

09.10.2023
SL No.28
Court No.8
(gc)

FMA 1490 of 2015

Sunil Kumar Gayen

Vs.

Jogesh Chandra Kirtania & Ors.

1. The parties are not represented nor any accommodation is prayed for on behalf of the parties.
2. The appeal had appeared in the warning list of cases on and from 19th September, 2023 with a clear indication that the said matter shall be transferred to the Regular Bench on 6th October, 2023. The appeal is again listed today in the main cause list. All the parties have sufficient notice about the listing of the matter before the Regular Bench on and from 6th October, 2023.
3. The appeal was filed on 12th December, 2014. The record shows that no attempt has been made to move this appeal after it was filed. No step has been taken to serve notice and prepare paper books. It clearly shows that the appellant is not interested to proceed with the appeal and has virtually abandoned the appeal. However,

we consider the materials on record and the impugned order.

4. The learned Single Judge has taken note of the Special Bench in ***Arun Kr. Hait vs. State of West Bengal & Ors, 1999 (1) CHN 521*** in terms whereof the managing committee was under an obligation to draw up a charge-sheet against the respondent no.5, providing him opportunity to reply to the same, to conduct an inquiry for ascertaining as to whether there was any truth in the charges or not by granting opportunity to the respondent no.5 to cross-examine the witnesses produced by the prosecution and to adduce witnesses in his favour, to furnish to the respondent no.5 copy of the inquiry report (if the inquiry officer found him guilty in respect of any or all the charges) providing him opportunity to represent thereagainst and to take a reasoned decision as to whether the charges had been established in course of the inquiry or not. If the charges were found to be established, it was required of the managing committee to obtain approval of the Board before issuance of a show cause notice proposing punishment. This

is commonly known as the 'first stage approval'.

5. The learned Single Judge was not satisfied with the manner in which the disciplinary proceeding conducted and disposed of the matter by directing the Board or its administrator, as the case may be, to consider the claim of the managing committee for 'first stage approval', strictly in accordance with law without being influenced by the earlier findings rendered by the administrator in the impugned order.
6. The learned Single Judge then proceeds to give the following direction:-

"If the managing committee is permitted to proceed for taking disciplinary action, a second show cause notice proposing the punishment to be inflicted shall be issued whereafter the respondent no. 5 shall be at liberty to respond thereto. It is only upon consideration of the response of the respondent no.5 to such notice that the managing committee shall, if it so chooses, seek the 'second stage approval' from the Board to punish the respondent no.5 and if such occasion arises, the Board shall proceed in accordance with law and in the light of the directions contained in Arun Kumar Hait (supra).

Needless to observe, if the Board or the administrator, as the case may be, is once again of the view that first stage approval' is not required to be given to the managing committee to proceed against the respondent no.5 for taking disciplinary action, an appropriate reasoned order shall be passed and communicated to it.

It is made clear that this order shall not be construed as a lever to restrain the respondent no. 5 from discharging duty as the Headmaster of the school.”

7. In such conspectus of the aforesaid facts and having regard to the fact that the principles elementary to the initiation disciplinary proceeding have not been followed.
8. We do not find any reason to interfere with the order passed by the learned Single Judge.
9. Under such circumstances, the appeal stands dismissed.
10. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)