

**13.01.
2022**

Ct. No. 04

Ab

MAT 11 of 2022

With

CAN 1 of 2022

**The Managing Committee,
Vidya Vikash High School (HS) and another.
Vs.
Gita Barai and others.**

**Mr. Biswaroop Bhattacharya,
Mr. Pratik Majumder.**

... for the appellants.

Mr. Himadri Barua.

... for the respondent no. 1.

Ms. Koyeli Bhattacharya.

... for the WBBSE.

The matter pertains to the disbursement of the retiral benefits including the Provident Fund to a deceased teacher at the behest of the widow.

The directions were passed for disbursement of the Provident Fund amount, which, in fact, was done as the School Authorities being the appellants herein candidly submits that those amounts have been disbursed to the respondent no. 1. However, the dispute pertains to other retiral benefits admissible to the post of a teacher, who was murdered subsequently.

According to the appellants, the said deceased while alive and in service faced a disciplinary proceeding, which culminated into an order of dismissal. According to them, the dismissal disentitles the employee to get any retiral benefits and, therefore, the impugned order passed at 4.00 p.m. on 22nd December 2021 is contrary to such proposition of law.

It is also undeniable that the said deceased challenged the order of dismissal inflicted upon him by the disciplinary authority before the appellate authority and the same was set aside for the reasons recorded

therein.

According to Mr. Biswaroop Bhattacharya, learned Advocate for the appellants, the order of the appellate authority is challenged in a substantive writ petition filed by his clients before this Court, which is pending. He emphasized on the fact that genuine and bona fide attempts were taken on behalf of the appellants to list the said writ petition for final disposal as the appellate authority set aside the order of the disciplinary authority on a technical ground, which is untenable in law.

The fact remains that there is no interdict or interim order passed by the Writ Court in the said writ petition. Mere challenging the order of the appellate authority does not *ipso facto* render the order impugned therein to be kept in abeyance or no effect can be given thereto. There is no fetter on the part of the authorities to exercise the powers conferred upon them in absence of any order of the Court putting fetter thereupon. The position, which stands as on this day, is that the order of dismissal is no longer surviving and even if the matter is pending before the Writ Court, we do not find any brindle being created upon the authorities from exercising the powers, which the statute mandates.

The Single Bench has directed the District Inspector of Schools (SE), Barrackpore to call a meeting to be held with the representatives of the school and the respondent no. 1 so that the steps, which are required to be taken for release of the retiral benefits and the documents to be submitted may be explicitly, clearly required for such purpose, may be secured in order to expedite the process. Nothing has been said in the order that the retiral benefits shall be disbursed immediately upon the meeting so to be held but to expedite the process and avoid any technical plea to be taken by the authorities be it school or the Government.

We believe that after such exercise is undertaken, the consequential order would be passed by the Single Bench and since no right has been invaded or infringed, we do not think that the present appeal is entertainable. Hence, the appeal is dismissed.

In view of dismissal of the appeal itself, the connected application being CAN 1 of 2022 has become infructuous and the same is also dismissed.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)