

17.04.2023
Sl. No.14.
Crt. No.11
KB

MAT 663 of 2023
with
IA No. CAN 1 of 2023

Ratna Mitter and Another
- Versus -
The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. S. P. Lahiri
Mr. Sk. Imtiajuddin
.... For the Appellants.

Mr. Sanjay Kumar Baid
Mrs. Arunima Lala
.... For the Respondent
Nos. 6 to 8.

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

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

The Writ Petitioners are the Appellants before this
Court.

The Writ Petitioners challenge the Order of the
Hon'ble Single Bench dated 12th April, 2023 in W.P.A.
7329 of 2023.

The Appellants/Writ Petitioners are aggrieved by
the fact that the Hon'ble Single Bench did not consider
the prayer in the Writ Petition for grant of interim orders.

The Appellants/Writ Petitioners are Teachers of
the Respondent/School-in-Issue which claims to be a

minority institution. The Appellants are facing Disciplinary Proceedings (DP).

The first round of the DP ended in termination of service of the Appellants. The dispute was carried to the Hon'ble Apex Court which, by its Order dated 3rd of January, 2023, directed as follows:

“ The present petitions have been filed assailing the order passed by Division Bench of the High Court of Calcutta dated 23.08.2022 while granting stay of the order of termination dated 02.04.2022 and relegating the parties to the learned Single Judge decide WPA No.3512/2022 and WPA No.3511/2022 to be heard on merits.

After we have heard learned counsel for the petitioners for some time and on perusal of order of termination dated 02.04.2022. In our view the order of termination passed by the petitioners is not in accordance with law and deserves to be set aside.

Consequently, we dispose of the present petitions and while setting aside the order of termination dated 02.04.2022, permitting the respondents/employees to continue in service with further after directions that the petitioners are at liberty to proceed further after serving copy of the inquiry report to the respondents/employees and take decision independently after

affording a reasonable opportunity of hearing to him in accordance with law.

However, the respondents/employee is at liberty to challenge the inquiry proceedings/subsequent order, if any, passed by the petitioners in the appropriate proceedings in accordance with law.

With the above directions, the present petitions stand disposed of and the pending WPA No.3512/2022 and WPA No.3511/2022 also stands disposed of in terms of the order indicated above.

Pending application(s), if any, stands disposed of accordingly.”

Mr. Bari, Learned Senior Counsel appearing for the Appellants/Writ Petitioners with Mr. Lahiri, Learned Counsel, points out that the Respondents/School-in-Issue re initiated the old *DP* claiming such re-initiation to be in terms of the Order of the Hon’ble Apex Court dated 3rd January, 2023 (*supra*). It is submitted that such re initiation of the old *DP* was challenged before the Hon’ble Single Bench with the prayer to set aside the same.

During pendency of the Writ Petition, the Respondent/School Authority has again proposed a penalty of termination of service of the Appellants/Writ Petitioners *vide* a Notice dated 4th of April, 2023.

Mr. Bari points out that the proposed penalty of termination *vide* the Notice dated 4th April, 2023 was allowed to be taken on record by the Hon'ble Single Bench through a Supplementary Affidavit filed by the Appellants/Writ Petitioners. However, although the Hon'ble Single Bench has listed the matter on the 2nd of May, 2023, no interim protection from the proposed second order of termination was granted by the Hon'ble Single Bench. It is submitted that in the event such interim protection is denied, the Appellants/Writ Petitioners would be placed in a disadvantaged position before the Hon'ble Single Bench notwithstanding the fact that the earlier round of an identical *DP* culminating in an Order of termination stood set aside.

Hence, this Appeal.

On behalf of the Respondents/School-in-Issue, Mr. Baid, Learned Senior Counsel with Mrs. Lala, Learned Counsel, submits that the Order of the Hon'ble Supreme Court dated 3rd of January, 2023 permits the Respondent/School-in-Issue to re-initiate the earlier *DP*. The School has accordingly done so. The Appellants/Writ Petitioners are avoiding the second round of *DP* and therefore the School had to issue a notice of the proposed termination in continuation of the *DP*.

It is further submitted that the Hon'ble Single Bench had kept the point of maintainability of the Writ

Petition open considering the School, being a minority institution, enjoys autonomy of management. It is clarified that in the second round of the challenge to the *DP* the Management Rules pertaining to unaided Schools have been amended and the West Bengal Board of Secondary Education no longer enjoys powers of approval and/or disapproval of a *DP* initiated by an unaided School in respect of its employees.

Learned Senior Counsel next submits that the Order impugned of the Hon'ble Single Bench does not qualify to be a Judgement within the meaning of Clause 15 of the Letters Patent. The rights of the parties have not been determined by the Order impugned. Further, the Hon'ble Single Bench has left the issue of maintainability open. It is accordingly submitted that an intra-court appeal is not maintainable.

Mrs. Bhattacharyya, Learned Counsel appears for the West Bengal Board of Secondary Education, (for short, the Board) and reiterates the legal position flowing out of the amended of Management Rules. Learned Counsel points out that the Board no longer enjoys powers of approval and/or disapproval of *DP* pertaining to minority unaided institution.

Having heard the parties and considering the materials placed at this stage, this Court is of the view that having regard to the proceedings connected to the

second round of *DP* which from the records it transpires is identical to the first round of *DP* in respect of which the Orders of termination stood set aside right upto the Hon'ble Apex Court, the parties deserve to be put into the same position as they were prior to the initiation of WPA 7329 of 2023, till such time the Hon'ble Single Bench is in a position to consider the matter on merits, including the issue of maintainability.

Accordingly, it is directed that *status quo* as on date be maintained by the parties till further and/or appropriate Orders to be passed by the Hon'ble Single Bench.

Since affidavits are not called for, all allegations to the contrary are deemed to be denied.

MAT 663 of 2023 with **IA No. CAN 1 of 2023** stand thus **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.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)

Note: The Hon'ble Single Bench shall be of course free to decide the matter independently.