

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

M.A.T. 1185 of 2019

S.B. Modern High School & Anr.

Vs.

Sri Kamala Kant Singh & Ors.

Mr. Himadri Barua
Mr. Biswajit Das

... For the Appellants.

Ms. Debjani Sengupta
Ms. S. Bhattacharjee
Ms. S. Haque
Mr. Abhijit Chatterjee
Ms. Koyel Bag

.... For the Respondents.

Ms. Sanghamitra Nandy
Mr. Bhaskar Chakraborty

... For the State.

We find no reason to interfere with the impugned judgement and order made on 17th July, 2019.

Our reasons are summarized below:

At the relevant point of time a disciplinary proceeding could be initiated against a teacher of the government aided school after crossing the 'first stage'.

The first stage procedure is very conveniently set out in the impugned judgement and order itself, and is as follows:

S.D.

"i) Resolution of the Managing Committee containing the charges against the person to be proceeded against;

ii) Formal charge sheet to be issued to the person concerned, containing the articles of charges as per resolution of the Managing Committee;

iii) Reply to the charge sheet by the person proceeded against to be submitted to the Managing Committee ordinarily within a fortnight from the date of receipt of the charge sheet.

iv) Consideration of the reply by the Managing Committee and its decision thereon, with the underlying reasons for taking such decision to be stated in detail.

The school management shall, thereafter, send to the Board their proposal along with attested copies of all relevant papers coming within the scope of the 'First Stage' above

If the Board considers there are sufficient grounds

for taking disciplinary action against the person concerned on the basis of papers submitted by the school and also papers that may be subsequently called for, if necessary, the Board will accord first approval to the school's proposal for initiating disciplinary proceeding against him/her.

In all cases, the Board will acknowledge the school's letters on the subject at the earliest opportunity.

If no communication from the Board be received within one month of submission of the proposal regarding the punishment to be meted out to the teacher/non-teaching employee, the school concerned will meet the Secretary of the Board along with all relevant papers with a prayer for expeditious disposal of the case."

Therefore, the procedure was that a resolution had to be taken by the managing committee imputing charges against the person to be proceeded against. On the basis of this resolution a formal charge sheet was to be drawn up. An opportunity was to be given to the delinquent to reply to the charge sheet to be considered by the managing committee within a fortnight of the date of its receipt. On consideration of the reply the managing committee of the school was required to arrive at a decision. If the managing committee was of the view that a disciplinary proceeding ought to be initiated, expressing that view the papers were required to be sent to the Board. If the Board considered that there was sufficient ground for proceeding against the person concerned it would approve the school's proposal. Only then the disciplinary proceedings could start.

On examination of the records of this case, it appears that the school duly recommended disciplinary proceedings to be initiated against the respondent/writ petitioner and forwarded its proposal to the Board. The

Board's approval is not in the records.

It appears that on the basis of its recommendation, the managing committee proceeded against the respondent/writ petitioner by suspending him. Thereafter it proceeded with the disciplinary proceedings, resulting in an adverse punishment order against the respondent/ writ petitioner.

In our view, since the Board's approval was lacking, the initiation of the disciplinary proceedings by the school was invalid and nonest. It is a nullity in the eye of law.

In those circumstances, the learned judge was perfectly right in allowing the writ application.

We dismiss the appeal and direct compliance with the learned single judge's order within four weeks of communication of this order.

However, the stipulation in the impugned order with regard to costs is set aside.

(I.P. Mukerji, J.)

(Aniruddha Roy, J.)

