

22.03.2022

Court : 04
Item : PB-06
Matter : FMA
Status : DO
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**CAN 1 of 2022
&
CAN 2 of 2022
in
FMA 312 of 2022**

**The Administrator, Saldiha Girls' High School
Vs.**

Tapasi Mandal & Ors.

**Mr. Biswabrata Basu Mallick, Advocate
Mr. Sayan Ganguly, Advocate**

.....for the Appellant

It is a sordid state of affairs that the Assistant Teacher of the School was deprived of her salary despite having discharged her duties attached to the said post.

The genesis of the dispute can be traced from the date when the Headmistress attains superannuation and the writ-petitioner/respondent no. 1 alleged to have refused to take charge. She was asked for an explanation which was duly given but the same was not found satisfactory in a meeting conducted by the Administrator in terms of the direction passed by the District Inspector of Schools (SE), Bankura (in short 'the D.I.'). The meeting was held on August 3, 2020 in absence of the respondent no. 1 being the senior-most Assistant Teacher and a decision was taken to initiate disciplinary proceeding against her. Curiously enough, a resolution was further passed in the said meeting to stop the salary of

respondent no. 1 as the reply which she had given to a notice issued upon her, was not found satisfactory.

This compelled the writ-petitioner/ respondent no. 1 to file a representation before the D.I., which was kept in abeyance. The writ-petitioner moved a writ-petition being WPA 7 of 2021 before this Court assailing the inaction on the part of the D.I. of Schools in not addressing the issue raised in the said representation. A direction was passed upon the said D.I. to dispose of the said representation by recording proper reason and upon giving an opportunity of hearing to the petitioner and other persons including the School authorities within a specified time.

In terms of the said direction, the D.I. passed an order on August 12, 2021 holding that the conduct of the respondent no. 1 is reprehensible and a disciplinary proceeding must be initiated in terms of the relevant Rules. The D.I. found that the decision of the Administrator to stop the salary is not in consonance with the relevant Rules nor the Administrator has been empowered to take such decision. The D.I. directed the Administrator to start the salary forthwith. Curiously enough, the Administrator

misconstrued and misread the direction of the D.I. to the extent that such direction is restricted to current salary and no arrears salary shall be paid.

Once the decision of the Administrator was found inappropriate and not legally sustainable by the D.I., so far as it relates to the stoppage of salary, there cannot be any confusion in the minds of the Administrator that the directions passed by the D.I. is restricted to the current salary and not the arrears salary.

Fundamentally, an individual can do anything unless forbids under law but a statutory authority cannot do anything unless conferred by law. A statutory authority cannot take a decision whimsically, arbitrarily and capriciously because of the defiance of its mandate but has to take recourses permissible under law and not beyond it. The administration of the Institution is important and casts an onerous responsibility on the Administrator but for defiance, if there be any, does not *ipso facto* loath any power on him to stop the salary when the extant provision of law does not provided for.

Precisely for such reason, the D.I. directed the payment of the salary to the respondent no. 1, which in our opinion cannot be misconstrued and restricted to the payment of the current salary.

The single Bench has found the conduct of the appellant deplorable and not in consonance with the powers conferred upon him by extant Rules and awarded the compensation as the respondent no. 1 was unnecessarily dragged to the doors to the Courts to get justice.

We do not find any infirmity in the course of action adopted by the single Bench nor the findings can be impinged on any ground so disclosed before us. However, the imposition of the personal costs may have an impact on the future prospect of the appellant.

We thus made it clear that such costs, if paid, in terms of the order of the single Bench, shall have no persuasive effect at the time of consideration of his candidature for promotion or any other incentives provided in this regard nor the said order shall be treated to be a part of the service record.

With the above observations, the appeal being **FMA 312 of 2022** as well as the connected applications being **CAN 1 of 2022 and CAN 2 of 2022** are **disposed of**. No order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

