

156-157 18.12.2023
Sc Ct. no.22

WPA 27614 OF 2022
(Disposed of)
with
RVW 142 OF 2023

The Headmistress
being the Ex-Officio Secretary to the
Managing Committee of
Saidabad Maharaja Srish Chandra Balika Vidyalaya

Vs.

Minu Ahamed & Ors.

Mr. Anjan Bhattacharya
Ms. Anita Shaw.

....For the Petitioner

Mr. Rezaul Hossain
Mr. Parvez Hossain.

....For the Writ
Petitioner

RVW 142 OF 2023

This is a review application, seeking review of an order dated **May 1, 2023** passed by this Court.

Referring to the review application, for the review applicant Mr. Anjan Bhattacharya, learned advocate submits that, the writ petitioner has been alleged for defalcation of the school fund. He submits that, a police complaint has already been lodged against the writ petitioner. He also submits that the direction was upon the managing committee of the relevant school for considering the representation dated September 23, 2022 made on behalf of the writ petitioner through its learned advocate but the managing committee has already been superseded by the jurisdictional District Inspector of

Schools and an administrator has been appointed under a communication ***dated May 10, 2023*** issued by the School Education Department, Government of West Bengal. Hence, in absence of such managing committee in the school at present, the representation could not be dealt with and the charges against the petitioner was such that, the records of the petitioner could not be transmitted to the transferred school where the petitioner is presently teaching.

Mr. Rezaul Hossain, learned counsel for the writ petitioner opposing this review application refers to his affidavit-in-opposition and submits that, the writ petitioner was the Teacher-in-Charge for a period of eight months at the relevant school with effect from January 1, 2014. He submits that, during the time she was the Teacher-in-Charge of the relevant school, no money was utilised from the school fund. Therefore, the question of any defalcation against the petitioner cannot arise. The writ petitioner was released on transfer on ***February 10, 2021*** by the school, without any charges or objection. The school had released her without any objection. Referring to ***paragraph 14*** from the writ petition, learned counsel for the teacher submits that, her Provident Fund is also lying with the relevant school.

After considering the submissions made on behalf of the parties and upon perusal of the material on record,

first this Court proceeds to quote the relevant portion from the order dated **May 1, 2023** :

“The State respondents had not appeared. The school authority chose not to appear.

*To subserve justice, the letter of the learned for the petitioner dated **September 23, 2022** shall be treated as the representation of the petitioner and the Managing Committee of the relevant school shall decide the same by passing a reasoned order/decision in accordance with law.*

The entire exercise shall be carried out and completed by the Managing Committee of the relevant school positively within a period of four weeks from the date of communication of this order.

The Managing Committee shall then communicate its reasoned order/decision to the petitioner within a further period of two weeks from the date of the said reasoned order/decision to be passed.”

The order dated **May 1, 2023** of which the review has been sought for speaks that, neither the State respondent was represented, nor the school authority was represented who is the review applicant herein, when the order was passed.

To adjudicate a review proceeding the provisions as laid down under **Order XLVII of the Code of Civil Procedure, 1908 is the guiding factor**. Two principal grounds on which review can be done in the light of the said provision of Code of Civil Procedure. First, **if there is an error apparent on the face of record** and second, for the expression **any other sufficient reason** which, as settled in law includes, *inter alia*, that, despite diligence being shown by a party it has failed to disclose the material records on which the adjudication is dependent.

In the light of the said settled principle of law, this Court considering the submissions made on behalf of the review applicant, is of the considered view that, despite having opportunity, the relevant school was not represented on the day when the order was passed. Furthermore, the direction in the order of which review has been sought for, has not decided any right of the either of the parties. It was merely a direction for considering the representation of the petitioner and to decide the same by passing a reasoned order by the managing committee. So, it was always open to the managing committee of the school to decide the issue in accordance with law in whichever way the decision might go.

The review applicant submits that, an administrator has already been appointed by the School Education Department in accordance with law. The power and authority of the managing committee of the school has been taken over by it but one Smt. Smita Chaudhuri, being the present Headmistress who has affirmed the review application is the present secretary looking into the affair of the school along with the administrator.

In view of the foregoing reasons and observation, this court is of the considered view that, neither there is ***any error apparent on the face of record*** nor it was the case of the review applicant that, the review applicant

comes within the meaning and expression of ***any other sufficient reason*** as expressed under Order XLVII of the Code of Civil Procedure.

However, a question of friction of law has arisen because of the appointment of an administrator superseding the managing committee of the school.

In view of such legal friction to make the order operative, the order dated ***May 1, 2023*** stands modified only to the extent that wherever the expressions for considering the representation of the petitioner dated September 23, 2022 and to pass a reasoned order thereupon are there, the expression ***managing committee is replaced*** by the expression ***the administrator***, appointed by the School Education Department at the relevant school and he shall decide the issue in presence of Smt. Smita Chaudhuri, the present Headmistress of the school.

It is further clarified that, the time-frame for commencement and completion of the proceeding on the representation of the writ petitioner, as directed in the order dated May 1, 2023 stands extended for a further period of ***six weeks*** from date of communication of this order.

It is once again clarified that, the order dated ***May 1, 2023 stands modified*** only to the extent of the hearing authority who shall decide the representation of the writ petitioner and to the extent of the time-frame.

Rest of the order stands unaltered and without any modification.

On the above terms and with the above observations, this review application, ***RVW 142 of 2023*** stands disposed of, without any order as to costs.

(Aniruddha Roy, J.)