

21.12.2021
Item No. 2
Ct. No.17
S.A.

WPA 14707 of 2021

Abhishek Kumar Upadhyay
-vs-
The State of West Bengal & Ors.

Mr. Soumya Majumdar
Mr. Sakti Pada Jana
...for the petitioner
Mr. Supriya Chattopadhyay
Mr. Sagnik Chatterjee
...for the State
Mrs. Koyeli Bhattacharyya
...for the WBBSE
Mr. H. Baruah
Mr. B. Das
...for the respondent no.8

In this writ application the petitioner who is a non-teaching staff of a school started absenting from his duty from 17th April, 2017 and after more than four years he has expressed his willingness to join his duty. The school has not allowed him to join. The petitioner was absent from his duty in the school without any intimation to the school for almost four years. In the meantime, the school requested the President of West Bengal Board of Secondary Education for initiation of disciplinary proceedings against the petitioner. The petitioner on 27.01.2021 made a prayer to the school authority to allow him to resume his duty. Subsequently, the petitioner filed one writ application on 09.04.2021 wherein this Court directed the Board to give hearing to the petitioner

and concerned parties within four weeks and to pass a reasoned order. After hearing the parties, the President of the Ad-hoc Committee passed an order directing the petitioner to submit immediately all documents relating to his long absence and had also directed that disciplinary proceedings against the petitioner was to be initiated as per prevalent rule.

Learned advocate Mr. Majumdar appearing for the petitioner has submitted that the President of the Ad-hoc Committee is not the appropriate authority on whom the direction was given by the Court. It should have been heard by the Ad-hoc Committee.

In this respect, learned advocate Mrs. Bhattacharyya for the Board placed amendment notified on 8th July, 2016 and subsequent meetings of the Board along with the agenda and has submitted that the President of the Ad-hoc Committee can take decision on behalf of the Ad-hoc committee. In this regard, learned advocate for the Board has drawn my attention to one judgement delivered by a Division Bench of this Court in MAT 150 of 2021 on 25.03.2021. In Paragraph 17, 18, 19 and 20 of the said judgement the following has been decided –

“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 Section 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.”

From this judgement it appears that the Ad-hoc Committee in its due course of functioning adopted resolution dated 07.08. 2018 and delegated its power to the President for taking decision of matters relating to suspension, disciplinary proceedings against teaching and non-teaching staff of Government aided secondary schools governed by the Act of 1963. Therefore, the decision of the President dated 17.08.2021 in this regard is fully authorised and does not suffer from any illegality or infirmity.

Another point which has been raised by the petitioner is that despite he wanted to join the school after a long absence, the school has not allowed him to join. I am not passing any order in this regard. I

leave the matter to the school whether the school will allow the petitioner to join or not. It is to be kept in mind that the President of the Board has given his consent for initiating disciplinary proceedings against the petitioner Sri Upadhyay.

Learned advocate for the Board has intimated to this Court that the disciplinary proceedings has already been initiated by issuing a show cause notice dated 04.10.2021.

For the reasons as aforesaid, this writ application is dismissed.

Urgent certified website copy of this order, if applied for, be made available to the parties upon compliance of the formalities.

(Abhijit Gangopadhyay, J.)