the benefit of anyone. The President of the Board shall take his decision within a period of six weeks from the date of communication of this order to him by either of the parties. The disciplinary proceeding initiated against the writ petitioner shall remain stayed till the President of the Board takes his decision on the issue.

With the aforesaid observations, the appeal and the application for stay are disposed of.

In view of the order passed, as above, nothing remains in the writ petition and the same being W.P. 15571 (W) of 2019 is also disposed of.

There will be no order as to costs.

(Soumen Sen, J.)

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(Saugata Bhattacharyya, J.)

