

13.05.2022

Court : 04
Item : PB-06
Matter : FMA
Status : DISMISSED
Transcriber: nandy

FMA 301 of 2022

with

CAN 1 of 2022

Managing Committee, CMO High School & Anr.

Vs.

Syed Md. Taqui Hyder & Ors.

Mr. Kamalesh Bhattacharya, Senior Advocate

Mr. Swapan Pal, Advocate

.....for the Appellant

Ms. Koyeli Bhattacharya, Advocate

.....for the WBBSE

Ms. Nandini Mitra, Advocate

Mr. Syed Shahid Imam, Advocate

Mr. Sakya Maity, Advocate

.....for the Private Respondent No. 1

Mr. Bhaskar Prasad Vaisya, Advocate

Mr. Suman Dey, Advocate

.....for the State

The letter dated January 26, 2021 issued by the Managing Committee of the School removing the writ-petitioner from the post of Teacher-in-charge unilaterally without affording an opportunity of hearing to him was the subject-matter of challenge in the writ-petition. The learned single Judge has held that the aforesaid decision of the Managing Committee cannot be sustained unless an opportunity to defend is afforded to him.

It appears from the record that the Managing Committee initially took a resolution to appoint the writ-petitioner as Teacher-in-charge but later on by virtue of the said letter decided to withdraw despite the fact that such resolution was sent to the District Inspector (D.I.) of Schools (Secondary Education) for due approval. It is not in dispute that the approval

was granted by the D.I. of Schools (SE) but the said writ-petitioner was robbed of all the powers admissible to the post of the Teacher-in-charge by unilateral decision taken by the Managing Committee.

A point is sought to be projected by Mr. Bhattacharya, learned Advocate for the appellant, that for the purpose of appointment of the Teacher-in-charge, the approval of the D.I. of Schools (SE) is not necessary.

We failed to appreciate the aforesaid submission for the simple reason that the Managing Committee after taking a resolution appointing the writ-petitioner as Teacher-in-charge sought for approval of the D.I. of Schools (SE) and such approval was granted by the said authority. Once the Managing Committee have proceeded in a particular manner, it is inconceivable that before the Court of Law they take a rebound and say that the Rules does not require any such approval from the D.I. of Schools (SE).

We invited the attention of Mr. Bhattacharaya when it was submitted that the decision of the Managing Committee is innocuous as no stigma is put on the writ-petitioner. We gave our anxious consideration to the contents of the letter dated January 28, 2021 and found that the removal is sought by putting stigma on the writ-petitioner. The expression “unfortunately you could not accomplish

the task” is suggestive of the stigma or allegation having made against the writ-petitioner in not discharging his duty properly and, therefore, it is beyond cavil of doubt that such removal cannot be done unilaterally without affording an opportunity to the writ-petitioner to defend such allegation. Opportunity to defend and hearing is the hallmark of the principle of natural justice and, therefore, the action of the authorities in gross violation of the principle of *audi alteram partem* cannot withstand on the anvil of law.

It appears from the stand of the appellant that they have chosen an Assistant Teacher junior to the writ-petitioner to act as a Teacher-in-charge. If such action is allowed, it will have a negative impact on the system and shall encourage the nepotism and/or favouritism by cherry picking which cannot be allowed. The constitutional right cannot be allowed to be broken or to bend. If the action of the authority is against the constitutional ethos such action cannot seek blessings of the Court.

In the midst of the dictation Mr. Bhattacharya intervenes and submits that the writ-petitioner is not the senior-most teacher of the School. Such submission made on instruction, does not appear to be factually correct.

Our attention is drawn to the letter dated May 23, 2019 issued by the D.I. of Schools (SE), Kolkata where the petitioner has been considered as the

senior-most teacher of the institution and, therefore, the said authority was of the view that the appointment cannot be questioned under any circumstances.

We thus do not find any illegality and/or infirmity in the order. The appeal being **FMA 301 of 2022** and the connected application being **CAN 1 of 2022** are accordingly **dismissed**.

However, we find that there has been a direction upon the Board to take an appropriate decision.

We, therefore, direct the said authority to complete the exercise as early as possible.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

