

11.11.2021
SL No.25
Court No.8
(sg/gc)

**MAT 891 of 2021
With
CAN 1 of 2021**

**The Teacher-in-Charge, Durgapur Vidyasagar
Model High School
Vs.
Saurendra Kumar Chakrabarti & Ors.**

(Via Video Conference)

Mr. Arjun Roy Mukherjee,
...for the Appellant.
Mr. Ranajit Chatterjee,
Mr. Aniruddha Mitra,
...for the Respondent Nos.1 to 10.
Mr. Tapan Kr. Mukherjee, Ld. A.G.P,
Mrs. S. Mukherjee,
...for the State Respondents.

Ms. Koyeli Bhattacharyya,
...for the W.B.B.S.E.

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

The present appeal is directed against the order of the Hon'ble Single Bench dated 25th August, 2021 passed in WPA 11290 of 2021 whereby the Administrator, Durgapur Vidyasagar Model High School (for short "the said school") was directed to remove the Principal of the said school immediately from his post since he was continuing illegally in violation of the conditions given by the West Bengal Board of Secondary Education.

Being aggrieved by and dissatisfied with the said direction as contained in the order dated 25th August, 2021

passed by the Hon'ble Single Bench, the respondent No.8 being the Principal of the said school has preferred intra-court appeal and the connected stay application questioning the direction relating to his removal from the post of Principal. It has been submitted by Mr. Arjun Roy Mukherjee, learned Advocate representing the appellant/respondent No.8 that the writ petition was filed by some teaching and non-teaching staff of the said school along with the erstwhile Secretary of the Ad hoc Committee. A prayer made in the said writ petition runs infra:-

- “a) A writ of and/or writs in the nature of Mandamus directing the Respondents to act and proceed in accordance with the provisions of law;*
- b) A writ of and/or writs in the nature of Mandamus directing the Respondent No.9 to conduct an impartial election for formation of the new Managing Committee of the Respondent school as per the Rules of Management of Recognized Non-Government Institutions (Aided and Unaided) Rules, 1969, forthwith;*
- c) A writ of and/or in the nature of Mandamus directing the Respondents to enquire into the acts financial impropriety of the Respondent no.8 and initiate criminal proceedings against him;*
- d) A writ of and/or in the nature of Mandamus directing the Respondents to discontinue the service of the Respondent no.8 as Teacher-in-*

Charge of the school, upon recalling/cancelling the purported resolution of the managing committee dated 24.05.2019, and appoint the writ petitioner no.2 as Teacher-in-Charge in his place till the post of Principal is filled up in accordance with law.”

Placing reliance on the said prayer, it has been contended on behalf of the appellant/respondent No.8 that there was a prayer made in the writ petition for holding of election for reconstitution of the Managing Committee of the said school since after obtaining recognition in 2008 from the concerned authority of the West Bengal Board of Secondary Education, reconstitution of the Managing Committee by holding election following the procedure was not made as a result whereof indefinitely, the Ad hoc Committee was continuing beyond the statutory period of three years. In addition thereto, though the prayer has been made for discontinuation of the respondent No.8 since the respondent No.8 has already crossed the age of superannuation, that is, 60 years, it has been pointed out on behalf of the respondent No.8 being the appellant herein that without considering the entire gamut of the issue, the Hon'ble Single Bench straightway directed the Administrator of the said school to remove the Principal from his post forthwith. The appellant is aggrieved by such direction given by the Hon'ble Single Bench whereby the right of the appellant to continue as the Principal of the said school is affected.

Mr. Ranajit Chatterjee, learned Counsel representing the writ petitioners/respondents has submitted before this Court that the said school obtained initial recognition as IV-Class Junior High School from the West Bengal Board of Secondary Education in 2008 and subsequently the school was upgraded as High School by the Board in 2009. Upon drawing attention of this Court to Clause 4 of the Upgradation Memo issued by the Board on 5th November, 2009 it has been argued that the composition of the Managing Committee has been indicated in the said Upgradation Memo. It is submitted that initially Ad-hoc Committee was formed to run the administration of the said school and one, Saurendra Kumar Chakraborti, one of the writ petitioners, was the Secretary of the said Ad hoc Committee; according to Mr. Chatterjee which continued till the said Committee was superseded by appointment of Administrator in terms of the order passed by this Court. It has further been submitted that the said Secretary has tendered his resignation in the year 2017. Upon pointing out the appointment letter dated 15th March, 2013 issued by the said Secretary of the Managing Committee, it is informed to this Court that the appellant was though appointed as the head of the institution vide said appointment letter dated 15th March, 2013, but one condition was fastened on the said appointment with regard to obtain B.Ed. qualification through correspondence course conducted by the approved University of India. According to the writ petitioners as well

as the said Secretary of the Managing Committee, the appellant has failed to obtain such B.Ed. qualification in terms of the condition attached to the appointment letter dated 15th March, 2013. There is also allegation of financial impropriety by the Principal of the school. Therefore, after completion of 60 years of age, the appellant has no right to continue as the head of the institution. Therefore, on behalf of the writ petitioners/respondents it has been argued that there is no flaw in the order passed by the Hon'ble Single Bench while directing the Administrator to remove the appellant forthwith.

Ms. Koyeli Bhattacharyya, learned Advocate appears on behalf of the West Bengal Board of Secondary Education (for short "the Board") and submits that the life of the Managing Committee of a recognized secondary school in terms of the Management of the Recognized Non-Government Institutions (Aided and Unaided) Rules, 1969 (for short "the Management Rules of 1969") is three years. It is a fact that after obtaining the initial recognition from the Board in the year 2008, the organizing Managing Committee continued for some time and thereafter the Ad hoc Committee was constituted to run the administration of the school. It has been submitted by Ms. Bhattacharyya that meanwhile during lockdown period due to outbreak of Covid-19, the concerned authority of the Education Department, Government of West Bengal has issued general circulars from time to time extending the life of the

Managing Committee of the Secondary Schools and presently the life of the Managing Committee of the Secondary Schools has been extended until further order. It has further been submitted that though this is the general position with regard to the Managing Committee of the Secondary Schools but in the present school in terms of the direction of this Hon'ble Court, the Ad hoc Committee has already been superseded thereby Administrator has been appointed by the Board on 26th April, 2021 and presently the Administrator is functioning and running the administration.

We have considered the submission of the rival parties relating to issue involved in this appeal and the connected stay application and also examined the relevant records. It appears that the said school was recognized in the year 2008 and which was upgraded in the year 2009 as a X-Class High School. While granting recognition in favour of the said school a condition was attached that the school would not receive any Government aid from the State exchequer. Now, in view of such position with regard to the status of the said school whether the appellant is entitled to continue as the head of the institution after attaining the age of 60 years is a question which requires to be considered by the appropriate authority. Indisputably the appellant has attained 60 years on 25th December, 2019 and it appears from the letter dated 25th May, 2019 issued by the then President of the Managing Committee of the said school that

the Managing Committee of the said school unanimously resolved to extend the service of the appellant for three years with effect from 26th December, 2019 on year to year basis. Such letter dated 25th May, 2019 is attached to the report of the Administrator of the said school which is filed before this Court dated 19th August, 2021 during the course of hearing and taken on record.

The question would arise whether the authority of the said school can unilaterally extend the service of the appellant who has crossed 60 years on 25th December, 2019. In order to find the answer, we have considered Rule 28(4) of the Management Rules, 1969. Rule 28(4) is quoted below:-

“R.28(4). *In an unaided Institution the Committee shall, subject to the approval of the Board, have the power-*

- (i) *to appoint in accordance with the directions given by the Director or in his behalf teachers and other employees on permanent or temporary basis, approval of such appointment being thereafter sought for from the Board through the Director ordinarily within a fortnight from the date of decision of the Committee;*
- (ii) *to extend as per conditions laid down by the Director the services to teachers and other employees beyond the date of superannuation approval for such extension being thereafter sought for from the date of decision of the Committee.”*

In terms of sub-rule (4) of Rule 28 of the Management Rules, 1969, it has specifically been provided that in case of

unaided institution, the school authority shall have power subject to the approval of the Board to extend the service of the appellant as per conditions laid down by the Director. The services of the teaching staff and other employees can be extended as per conditions laid down by the Director beyond the date of superannuation and thereafter approval of such extension needs to be sought from the Board. In the present case, this Court has specifically asked the learned Advocates representing the parties whether such approval was sought for from the concerned authority of the Board but the Court has not received any satisfactory answer on such query. It appears from the letter dated 25th May, 2019 issued by the then President of the Managing Committee of the said school that there was an extension of service with effect from 26th December, 2019 for three years on year to year basis and presently the appellant is continuing as the Principal of the said school.

Considering the relevant provisions as contained in Rule 28(4) of the Management Rules, 1969 which is applicable to unaided institutions we find it apposite to direct the present Administrator of the School to approach the President of the Board seeking approval of such extension which has been granted in favour of the appellant with effect from 26th December, 2019 within a period of three weeks from date. On receipt of such application from the Administrator of the said School, the President of the Board shall take decision on the entitlement of the appellant to get

extension in terms of the relevant provisions of the Management Rules, 1969. The President of the Board is directed to give opportunity to hear the appellant as well as the Administrator/newly reconstituted Managing Committee of the said school before taking such decision. Such exercise is to be carried out by the President of the Board within a period of 12 weeks from the date of receipt of the application from the school authority. While taking such decisions the President shall be at liberty to look into the allegations of financial impropriety alleged by the writ petitioners/respondents against the appellant.

Another issue which needs to be gone into by us in connection with the present appeal is the reconstitution of the Managing Committee which is required to be made in terms of the relevant provision of the Management Rules, 1969. It is an admitted position that there is no validly constituted Managing Committee functioning in the said school which prompted this Hon'ble Court to direct the concerned respondent authorities to appoint Administrator by superseding the Ad hoc Committee which was functioning beyond the statutory time period. Since the Administrator is an officer of the education department of the concerned District being the Assistant Inspector of Schools, we find it fit to give direction upon the Administrator to hold election for reconstitution of the Managing Committee of the said institution strictly in terms of the Procedure for Holding Election as framed by the Board

within six months from date. It is also made clear that till the newly reconstituted Managing Committee takes over charge of the administration of the said school, no policy decision is to be taken by the Administrator. Administrator shall run only day to day administration. Administrator shall also be at liberty to incur necessary expenditure for holding election. The appellant being the Principal of the said school shall be permitted to continue his service subject to the decision to be taken by the President of the Board in terms of this order.

In view of the above direction, the order passed by the Hon'ble Single Bench is set aside and the appeal being MAT 891 of 2021 and application being CAN 1 of 2021 are allowed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)