

Ct. 09.02
No. 26 2021
6
akb

W.P.A. 2246 of 2021
Bimal Mandal
-Versus-
The State of West Bengal & Ors.

Mr. Shamim Ul Bari
Ms. Molly Saha

...For the Petitioner

Mr. Sarwar Jahan
Mr. Samir Halder

...For Respondent Nos. 4, 5 & 6

Mr. Bhaskar Prasad Vaisya
Mr. Suman Dey

...For the State Respondents

This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the action of the respondent State Authorities in removing him as a ‘President’ of the Managing Committee of the School concerned.

I have heard the learned Counsel appearing on behalf of the parties and perused the materials placed on record.

Upon perusal of the impugned order, it is clear that no personal hearing was granted to the petitioner before removing him.

Mr. Shamim Ul Bari, learned Counsel appearing on behalf of the petitioner relies on an unreported decision in the case of *Sahid Pervez Vs. The State of West Bengal & Ors.* (M.A.T. 650 of 2018) wherein a Division Bench of this Hon’ble Court has held as follows :-

“The very purport of the proviso, to our mind, is that upon receipt of an information, either formal or informal, it is for the Government to look into the allegations that have been levelled and to reach a satisfaction (by conducting an inquiry upon hearing

the member sought to be replaced) that unless replacement is ordered, continuance of that member on the managing committee would not be in the better academic or administrative interest of the sponsored institution. Having regard to introduction of the proviso, which is aimed at observing the principle of audi alteram partem, the position now seems to be clear that no member can be replaced merely on the basis of unsubstantiated allegations.”

In the light of the above, it is clear that merely on the basis of unsubstantiated allegations the President cannot be removed. Furthermore, a proper investigation should be carried out by the State Authorities and hearing must be granted to the petitioner before his removal. None of these steps have been taken in the instant case.

Accordingly, the impugned order dated December 31, 2020 is hereby quashed and set aside. Furthermore, in the meantime any action taken by the State Authorities in appointing any person as President shall also be set aside and the present petitioner shall be reinstated as a ‘President’ of the School concerned.

Needless to mention, the above order of setting aside shall not preclude the State Authorities in appointing any person as President of the school in accordance with law in future.

With the aforesaid direction, the writ petition is disposed of.

Since, no affidavit-in-opposition has been called for, the allegations made in the writ petition are deemed to

have not been admitted by the respondents.

There will be no order as to costs.

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

(*Shekhar B. Saraf, J.*)