

21-23 20.12.
2021
Ct. No. 04
Ab

MAT 1008 of 2021
CAN 1 of 2021
With
MAT 1009 of 2021
With
MAT 1010 of 2021

Dr. Satrajit Ghosh
Vs.
The State of West Bengal and others.

Mr. Subir Sanyal,
Mr. Ranajit Chatterjee,
Mr. Aniruddha Mitra.
... for the appellant.

Mr. Swapan Kumar Dutta,
Mr. Pradyot Kumar Das.
... for the State.

Mr. Kallol Basu,
Mr. Suman Banerjee.
... for the College Authority.

A beleaguered appellant has approached this Court assailing an order dated 6th September 2021 whereby and whereunder a direction was passed upon the authorities to complete the proceeding initiated against the writ petitioner/appellant within 31st December 2021 with a liberty to raise all points taken in the writ petition before the Enquiry Officer.

Though a plea relating to the appointment of Principal in-Charge of the college was concerned, the Court found that the writ petitioner/appellant being under suspension and the person next in line declined to act in such capacity, the person following was appointed as teacher in-charge. However, the Court did not make any final observation thereupon and it appears to us that it was a reproduction and

recapitulation of the facts discerned from the record. The moot question remains on the validity and legality of the proceeding initiated against the writ petitioner/appellant.

Mr. Subir Sanyal, learned Advocate for the appellant, raises various points in relation thereto and submits that all the actions of the authorities before embarking a journey leading to the disciplinary proceeding are contrary to the provisions of the relevant statute and the rules. Even Mr. Sanyal has arduously submitted before us that the decision of the Governing Body taken on 26th November 2018 reflects the bias of the authorities in the order of suspension issued on 27th November 2018 and, therefore, such decision/resolution of the Governing Body cannot withstand on legal parameters.

However, in course of proceeding we noticed that the writ petitioner/appellant approached this Court on several occasions and the directions were passed by this Court upon the authorities to take appropriate steps. The last preceding writ petition being WPA 19788 of 2020 came to be disposed of on 25th November 2020 fixing a timeline within which the enquiry proceeding so ensued shall be completed and the liberty was granted to the writ petitioner/appellant to raise all points pertaining to the challenge against the proceeding can be taken before an authority or at appropriate stage.

According to Mr. Sanyal, the issues in the last preceding writ petition were distinct and different than the issues raised in the instant writ petition. As per Mr. Sanyal, the resolution of the Governing Body taken on 26th November 2018 was not the subject matter of challenge or the issues in the preceding writ petition and, therefore, there is no fetter on the part of the writ petitioner/appellant to agitate such points in the instant

writ petition. We find difficulty in accepting the aforesaid contention for the reasons stated hereinafter.

The genesis of dispute originates sometimes in the year 2016 and ultimately a decision was taken by the Governing Body on 26th November 2018 to initiate an enquiry proceeding as the reply to the show-cause issued upon the writ petitioner/appellant was not satisfactory. The order of suspension was passed in contemplation to a proceeding to be initiated against the writ petitioner/appellant and such order of suspension was the subject matter of challenge in the last preceding writ petition.

We have given our anxious consideration on the language employed in the said order of suspension. What could be seen therefrom that it contains the factum of Governing Body's decision taken on 26th November 2018 and, therefore, it cannot be said at this juncture that the resolution/order of the Governing Body was not within the knowledge of the writ petitioner/appellant. The moment the order of suspension is challenged and the court refused to interfere therewith, it forecloses all other rights to re-agitate or resuscitate the decided issue in an another proceeding.

A plea has been taken by Mr. Sanyal that the resolution/order of the Governing Body taken on 26th November 2018 was not served or communicated to his client but that does not absolve him from taking a plea or asking for such copy before a final decision was taken to challenge the order of suspension. The plea, which was available in an earlier proceeding, having not taken shall be deemed to have been taken therein and if the court has disposed of the said proceeding, such plea cannot be allowed to be agitated once again in the later round of litigation.

The 'res' does not become 'judicata' unless there is a complete and effective adjudication and the moment the adjudication be it expressed or implied is made it becomes judicata and cannot be permitted to be re-agitated in a later proceeding. Finality to the litigation is fundamental policy of this country and is based upon a public policy. However, litigation must reach finality and should not be allowed to remain in lurch, as it has a ramification of mounting of the cases and inviting the court to continue in passing a conflicting decision. It is not estoppel on facts but estoppel on issue, which forecloses the right to re-agitate the same issue in another proceeding.

Since those points were available and in view of Explanation-IV to Section 11 of the Code of Civil Procedure, such plea could have been conveniently taken in a last writ petition; having not taken, we would not permit such points to be taken in the instant writ petition.

Since the liberty was already granted to the writ petitioner/appellant to take all points including the one taken in the instant writ petition to be agitated at the appropriate stage, we do not want to delve deep into the nitty-gritty of such observation nor to interpret such expression, as it may have some persuasive impact on the authority. Even in the impugned order, such liberty has been kept intact and, therefore, the writ petitioner/appellant is not prevented from taking such plea.

We appreciate the submission of Mr. Sanyal that because of the pendency of the instant appeal, the writ petitioner/appellant could not appear before the Enquiry Officer and because of the paucity of time within which the Enquiry Officer has to conclude the proceeding, he would not be in a position to get the best

assistance.

We, therefore, modify the impugned order to the extent that the Enquiry Officer shall complete the proceeding within 31st January 2022. The time limit indicated herein above is peremptory and mandatory.

We also permit the writ petitioner/appellant to cross-examine the witnesses whose statements have been recorded by the Enquiry Officer but with a rider that the writ petitioner/appellant shall not seek for any adjournment on such score.

The Enquiry Officer shall hand over the copy of the deposition of the witnesses as well as the documents taken on record within two days from the date of communication of this order.

Since the order is dictated in open Court in presence of the Counsels of the respective parties, it is a duty of Mr. Ranajit Chatterjee, learned Advocate for the writ petitioner/appellant, to communicate the same to his client so that the time stipulated here-in-above is strictly adhered to.

The Enquiry Officer shall continue with the enquiry on day-to-day basis except on the weekends and the official holidays, if there be any.

With these observations, all the appeals are disposed of.

Connected application, if there be any, also stands disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

