

23.08.2022
Item No.224
Crt. No.11.
KB

**MAT 617 of 2022
with
IA No. CAN 1 of 2022**

**Convent of Our Lady Providence High School & ors.
Vs.
Anita Nigam & Ors.**

Mr. Sanjay Kumar Baid
Mrs. Arunima Lala
Ms. Shagun Baid
... For the Appellants.

Ms. Koyeli Bhattacharyya
...For W.B.B.S.E.

Mr. Ekramul Bari
Mr. S. M. Ali
Sk. Imtiajuddin
... For the writ petitioner/respondent.

Mr. Supriya Chattopadhyay
Mr. Biswarup Biswas
... For the State

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

The appellants claim to be an Unaided School as
well as a Minority Institution entitled to protection
under Article 30 of the Constitution of India. The
appellants are aggrieved by the Order of the Hon'ble
Single Bench dated the 8th of April, 2022 in the writ
petition being W.P.A. 3511 of 2022.

By the said impugned Order, the Hon'ble Single
Bench was pleased to set aside the termination Order of
the writ petitioner, who was employed as a confirmed

teacher in the appellant's school. The appellants appearing through Mr. Baid, Learned Counsel, make the submission that the setting aside of the termination Order without permitting the parties to place their factual and legal stand on affidavits is violative of the principles of *audi alteram partem*.

The appellants contend that by an Amendment of 2018. The Management Rules, 1969 under which the West Bengal Board of Secondary Education (for short the Board) was empowered to exercise disciplinary control in respect of the staff of even Minority Unaided institutions has been dispensed with and hence the writ petition suffers from the vice of non-maintainability as there is no scope to exercise powers under Article 226 of the Constitution of India in respect of a contract of personal service between the school and the writ petitioner.

Per contra, Mr. Bari, Learned Counsel appearing for the writ petitioner/the Respondent No.1 in this appeal, submits that the Disciplinary Proceedings (*DP*) had been initiated by the School *qua* the writ petitioner way back in 2016, which is prior to the 2018 Amendment. At the said point of time the *DP* was initiated by filing of the first amongst several charge

sheets against the writ petitioner following the pre-amended 1969 Management Rules.

Mr. Bari submits that a Memo dated 20th February, 2017 of the Board is evidence of the fact that the Board was exercising disciplinary control *qua* the writ petitioner at a moment of time when the 2018 Amendment dis-empowering the Board from exercising disciplinary control had not come into effect.

Mr. Bari also takes this Court to the Order of the Hon'ble Single Bench in the writ petition dated 1st of April, 2022 which reads as follows:

“The petitioner prays for setting aside the impugned undated order of the Enquiry Officer and to drop and close the disciplinary proceedings. Before further hearing the parties exchange of affidavits in required for knowing the full facts.

Affidavit-in-opposition be filed within four weeks and reply thereto, if any, be filed within two weeks thereafter.

After expiry of the said period, the matter will appear as a ready for hearing matter and may be mentioned before the Appropriate Bench.”

From the Order dated 1st of April, 2022, the writ petitioner points out that the Hon'ble Single Bench was poised to examine the entire issue of the pendency of the *DP* against the writ petitioner on merits upon exchange of affidavits.

However, as would appear from the Order dated 8th of April, 2022, which is the impugned Order before this Hon'ble Court, the Hon'ble Single Bench, disapproved of the action of the appellants/School to terminate the writ petitioner from service even at the stage when the issue was to be considered on merits in terms of the previous Order dated 1st of April, 2022.

Mr. Bari therefore points out and, to the mind of this Court correctly so, that the Order of termination dated 2nd of April, 2022 passed by the School without taking leave of the Hon'ble Single Bench, had the effect of making the writ petition infructuous.

In the above view of the matter, the Hon'ble Single Bench could not have lost jurisdiction simply because one of the parties had acted in a manner which had the effect of foreclosing such exercise of jurisdiction at the very inception.

It is submitted and, again correctly to the mind of this Court, that the effect of the 2018 Amendment in the backdrop of the particular facts of this case and the documents exchanged between the parties, was ready to

be examined by the Hon'ble Single Bench and the School could not, without inviting the Hon'ble Single Bench in *seisin* of the issue, act unilaterally invoking the 2018 Rules by issuing the Order of Termination dated 2nd of April, 2022.

Mrs. Bhattacharyya, Learned Counsel, appears for the Board and takes the position that the 2018 Amended Rules presently subsists.

Having heard the rival submissions and closely considering the materials placed, this Court is of the view that the exercise of jurisdiction by the Hon'ble Single Bench could not have been abruptly closed by the appellants/the School by terminating the writ petitioner on 2nd of April, 2022 at a point of time when the Hon'ble Single Bench was poised to hear the entire issue on affidavits.

This Court is also of the view that the prospective and retrospective application of the 2018 Rules in the facts of this case is also *germane* before the Hon'ble Single Bench.

In such view of the matter, the Hon'ble Single Bench was not far from wrong in taking the position that the *lis* should be preserved in the manner brought before the Hon'ble Single Bench and therefore felt compelled to set aside the Order of termination.

In the event the Order of Termination dated the 2nd of April, 2022 would have been allowed to survive, it would have the effect of transferring the *lis* from a competent Court of Law to one of the parties, which cannot be contemplated to be a part of due process.

Accordingly, this Court is of the view that the Hon'ble Single Bench deserves the opportunity to consider the writ petition on merits.

Parties shall be entitled to raise all points on merits before the Hon'ble Single Bench. Consequently, there is no expression on merits by this Court at this stage. The matter stands accordingly remanded to the Hon'ble Single Bench for consideration on merits.

In the backdrop of the above discussion, the setting aside of the Order of termination stands replaced by a direction of stay of the Order of termination issued against the writ petitioner pending further Orders of the Hon'ble Single Bench.

Parties shall be entitled to pray for expeditious consideration of the matter before the Hon'ble Single Bench and seek extension of time to file their respective affidavits.

MAT 617 of 2022 with **IA No. CAN 1 of 2022** stand accordingly **disposed of**.

All parties to act on a gist of the communication of this Order.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Lapita Banerji, J.)

(Subrata Talukdar, J.)