

293.
16.06.2022.
Ct. No. 11.
F.B.

**MAT 471 of 2022
with
IA No. CAN 1 of 2022**

**The President, Managing Committee, Krishnath
College School & Anr.**

-Vs.-

Sri Himadri Chowdhury & Ors.

**Mr. Srijib Chakraborty,
Mr. Somnath Adhikary,
Mr. Biswajit Sarkar
..... For the Appellants.**

**Mr. Biswaroop Bhattacharyya,
Mr. Mani Sankar Chattopadhyay,
Mr. Pratik Majumder
..... For the Respondent
No. 1.**

**Ms. Koyeli Bhattacharyya
..... For the WBBSE.**

**Mr. Bhaskar Prasad Vaisya,
Mr. Ranjan Saha
..... For the State.**

Party/Parties is/are represented in the order of
their name/names as printed above in the cause title.

Under challenge in this appeal is the Order of
the Hon'ble Single Bench dated the 15th of March, 2022
in the Writ Petition, being WPA 1517 of 2022. The
Hon'ble Single Bench, *inter alia*, held that the appearing
Respondents could not substantiate the action of
suspending the Writ Petitioner/who is the Private
Respondent in this appeal in contemplation of a
Disciplinary Proceeding (*DP*) in terms of the applicable

Rule 5 of the West Bengal Board of Secondary Education (Appointment and Confirmation etc.) Rules, 2018 (for short, referred to as the 2018 Rules).

The Hon'ble Single Bench was of the view that the Writ Petitioner has been able to demonstrate that no complaint has been produced by the Respondents/School Authority or the State Respondents which can prove to be the basis of an order of suspension in contemplation of a *DP*. It is submitted that although the Respondents prayed for time to produce a copy of the complaint, the Hon'ble Single Bench set aside the order dated 21st of December, 2021 as communicated to the Writ Petitioner by the Board on the 28th of December, 2021 thereby restoring the Writ Petitioner to his service as the Headmaster of the School-in-issue.

The attention of this Court is also drawn to the Order of a concurrent Hon'ble Division Bench dated 6th of May, 2022 which, *inter alia*, after considering the facts and the law as recorded in the said Order was *prima facie* of the view that the impugned order was required to be stayed until disposal of the stay application. The Hon'ble Division Bench also permitted the parties to exchange their affidavits.

Although, this Court has found the Order of the Hon'ble Single Bench to be cryptic, at the same time the parties have been allowed to submit at length today on the validity or otherwise of the said Order impugned in this appeal. The parties have largely submitted on the basis of facts which are part of the records of this appeal and annexed to the application for stay being IA No. CAN 1 of 2022.

Mr. Chakraborty, Learned Counsel appearing for the Appellants/the School authority and Ms. Bhattacharyya, Learned Counsel appearing for the Board, submit that the action of the Respondents has been entirely in accordance with Rule 5 and Rule 6 of the 2018 Rules. It is argued that the Order of the Hon'ble Single Bench setting aside the Order dated 21st of December, 2021 as communicated on the 28th of December, 2021 of the President, *Ad hoc* Committee of the Board, has failed to take notice of the fact that the said Order was issued pursuant to a complaint before the Board lodged by the President of the Managing Committee of the School-in-issue.

It is submitted that the content of the complaint of the President of the Managing Committee of the School-in-issue dated 13th January, 2021, *inter alia*, alleges that the Writ Petitioner is guilty of *unscrupulous activities, financial malpractices, and total disregard for*

administrative protocols in performing his duties. The complaint therefore requests the President of the Board to transfer the Writ Petitioner from his position as the Headmaster (*HM*) of the School-in-issue to a different School in order to maintain the best traditions of the School-in-issue.

Learned Counsel appearing for the Appellants/the School-in-issue and for the Board next draw the attention of this Court to the Order dated 21st December, 2021 of the President of the Board. The Order, *inter alia*, takes notice of the allegations of *financial malpractices* brought to the notice of the Board pursuant to a hearing conducted of all the stakeholders, including the Writ Petitioner. The allegations of *malpractices* are found to be serious in nature and therefore the President, acting in exercise of powers conferred on him by the 2018 Rules pursuant to Notification No.- 214/SC/S/10M-01/18 dated 8th of March, 2018, suspended the Writ Petitioner from the School-in-issue in contemplation of a *DP*. The reasons for suspension have been stated to be that the Writ Petitioner as the *HM* of the School-in-issue is the custodian of the school records and hence any *DP* relating to his alleged role in defalcating school funds requires his absence from such position as the custodian of the school records.

It is pointed out by Learned Counsel for the Appellants and for the Board that the Order dated 21st of December, 2021 also calls for initiation of a *DP* against the Writ Petitioner by holding of a necessary Enquiry to such effect for facilitating the progress of the *DP*. It is submitted that therefore the Order dated 21st of December, 2021 is squarely within the ambit of Rule 5 of the 2018 Rules. A particular submission is made by Mrs. Bhattacharyya, Learned Counsel for the Board, that although the complaint of the President of the Managing Committee of the School-in-issue dated 13th of January, 2021 addressed to the President of the Board triggered the hearing culminating in the Order dated 21st of December, 2021 and such complaint primarily would relate to a request for transfer of the Writ Petitioner from the School-in-issue, Rule Rule 5(12) of the 2018 Rules empowers the Board to *suo motu* initiate a *DP* against a teaching and non-teaching staff upon reasons to believe that a misconduct has been committed by such staff.

Learned Counsel for the Board further submits that in terms of Rule 6(c) of the 2018 Rules if there is reason to believe that the suspension of teaching and non-teaching staff is to be directed, such direction can be passed in the event the delinquent who is to be proceeded against, if not suspended, is likely to tamper

with the records/evidence required in the *DP*. Under the aforesaid facts and provisions the uniform submission is made by the Appellants and the Learned Counsel for the Board that the exercise of powers by the Order dated 21st of December, 2021 by the President of the Board is valid in the eyes of law.

Per contra, Mr. Bhattachryya, Learned Counsel appearing for the Writ Petitioner/the Private Respondent in the appeal, submits that any action taken by the Board under the provisions of the 2018 Rules should be directed in conformity with the provisions of such Rules. Mr. Bhattacharyya emphasises the fact that the so-called complaint dated 13th of January, 2021 is a request for transferring the Petitioner from the School-in-issue to another School. Since the Board was not the Competent Authority to transfer the Petitioner, the Board was duty bound to refer the so-called complaint to the Competent Authority.

It is submitted that the prayer for transfer could not be converted by the Board into a complaint for the purpose of a *DP* for its convenience to be used as a tool to suspend the Writ Petitioner from his service. It is pointed out that the Hon'ble Single Bench correctly found that the Order dated 21st of December, 2021 of the President of the Board could not be in aid of

exercise of powers to suspend the Writ Petitioner. Hence such Order was correctly quashed.

Having heard the parties and considering the materials placed, this Court at this stage finds as follows:-

- (I)** That the complaint dated 13th of January, 2021 alleges, *inter alia*, financial malpractices on the part of the Writ Petitioner;
- (II)** Rule 5(12) of the 2018 Rules permits the Board to initiate *suo motu DP* against a delinquent teaching and non-teaching staff;
- (III)** That admittedly such *DP* is to be initiated by the Board in terms of the Rule 5 of the 2018 Rules;
- (IV)** That the Order of the President of the Board dated 21st of December, 2021 discloses assumption of powers under Rule 5(12) by holding that the complaint of the President of the Managing Committee of the School-in-issue dated 13th of January, 2021 on grounds of unscrupulous activities, financial malpractices and total disregard for

administrative parotocols, required to be inquired into, notwithstanding that the *prayer* of the President of the Managing Committee of the School-in-issue was for transfer of the Writ Petitioner;

(V) That having regard to the nature of the complaint dated 13th of January, 2012, this Court is of the view that the Board was not precluded from exercising its powers under Rule 5(12) for initiation of *suo motu DP* against the Writ Petitioner;

(VI) That the Order of the President of the Board dated 21st of December, 2021 was passed after hearing all the parties, including the Writ Petitioner. The Order dated 21st of December, 2021 also discloses the Notification dated 8th of March, 2018 (*supra*) which authorises the President of the Board to take action in furtherance of a *DP* against the Writ Petitioner;

(VII) For a better appreciation of the contents of the Order dated 21st of December, 2021 it would be necessary to reproduce its findings and concluding portion;

“Findings:

Sri Chowdhury accused H.M. of the school submitted relevant papers at the time of hearing. It reveals that the H.M. sought permission from the Administrator to demolish the old science building which may be fatal for the children of the school dated 16.07.2020 and a survey committee was formed to look into the matter thoroughly. But he did not seek any expert opinion regarding this matter. He declared/stated verbally in the M.C. resolution dated 24.07.2020 but such activity was carried without any proper tender. On the contrary the Administrator of the School informed that an order was issued by him in connection with demolition of the old science building and directed the H.M. to follow all the rules and regulations and inform him from time to time. But no such information was provided till date. Further the submission made by the school authority regarding defalcation of fund made by Sri Himadri Chowdhury it reveals that there is discrepancy between the sanctioned amount and the withdrawal amount. Sri Chowdhury could not substantiate with any evidential proof that he is not guilty regarding defalcation of fund at the time of hearing.

Order:

The undersigned empowered by the W.B.B.S.E. (Appointment, Confirmation, Conduct and Discipline of Teaching and

Non-teaching Staff) Rules, 2018 vide Notification No-214/SE/S/10M-01/18 dated 08.03.2018 hereby passes the order that as the Headmaster is the custodian of all school records is suspended with immediate effect and he is entitled to get subsistence allowance during his suspension period. Further Disciplinary Proceedings is to be initiated against the Headmaster and a thorough Administrative enquiry is to be done immediately by the D.I. of Schools (SE), Murshidabad to facilitate Disciplinary Proceedings initiated against him. The School Authority is further informed that Mutual Transfer is proposed to be cancelled and the matter be forwarded to the Commissioner of School Education, Govt. of West Bengal for an instruction.

Kalyanmoy Ganguly

21.12.2021

*PRESIDENT ADHOC
COMMITTEE”*

(VIII) From the Order dated 21st of December, 2021(*supra*) this Court is of the view that the suspension of the Writ Petitioner and his entitlement to subsistence allowance during the period of the *DP* contemplated against him, does not fall foul of Rules 5, 6 and 7 of the 2018 Rules;

(IX) It is also found that instructions have been issued by the President of the Board *vide* the Order dated 21st of December, 2021 to Order an administrative enquiry for facilitating the *DP*;

(X) For the above reasons, this Court also finds that the Hon'ble Single Bench by the Judgement and Order dated 15th of March, 2022 passed a cryptic Order without affording the parties the complete opportunity to explain their position and produce the records;

Next, this Court cannot be also unmindful of the fact that by an earlier Order dated 13th of December, 2021 in a previous Writ Petition filed by the same Writ Petitioner being WPA 5710 of 2021, the Hon'ble Single Bench was pleased to notice the submissions of the Appellants/the School that a change of defalcating Rs.10.43 lakhs is pending against the Writ Petitioner and there is a Report of the *DI* of Schools to such effect. The Hon'ble Single Bench had then directed the School-in-issue and the *DI* of Schools to file Reports in the form of affidavits with leave granted to the Writ Petitioner to deal with such affidavits.

Accordingly, this Court is of the further view that the ends of justice would have been subserved in the event the Hon'ble Single Bench granted the parties the opportunity to explain their stand vis-à-vis instances of irregularities brought to the notice of the Competent Authority, which is the Board, connected to the allegations against the Writ Petitioner.

For the above reasons, the Order impugned of the Hon'ble Single Bench dated 15th of March, 2022 stands set aside.

Since the parties have been heard on the basis of the materials already on record, the requirement of inviting further affidavits stands dispensed with.

The *DP* against the Writ Petitioner shall be completed within the period stipulated by the 2018 Rules.

For the above reasons, **MAT 471 of 2022** with **IA No. CAN 1 of 2022** stand **allowed**.

In view of the order passed above, the Writ Petition being **WPA 1517 of 2022** also stands **disposed of**.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.) (Subrata Talukdar, J.)

Later: Mr. Biswaroop Bhattacharyya, Learned Counsel, prays for stay of the order.

The prayer for stay is considered and refused.

(Lapita Banerji, J.) (Subrata Talukdar, J.)