

22.03.2021

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W.P.A. 6955 of 2020

Subhendu Kumar Mahata
Vs.
State of West Bengal & ors.

Mr. Anami Sikdar
Mr. Abijit Baral
... for the Petitioner

Ms. Chaitali Bhattacharya
Mr. Mrinal Kanti Ghosh
... for the State

Mr. Subhrangsu Panda
... for the school

Mrs. Koyeli Bhattacharya
... for the Board

1. This matter was heard by me today and upon hearing the counsels appearing on behalf of both the parties, I passed an order by dictating the same in Court.

2. However, upon rising from Court and upon retiring to my chambers, I was uneasy in relation to the order that had been passed in Court as I felt that certain legal issues had not been argued before me. Furthermore, I felt that certain factual aspects are required to be further examined. Accordingly, I deliberated further on the matter and carried out research with respect to some of the legal issues that had been argued before me and/or further legal issues that had not been argued before me. Subsequent to such research, I was of the view that I needed the assistance of

the counsels appearing on behalf of the parties to come to a final decision in the matter. Accordingly, I delineate below certain legal issues and factual clarifications that are required from the counsels appearing on behalf of both the parties:-

- a) Whether the minutes of the order signed by the President is supported by an actual resolution that has the signatures of all the Ad-hoc members?
- b) Whether the delegation of powers by the Ad-hoc Committee has been done under Section 4A or Section 24 or Section 28 of the West Bengal Board of Secondary Education Act, 1963 or is a power delegated under Section 16 and/or Section 19 of the General Clauses Act, 1897?
- c) Further clarification on the legal issue with regard to the maxim: *Delegatus non potest delegare*?
- d) Arguments to be placed on the legal issue as to whether suspension of an employee is an administrative decision or a quasi-judicial decision?
- e) I have examined certain judgments, the benefit of which I would like to give to the counsels appearing on behalf of all the parties:

I. ***Barium Chemicals Ltd. –v- Company Law Board*** reported in ***AIR 1967 SC 295***;

II. ***Sahni Silk Mills (P) Ltd. –v- ESI Corpn.***, reported in ***(1994) 5 SCC 346***;

III. ***Sidhartha Sarawgi –v- Kolkata Port*** reported in ***(2014) 16 SCC 248***;

IV. ***Automotive Tyre Manufacturers Assn. –v- Designated Authority*** reported in ***(2011) 2 SCC 258***;

V. ***Indian National Congress (I) –v- Institute of Social Welfare*** reported in ***(2002) 5 SCC 685***;

VI. ***Chintpurni Medical College & Hospital –v- State of Punjab*** reported in ***(2018) 15 SCC 1***;

VII. ***Lt. Col. P.R. Chaudhary –v- MCD*** reported in ***(2000) 4 SCC 577***;

VIII. ***Ashutosh Sen Gupta –v- W.B. Board of Secondary Education*** reported in ***1998 SCC Online Cal 367; (1999) 1 Cal LT 298; (1999) 2 LLN 975***;

3. The counsels appearing on behalf of the parties shall be at liberty to cite their own judgments and argue on any further legal points that they may so desire. Notes of arguments to be filed on the adjourned date along with precedents the parties may want to rely upon.

4. Since considerable time has already been taken in this matter, I would request counsels appearing on behalf of the petitioner and on behalf of the Board to restrict their arguments to 30 minutes each. The other Respondents shall also be at liberty to argue, if they so desire but would be requested to limit their arguments to 10 minutes each. Matter shall appear as a “Specially Fixed Matter on March 30, 2021.

5. Photocopy of this order duly countersigned by the Assistant Registrar (Court) be furnished to the parties, upon compliance of all necessary formalities.

(Shekhar B. Saraf, J.)