

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

MANDAMUS APPEAL**MAT 150 Of 2021****With****C.A.N. 1 Of 2021****Sandipan Mitra****-Vs-****State of West Bengal & Ors.****Before:****The Hon'ble Justice Subrata Talukdar****The Hon'ble Justice Saugata Bhattacharyya**

For the Appellant	:	Mr. Indranil Roy, Adv. Mr. Sunit Kumar Roy, Adv. Mr. Debasish Maitra, Adv.
For the W.B.B.S.E.	:	Ms. Koeli Bhattacharyya, Adv.
For the State	:	Mr. Pinaki Dhole, Adv. Ms. Ananya Neogi, Adv.
For the Respondent Nos. 7 & 8	:	Ms. Mousumi Bhowal, Adv.
Heard On	:	22.02.2021, 23.02.2021 & 26.02.2021
Judgment On	:	25.03.2021

Saugata Bhattacharyya, J.:

1. This intra court appeal is directed against the order dated January 28th, 2021, passed by the Hon'ble Single Bench, on the writ petition being WPA 11232 of 2020 (Sandipan Mitra Vs. State of West Bengal & Ors.) whereby the Hon'ble Single Bench refused to entertain the prayer of the writ petitioner, being appellant herein, to set aside the charge-sheet dated January 2nd, 2020 issued under Memo No. DP/292/20 by the disciplinary authority of the West Bengal Board of Secondary Education (hereinafter referred to as "Board") and the order of suspension issued by the President of the Board on December 8th, 2020.

2. The writ petition was filed by the appellant herein challenging the charge-sheet dated January 2nd, 2020 issued by the disciplinary authority of the Board and the suspension order dated December 8th, 2020 issued by the President of the Board. The Hon'ble Single Bench in its impugned order dated January 28th, 2021 only set-aside that part of the order of suspension dated December 8th, 2020 by which the District Inspector of Schools (SE) Barrackpore was directed to make a thorough enquiry in the matter and send the

comprehensive report to the President of the Board since in terms of Rule 5(5) of the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staff) Rules, 2018 (hereinafter referred to as “Rules of 2018”) enquiry officer was appointed and the said enquiry officer was required under the Rules to enquire into the charges leveled against the appellant herein. The Hon’ble Single Bench instead of setting aside the impugned charge-sheet dated January 2nd, 2020 directed to supply the documents and the list of witnesses to the appellant within a specific period.

3. Since the said impugned charge-sheet dated January 2nd, 2020 and the suspension order dated December 8th, 2020 were not interdicted by the Hon’ble Single Bench in the order dated January 28th, 2021 the writ petitioner preferred the present appeal questioning the said order of the Hon’ble Single Bench. In course of submission advanced by Mr. Indranil Roy, learned counsel assisted by Mr. Sunit Kumar Roy, learned advocate in support of the case of the appellant, challenge has been thrown to the charge-sheet dated January 2nd, 2020 chiefly on the ground that Rule 5(4) of the said Rules of 2018 has not been complied with by the Board while

issuing the said charge-sheet against the appellant. The steps required to be taken by the Board for completing disciplinary proceeding as enshrined in Rule 5 of the said Rules of 2018 necessitates supply of relevant materials and list of witnesses to the appellant along with the charge-sheet. Rule 5 runs infra:

“5. *Disciplinary proceeding.*—(1) The Board may authorize any officer not below the rank of a Sub-Inspector of Schools to conduct preliminary investigation against any teacher or non-teaching staff upon receipt of a complaint pertaining to the misconduct of a teacher and non-teaching staff, from the Committee or the Administrator or Head of an Institution.

(2) If the preliminary investigation report reveals prima facie a case of misconduct, the Board shall issue show cause notice to the concerned teacher or non-teaching staff against whom the complaint has been made in order to enable him to explain his act or omission in question by such date as may be specified in the show cause notice.

(3) If the explanation in reply to the show cause notice is not satisfactory, the disciplinary authority shall initiate disciplinary proceeding against the concerned teacher or non-teaching staff:

Provided that no disciplinary proceeding shall be initiated after three years from the date of alleged misconduct becomes known to the Board. However, the

said period may be extended with the approval of the State Government in appropriate cases:

Provided further that in case of retired teaching or non-teaching staff, disciplinary proceeding may, with the approval of the State Government, be instituted within three years from the date of retirement, if the misconduct becomes known to the Board after retirement.

(4) *The disciplinary authority shall frame charge(s) containing a statement imputations of misconduct including any admission or confession made by the teaching and non-teaching staff with annexures of a list of document and a list of witnesses by which and by whom the charge(s) is/are proposed to be substantiated.*

(5) *In all cases for the purpose of inquiry, the disciplinary authority, by an order in writing, shall appoint an inquiring authority for holding inquiry into the charge(s) and shall enclose with such order of appointment, a copy of the charge(s) along with all annexures and other relevant documents. The disciplinary authority may also appoint a Presenting Officer to present the case and shall enclose with such order of appointment, a copy of the charge(s) along with all annexures and other relevant documents.*

(6) *The disciplinary authority shall serve or cause to be served on the teaching or non-teaching staff a copy of the charge(s) containing statement of imputations of misconduct including any admission or confession made by the teaching and non-teaching staff with annexures of list*

of documents and a list of witnesses by which and by whom the charge(s) is/are proposed to be substantiated with a direction to file written statement of his defence to the inquiry authority within 30 days from the receipt of the charge sheet if the teaching or non-teaching staff does not admit any of the charge(s). If he pleads guilty to any of charge(s), the inquiring authority shall record the plea, sign the record and obtain the signature of the teaching and non-teaching staff thereon. The inquiring authority shall return a finding of guilt in respect of those charge(s) to which the teaching or non-teaching staff pleads guilty.”

(Emphasis supplied)

4. It has been argued in support of the case made out by the appellant that though charge-sheet was issued by the disciplinary authority of the Board on January 2nd, 2020 on not being satisfied with a reply offered by the appellant to the show-cause notice dated September 20th, 2019 issued vide Memo No. DP/216/19, in terms of the said Rule 5(4) no list of documents and list of witnesses in support of the allegations contained in the charge-sheet were supplied to the appellant albeit the prescription of said Rule 5(4) and Rule 5(6) requires supply of list of documents and list of witnesses along with charge-sheet. It has also been contended had those materials being supplied to the appellant along with the said

charge-sheet dated January 2nd, 2020 the appellant would have been able to demonstrate his case before the disciplinary authority comprehensively by offering reply to the charge-sheet resulting in denial of right of the appellant to make out his case by responding the said charge-sheet which led to violation of natural justice. Our attention has been drawn to the relevant part of the reply dated January 20th, 2020 of the appellant offered in response to the said charge-sheet wherefrom it appears that the objection was raised by the appellant in his said reply dated January 20th, 2020 that supply of the materials as required under said Rule 5(4) would enable him to explain his case more convincingly and to that extent a letter was issued by the appellant on January 8th, 2020 to the disciplinary authority whereby request was made to supply the materials in terms of Rule 5(4) of the Rules of 2018. Therefore, the appellant has prayed for compliance of said Rule 5(4) in its true letter and spirit while initiating disciplinary proceedings against him.

5. Another limb of submission of the appellant while questioning the suspension order dated December 8th, 2020 is whether the President of the Board is empowered to issue suspension order against the appellant in terms of Rule 6 of the said Rules of 2018 in

view of the provisions as contained in Section 4A read with Section 24. It appears from the impugned order of suspension dated December 8th, 2020 that the President of the Board suspended the appellant from the post of Headmaster of Shyamnagar High School, Kolkata. The concluding part of the said order of suspension reads as under:

“ In principle the order of suspension is passed against a teaching or non-teaching staff of the institution where such suspension is in the interest of the institution.

On scrutiny, it is evident that the charge as labelled against Sri Sandipan Mitra, Headmaster of the School being serious in nature, his presence would prejudicially affect the proper conduct of enquiry and smooth running of the institution. Moreover he is the custodian of School records.

Taking all the aspects for consideration, I am of the view that free and fair enquiry is likely to be prejudiced in the presence of the alleged Headmaster Sri. Sandipan Mitra.

Therefore, the undersigned, empowered by West Bengal Board of Secondary Education(Appointment, Confirmation, Conduct and Discipline of teacher and non-teaching staff) Rules, 2018 notified vide no.214-SE/S/10M-01/18 dt. 08.03.2018 herein suspends Sri Sandipan Mitra, Headmaster of the School with immediate effect.

DI (SE), Barrackpore is directed to make a thorough enquiry in the matter and to send a comprehensive report to the undersigned.

President, M.C. is requested to select a Teacher-in-Charge for smooth running of the School.

During the period of suspension Sri Sandipan Mitra, will get subsistence allowance as per rules and regulations.”

6. It has been contended on behalf of the appellant that as per prescription of law as contained in the West Bengal Board of Secondary Education Act, 1963, Section 4A provides for appointment and Constitution of Ad-hoc Committee. For better understanding of the legal position we find it apposite to reproduce said Section 4A hereunder:

“Constitution of Ad-hoc Committee:

4A (1) The State Government may, by notification, appoint an Ad-hoc Committee consisting of—

(a) a President, and

(b) Such number of other members not exceeding eleven, as the State Government may think fit, for such period, not exceeding one year at a time, as may be specified in the notification.

(2) The President of the Ad-hoc Committee shall exercise all the powers, and shall perform all the functions of the

President of the Board, and the Ad-hoc Committee shall exercise all the powers, and shall perform all the functions of the Board and the Committee constituted by the Board under this Act.”

7. Section 4A deals with appointment of Ad-hoc Committee, composition of the Ad-hoc Committee as well as the tenure of the said Ad-hoc Committee. It has also been provided therein that the President of Ad-hoc Committee shall exercise powers and perform function of the President of the Board and the Ad-hoc Committee shall exercise all the powers and perform all the functions of the Board and the Committees constituted by the Board. Reliance has also been placed upon Section 24 of the Act of 1963 in order to contend that for delegating any of the powers by the Ad-hoc Committee in favour of the President approval of the State Government is required in terms of Section 24(2) of the Act of 1963. Section 24 of the Act of 1963 is quoted hereunder:

“Other Committees -

24. (1) The Board may, with the approval of the State Government, constitute such other Committee or Committees as it may think fit and any such Committee

may be composed wholly or in part of members of the Board.

(2) The Board may, with the approval of the State Government, delegate to any such Committee any of its powers or functions and may in like manner withdraw from it any such power or function.”

8. On drawing our attention to these two sections namely, Section 4A and Section 24 of the Act of 1963 on behalf of the appellant attempt has been made to impress upon us that in the event point is taken on behalf of the Board that President of the Ad-hoc Committee has been delegated with the power to take decision on suspension of a teaching and non-teaching staff of the secondary school devoid of approval of the State Government as contemplated under Section 24(2), such delegation is not a valid delegation in view of the provisions as contained in the said Act of 1963. On the strength of this submission regarding empowerment of the President of the Board as claimed by him in the impugned order of suspension dated December 8th, 2020 argument has been advanced that in the absence of approval of the State Government such empowerment/delegation in favour of the President is no delegation at all. Hence, it is urged on behalf of the appellant that the

impugned order of suspension dated December 8th, 2020 needs to be set-aside since the President has no power to unilaterally take decision on the suspension of the appellant.

9. *Per contra* Ms. Koeli Bhattacharyya, learned advocate representing the Board has made two fold submissions in order to answer the points argued on behalf of the appellant questioning charge-sheet dated January 2nd, 2020 and suspension order dated December 8th, 2020. While answering non-compliance of the procedure as contained in said Rule 5(4) of the Rules of 2018, Ms. Bhattacharyya has submitted that on February 19th, 2021 the disciplinary authority by issuing Memo No. DA/464/1/21 forwarded relevant documents and list of witnesses to the appellant in terms of the order of the Hon'ble Single Bench and it is expected that the appellant would soon receive those materials. On referring to such steps taken by the disciplinary authority of the Board she has submitted that time to give reply to the charge-sheet dated January 2nd, 2020 may be extended which would enable the appellant to offer a further comprehensive reply to the charge-sheet on receipt of the relevant documents and list of witnesses and that

would lead to substantial compliance of the procedure as contemplated under such Rule 5(4) of the Rules of 2018.

10. To answer the point raised on behalf of the appellant on delegation of powers to the President of the Board relating to taking decision on suspension of teaching and non-teaching staff of Government aided secondary schools by the Ad-hoc Committee, our attention has been drawn to the notification dated July 30th, 2016 issued by the School Education Department (Secondary Branch) whereby the present Ad-hoc Committee of the Board was constituted. From the said notification dated July 30th, 2016 it also appears that there are seven members in the Ad-hoc Committee including the President of the Board. The said Ad-hoc Committee also consists of Commissioner of School Education, West Bengal as well as Joint Secretary, Secondary Branch, S.F. Department, both are ex-officio members. It is the contention on behalf of the Board that there is due representation of the Education Department, Government of West Bengal on the said Ad-hoc Committee and through these two members the information as well as views of the State Government can well be obtained by the Ad-hoc Committee. In addition thereto the agenda of the meeting of the said Ad-hoc

Committee dated August 1st, 2018 and the resolution of the meeting of the said Committee dated August 7th, 2018 have been produced before the Court to satisfy us that necessary steps were taken by the Ad-hoc Committee of the Board to delegate power to its President to take decision on suspension and/or disciplinary proceedings against Assistant Teachers, Headmasters, Assistant Headmasters and non-teaching staff of the school governed by the Act of 1963. On perusal of the agenda dated August 1st, 2018, Item No. 10, it appears one of the issues which was proposed to be discussed in the meeting of the Ad-hoc Committee on August 7th, 2018 was to discuss upon the modalities of initiating and drawing disciplinary proceedings against Assistant Teachers, Headmasters, Assistant Headmasters and Non-teaching staff of the school governed by the Act of 1963 and pursuant to the said agenda resolution was adopted in the meeting of the Ad-hoc Committee on August 7th, 2018 to the following effect:

“Agenda 10: To discuss upon the modalities of initiating and drawing Disciplinary Proceedings against Assistant Teachers, Headmasters, Assistant Headmasters and Non-teaching staff of the schools under the existing Provision of Law.

Resolved that Dr. Kalyanmoy Ganguly, being the President, Ad-hoc Committee of the Board, is herein empowered to hold hearing of all the concerned parties and take appropriate decision upon the issue of suspension and/or Disciplinary Proceedings and other Board related matters. Prior intimation of hearing be given to all members of the Committee.”

11. Hence, it is argued on behalf of the Board that there is no flaw in the decision of the President of the Board dated December 8th, 2020 on the suspension of the appellant since the President was duly empowered by the resolution of the Ad-hoc Committee dated August 7th, 2018.

12. We have considered the rival submissions made on behalf of the appellant as well as the Board prior to deciding the legality and validity of the steps taken by the Board against the appellant for initiating disciplinary proceedings and for suspending him from the post of Headmaster of Shyamnagar High School pending drwal of disciplinary proceeding. Two issues are required to be addressed by us as raised by the parties to this appeal, whether the steps taken by the disciplinary authority while issuing charge-sheet dated January 2nd, 2020 was in consonance with the relevant rules and

whether the President of the Board is empowered to take decision on suspension of the teaching and non-teaching staff of the secondary schools governed by the Act of 1963.

13. It is a fact that while issuing charge-sheet dated January 2nd, 2020 the disciplinary authority was required to supply relevant documents and list of witnesses to the appellant in terms of Rule 5(4) of the said Rules of 2018 which was not complied with by the disciplinary authority since the authority simply forwarded the charge-sheet to the appellant. On reading of said Rule 5 it appears that the said Rule deals with the procedure which needs to be followed by the disciplinary authority while initiating disciplinary proceeding against a staff of a secondary school. It further appears that for due compliance of natural justice the appellant who was proposed to be proceeded with was required to be supplied with the relevant documents and list of witnesses prior to responding to the said charge-sheet dated January 2nd, 2020; which has not been done in the present case.

14. Now, in order to fill the gap which has occurred while taking steps for initiating disciplinary proceedings against the appellant it

appears to the Court either of the two plausible exercises can be carried out. First one is to set-aside the charge-sheet dated January 2nd, 2020 and grant liberty to the disciplinary authority to issue a *de novo* charge-sheet and ask the appellant to respond to the said charge-sheet after sending copy of the said charge-sheet along with relevant materials and list of witnesses to him. The second one is to restrain the Board not to take any step based on the impugned charge-sheet dated January 2nd, 2020 in consideration of reply to the said charge-sheet offered by the appellant on January 20th, 2020 till the appellant is given due opportunity to give reply to the said charge-sheet on receipt of the relevant materials and list of witnesses which have already been forwarded by the disciplinary authority vide memo dated February 19th, 2021 which has been placed before us today during course of hearing.

15. Considering the entire gamut of the issue this Court finds it apposite to resort to the second exercise as indicated above on the apprehension that cancellation of the impugned charge-sheet dated January 2nd, 2020 with leave to issue *de novo* charge-sheet may prejudice the appellant since the disciplinary authority may motivatedly increase the number of charges which will aggravate

the situation further. Accordingly, we direct the disciplinary authority of the Board to supply the relevant materials and list of witnesses to the appellant, if the same is not received by this time pursuant to the order of the Hon'ble Single Bench, within a period of seven days from date and on receipt of such materials the appellant shall be provided three weeks time from this date or from the date of receipt of those materials, whichever is later, to give comprehensive reply to the charge-sheet dated January 2nd, 2020 to the disciplinary authority and thereafter the disciplinary authority shall take necessary steps for completing the proceedings strictly in accordance with the said Rules of 2018. It is made clear that the enquiry officer already appointed shall not grant any unnecessary adjournment to either of the parties excepting the reasons which is beyond control and shall bring the said proceeding into logical conclusion within a period of 16 weeks thereafter. We further make it clear the time which have been fixed above is peremptory since the appellant is aged about 59 years and he going to retire soon (at the age of 60).

16. Now, we are tasked to appraise the legality and validity of the order of suspension dated December 8th, 2020. It appears from the

said order that the President of the Board prior to issuing order of suspension has come to a finding that presence of the appellant as Headmaster of the school would prejudicially affect the proper conduct of the enquiry since the Headmaster is the custodian of all school records. We find merit in such finding of the President of the Board upon considering Rule 6(1)(c) of the Rules of 2018 where it has been provided that if there is reason to believe that unless the concerned teaching or non-teaching staff is suspended, it may result in tampering or destruction of the evidence or the concerned teacher or non-teaching staff may cause undue influence in disciplinary proceeding, pending or contemplated. The appellant is the Headmaster of the school as well as ex-officio Secretary of the Managing Committee. Therefore, if suspension is withdrawn it may be prejudicial to the proper conduct of the enquiry. In this regard we are also tempted to refer to old circular of the Board dated June 21st, 1982 being No. S/606 albeit the same was issued in connection with the previous rules relating to suspension of teaching and non-teaching staff of government aided secondary school, Rule 28(9)(viii) of the Management of Recognized Non-government Institutions (Aided and Un-aided) Rules, 1969, wherein it was also provided in paragraph 3 that the order of suspension

shall normally be issued to a member of the teaching/non-teaching staff under Rule 28(9)(viia)(Old Rules) when his/her presence in the school is deemed likely to prejudice the proper conduct of enquiry into the charges brought or to be brought against him or her.

17. Therefore, considering Rule 6(1)(c) of the Rules of 2018 as well the previous circular of the Board dated June 21st, 1982 in connection with old rules as indicated hereinbefore we find the issues required to be considered by the Board have been examined prior to suspending the appellant. But the question remains whether the President can take such decision of suspension on behalf of the Board? Strenuous arguments has been made by Mr. Roy learned counsel, appearing on behalf of the appellant that even the Ad-hoc Committee of the Board constituted under Section 4A of the Act of 1963 is required to follow the provisions as contained in Section 24(2) for delegating the power of the Ad-hoc Committee relating to suspension to its President. It is argued that in absence of the approval of the State Government the Ad-hoc Committee of the Board vide resolution dated August 7th, 2018 cannot delegate its power relating to suspension to its President.

18. This Court is not *ad idem* with such contention made on behalf of the appellant keeping in view of the fact that exercise of power by the President of the Ad-hoc Committee and performing the functions of the Board is not circumscribed by Section 24(2). The Ad-hoc Committee as contemplated under Section 4A is not one of the “Other Committees” under Section 24 of the said Act of 1963. Simple reading of Sections 4A and Section 24 goes to show that Ad-hoc Committee needs to be appointed by the State Government by the notification whereas “Other Committees” of the Board can be appointed by Board itself with the approval of the State Government. Therefore, delegation of power by the Board to any “Other Committees” may require an approval of the State Government but such approval of the State Government is not a *sine qua non* so far delegation of power by the Ad-hoc Committee to its President in terms of Section 4A.

19. On behalf of the Board notification dated July 30th, 2016 has been produced before this Court which shows appointment of Ad-hoc Committee of the Board by the State Government and the said Ad-hoc Committee in its due course of functioning adopted resolution dated August 7th, 2018 thereby delegated its power to the

President for taking decision on matters relating to suspension, disciplinary proceedings against teaching and non-teaching staff of Government aided secondary schools governed by the Act of 1963. The said notification dated July 30th, 2018, the agenda fixed vide notice dated August 1st, 2018 and the resolution of the Ad-hoc Committee dated August 7th, 2018 as produced by the learned advocate of the Board are taken on record.

20. In view of the above discussion this Court does not find fault with the decision dated December 8th, 2020 taken by the President of the Board on the suspension of the appellant. However, the directions as given hereinbefore regarding completion of the disciplinary proceedings initiated against the appellant need to be followed by the respondent authorities without any deviation.

21. Accordingly, the appeal being **MAT 150 of 2021** and application being **CAN 1 of 2021** are **disposed of** upon modifying the order dated January 28th, 2021 passed by the Hon'ble Single Bench to the above extent.

22. In view of the final order and judgment the interim order passed by us on February 26th, 2021 stands accordingly discharged.

23. However, there shall be no order as to costs.

24. All parties to act on a server copy of this judgment and order duly obtained from the official website of the Hon'ble High Court, Calcutta.

24. Urgent photostat certified copies of the judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree,

(SUBRATA TALUKDAR)

(SAUGATA BHATTACHARYYA)