

31.08.2022.
Court No.13
Item No. 760
ap

W.P.A. No. 20279 of 2017

**Shyam Salone Upadhyay
Versus
The State of West Bengal & Ors.**

Mr. Malay Bhattacharya,
Mr. Subhrajyoti Ghosh.

...For the petitioner.

Mr. Sakti Pada Jana,
Mr. Subhajyoti Das.

...For the School Authority.

Mr. Rezaul Hossain.

...For the State.

The writ petitioner was an Assistant Teacher in a D.A. getting School, namely, Sree Vishuddhanand Saraswati Vidyalaya, Kolkata (School).

The petitioner is aggrieved by an order of termination of service dated 13th April, 2017 pursuant to the disciplinary proceedings instituted by the said school.

It appears from the records that a show-cause notice was issued to the petitioner and a charge-sheet was thereafter served. The petitioner replied to the charge-sheet and an enquiry report was prepared.

In terms of Rule 28(8) of the Management Rules of Aided and Unaided School, 1969, the charge-sheet, reply and enquiry report were to have been sent to the West Bengal Board of Secondary Education for approval of the first stage of disciplinary proceedings.

The West Bengal Board of Secondary Education was never sent any of the aforesaid documents that ought to have been forwarded by the School in the form of a dossier.

It is only after the approval of Board of the first stage of the departmental proceedings could the school have proceeded to issue a second show cause for proposed punishment.

In the absence of approval by the Board, the first stage of the disciplinary proceedings the school would not have proceeded to the second stage of punishment.

It is surprising to note that in the instant case the school has proceeded to terminate the service of the petitioner imposed punishment on the petitioner even without issuance a second show cause. This is against the basic canons of service jurisprudence.

Admittedly, both the show-cause notice and the letter of termination referred to above, indicate that the proceedings were under the 1969 Rules.

There is, therefore, gross and clear violation of the 1969 Rules, particularly 28(8) thereof by the School Authority. The order of termination of the petitioner's service is, therefore, quashed and set aside.

The petitioner shall be paid on an ad hoc basis five months of his last drawn salary.

The 1969 Rules have now amended with effect from 18th March, 2018. The school may take steps as they may be advised in accordance with law.

With the aforesaid directions, the instant writ petition shall stand disposed of.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)