

15/12/2020  
Item 6  
Court No.12  
AB

Through Video Conference

**MAT 1940 of 2019**  
**With**  
**I. A. No. CAN/1/2019**  
**(Old No. CAN/12633/2019)**

**Sanjib Sarkar**  
**Vs**  
**The District Inspector of Schools (S.E.),**  
**Dakshin Dinajpur & Others**

Mr. Anami Sikdar           ...for the Appellant.

Mr. Biswabrata Basu Mallick   ...for the Respdt.

Mr. Washef Ali           ...for the School Authority.

By consent of the parties, the appeal and the connected application are treated as on the day's list and disposed of by this common order.

The appeal is arising out of the order and/or judgment dated 2<sup>nd</sup> December, 2019 passed by the learned Single Judge refusing to interfere with the order of suspension dated 10<sup>th</sup> February, 2017 issued by the authorities of Khidirpur High School, Vill. & P.O.- Khidirpur, P.S.- Balurghat, District - Dakshin Dinajpur on the ground that the disciplinary proceeding was initiated against the writ petitioner/appellant herein in terms of Rule 28(9)(viia) of the Management of Recognized Non-Government

Institution (Aided and Un-Aided) Rules, 1969 (hereinafter referred to as the “said Rules”). On perusal of the order passed by the learned Single Judge under challenge, it appears that a charge-sheet was issued against the appellant which was replied by him on 18<sup>th</sup> April, 2017 but it is the contention of the appellant that no subsequent steps have been taken based on the charges levelled against him in terms of the relevant provisions of the said Rules.

It also appears that the order of suspension which was issued against the appellant on 10<sup>th</sup> February, 2017 w.e.f. 4.11.2016 has been approved by the concerned authority of the West Bengal Board of Secondary Education vide letter dated 4<sup>th</sup> July, 2017 and the appellant is aggrieved also by such approval of suspension accorded by the Board.

During the course of hearing of the instant appeal in presence of the learned Counsels representing the appellant and the respondent authorities, it is brought to our notice the Appeal Regulations framed by the West Bengal Board of Secondary Education in terms of sub-section (3) of Section 27 read with sub-section (3) of Section 22 of the West Bengal Board of Secondary Education

Act, 1963. Regulation (3) of the said Appeal Regulations is quoted hereunder:-

*“3. A teacher or any other employee who feels to have been affected adversely by any decision of the Managing Committee of the Institution he serves or has served (hereinafter referred to as the appellant) may appeal direct to the Appeal Committee against such decision in accordance with the provisions of these regulations.”*

Taking note of the provisions as contained in the said Regulation 3 under Appeal Regulations and as we are not oblivious of the fact that the West Bengal Board of Secondary Education has already approved the proposal for suspension of the appellant as forwarded by the concerned authority of Khidirpur High School vide letter dated 4<sup>th</sup> July, 2017 ; the course left open to the appellant is to approach the Appeal Committee of the Board in terms of the said Regulation 3 as quoted above questioning the validity as well as the legality of the suspension order issued against him and the approval of suspension as accorded by the Board by letter dated 4<sup>th</sup> July, 2017.

In this regard, reliance is placed on the judgment of Apex Court reported in (2013)10 SCC page 83 [General Manager, SRI Siddeshwara Cooperative Bank Limited & Another Vs Ikbali & Others] ; paragraph 27 is quoted below :-

*“27. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented.”*

During the course of argument, Mr. Sikdar, learned Counsel appearing for the appellant has brought to our notice the circular letter dated 19<sup>th</sup> January, 2007 issued by the Secretary, West Bengal Board of Secondary Education containing the guidelines relating to suspension of the approved teaching and non-teaching staff of the school who is required to put under deemed suspension. We find it apposite to observe that this circular letter which has been issued by the Board needs to be placed before the Appeal Committee of the Board at the time of adjudicating the merit of the impugned suspension as well as subsequent approval accorded by the Board on the proposal of suspension as forwarded by the concerned school authority.

In view of the above discussion, we find it fit to grant liberty to the appellant before us to

approach the Appeal Committee of the West Bengal Board of Secondary Education under the Appeal Regulations questioning the suspension order as well as the approval of suspension as accorded by the Board. In the event the appeal is preferred within a period of one month from date, the appellate authority shall not insist the appellant to file the application for condonation of delay and treating the said appeal as a regular appeal, the Appeal Committee shall decide the same within a period of eight weeks from the date of preferring appeal in terms of this order.

We are also restraining the concerned school authority to proceed further relating to initiation of disciplinary proceedings against the appellant till the decision to be taken by the Appeal Committee on the appeal to be preferred in terms of our direction. However, we make it clear that if the appeal is not filed by the appellant within a period of one month from this date, the school authority as well as the Board shall have the liberty to initiate disciplinary proceeding against appellant after expiring the period of one month from this date and shall conclude the proceeding in accordance with law.

In view of the aforesaid direction, the observation made by the learned Single Judge

with regard to the applicability of the Rule 28(9) (viia) of the said Rules is left open and shall not be construed as conclusive. This observation is made because of the fact that the learned Single Judge has construed Rule 28(9)(viia) of the said Rules to include “suspension of the petitioner shall be in the interest of the institution which apparently does not find place in Rule 28(9)(viia)”. Whether the order of suspension is in the interest of the school as envisaged under Rule 28(9)(viia) shall be assessed on the basis of letter dated 10<sup>th</sup> February, 2017 of the President of Khidirpur High School, would be a matter for the appellate authority to conclusively decide. We are not expressing our opinion as to whether under the facts of the case it would come within the provision of Rule 28(9)(viia) of the said Rules or Rule 28(8b) of the said Rules of 1969 and it is for the appellate authority to take the final decision on this score after considering the materials on record and after giving an opportunity of hearing to the parties. The appellant shall be at liberty to produce all relevant documents before the appellate authority for adjudication by the Appeal Committee. The order of the learned Single Judge is, accordingly, set aside.

With the above observation, the appeal being MAT 1940 of 2019 and the connected application being CAN 1 of 2019 (Old CAN 12633 of 2019) are disposed of.

All parties are to act on a website copy of this order on the usual undertaking.

**(Saugata Bhattacharyya, J.)**

**(Soumen Sen, J.)**