

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Aniruddha Roy

W.P.A. 15094 of 2018

Selina Afroza Begum
Vs.
The State of West Bengal

For the petitioner	:	Mr. Ekramul Bari Mr. Lutful Hoque Mr. Golam Karim Chowdhury
For the State	:	Mr. Supriyo Chattapadhyay Mr. Sabyasachi Mondal
For respondent No. 7		Mr. K. Mishra Mr. Uttam Kumar Bhattacharya
For respondent Nos. 3, 8 & 9		Ms. Saswati Chatterjee
Heard on	:	December 11, 2023
Judgment on :	:	December 11, 2023

Aniruddha Roy,J.

Facts:

1. This is the third round of writ litigation filed by the deceased Headmaster of the school and then after substitution now is being contested by the surviving widow of the deceased Headmaster. The widow henceforth shall be referred as the petitioner and the deceased school teacher being her husband henceforth shall be referred to as the original writ petitioner.

2. The original writ petitioner was the Headmaster at **Amgoria Gopalpur R.G.M. Institution**, then district Burdwan now Purba Burdwan (for short, the school). On the ground of defalcation of school fund, the school initiated disciplinary proceeding against the original writ petitioner and by a decision dated **February 2, 2006** the school suspended him.

3. The original writ petitioner being aggrieved with the said order of suspension dated **February 2, 2006** filed the first writ litigation being **W.P. 4844 (W) of 2006** (for short, the first writ petition). The said first writ petition was dismissed under an elaborate order dated **January 25, 2007, Annexure P-2** at **page 25** to the writ petition, passed by a co-ordinate bench.

4. The original writ petitioner being aggrieved thereby carried out an appeal being **MAT No. 808 of 2007 F.M.A. No. 2757 of 2007** (for short, the appeal). By an order dated **December 15, 2008, Annexure P-3** at **page 34** to the writ petition, the Hon'ble Division Bench without interfering with the finding on the fact by the co-ordinate bench had disposed of the appeal by granting an opportunity to the original writ petitioner to participate in the disciplinary proceeding by filing his reply to show cause issued upon him.

5. The original writ petitioner in the said first writ petition contended that, without giving any opportunity of showing cause, the order of suspension dated **February 2, 2006** was issued. His further case was that, the same was not issued in contemplation of any disciplinary proceedings. He alleged that, the suspension order was issued by the Managing Committee of the school in colourable exercise of its power

conferred on it under the provisions in **Rule 28 of the Management of Recognized Non-Government Institutions (Aided and un-Aided) Rules, 1969** (for short, 1969 Rules). It was further contended that, since the proceeding was not drawn within 90 days from the date of suspension, in view of operation of the provisions under **Rule 28 of the 1969 Rules**, order of suspension must be deemed to have been stood automatically withdrawn.

6. By filing affidavit-in-opposition and a supplementary opposition the school authority stated that, the decision to suspend the original writ petitioner was taken in the meeting held on **February 1, 2006**, since he had not been responding to the allegations made in the charge sheet sent to him previously. It was noted in the said resolution dated **February 1, 2006** that, the original writ petitioner had refused to receive the registered letter containing the charge sheet. The Managing Committee decided to suspend the original writ petitioner in the interest of the institute. It was apparent on the face of the resolution that, the school had decided to enquire into the allegations labelled in the charge sheet. The school authority further contended through its affidavit-in-opposition filed in the first writ petition that, the charge sheet was sent to the original writ petitioner on more than one occasion, namely, it was sent on **January 18, 2006** and again on **February 4, 2006**. The envelop of registered **letter No. 4062 dated January 18, 2006** was produced before the co-ordinate bench and the charge sheet that was sent to the petitioner had come out of it. That letter was returned to the School authority with the postal endorsement that, the

original writ petitioner had refused to receive it. Before the co-ordinate bench all these facts had assumed significance because of the contention that, since the school did not draw up the proceeding within 90 days, the original writ petitioner challenged the same that, the order of suspension stood automatically withdrawn.

7. In the light of the above facts, as would be evident from the said order dated **January 25, 2007** passed in the first writ petition, the contention of the petitioner raised before it against the school authority that, the charge sheet was not served upon the petitioner was negated. It was held that, the decision to suspend was taken in the context of the refusal of the original writ petitioner to receive the charge sheet sent to him by registered post. The co-ordinate bench had also held that, on repeated occasions though the charge sheet was sent to the petitioner by the school authority was refused to be received by the original writ petitioner. Accordingly, the co-ordinate bench held that, the order of suspension was passed in accordance with law after issuing the charge sheet. Resultantly, the co-ordinate bench upheld the suspension of the original writ petitioner and dismissed the first writ petition directing to expedite the disciplinary proceeding with a specific direction upon the school authority to grant every opportunity of natural justice to the writ petitioner while conducting the disciplinary proceeding against him.

8. In the appeal carried out by the original writ petitioner it would be evident from the order dated **December 15, 2008** that, the Hon'ble

Division Bench did not interfere with the factual finding of the co-ordinate bench but ultimately directed to the school authority to proceed afresh by giving one more opportunity to the petitioner and the petitioner was granted liberty to file its reply to show cause within a specific time frame. The school authority was directed to pass appropriate order subject to the approval of the Board, respondent No. 3 (for short, the Board). The school authority was also granted liberty to appoint an Enquiry Officer.

9. Pursuant to the direction and in terms of the said liberty granted by the Hon'ble Division Bench the original writ petitioner filed its reply to the charge sheet dated **January 8, 2009, Annexure P-4** at **page 41** to the writ petition. The detailed enquiry report was also sent by the school authority to the original writ petitioner under a forwarding letter dated **April 6, 2009, Annexure P-5** at **page 43** to the writ petition and the same was duly accepted by the original writ petitioner and was disclosed in this writ petition at **pages 44 to 92** to the writ petition part of **Annexure P-5**.

10. On the basis of the said enquiry report sent to the Board, the Board by its communication dated **July 12, 2008, Annexure P-6** at **page 132** to the writ petition, sent the proposal for approval of suspension against the original writ petitioner to the school. The Board also sent to the school the proposal for approval of dismissal (second stage of disciplinary proceeding) against the original writ petitioner dated **August 12, 2010, Annexure P-7** at **page 134** to the writ petition. Following the said approval the school in its Managing Committee meeting held on **April 16, 2010**

decided to dismiss the original writ petitioner from his service and a dismissal decision dated **April 17, 2010, Annexure P-8** at **page 135** to the writ petition was served upon the original writ petitioner under the relevant **memo No. 16 of 2010 dated April 17, 2010**. By a communication dated **August 26, 2009** the proposal for approval for disciplinary proceeding (second stage) against the original writ petitioner was sent by the Board to the school at **pages 136 and 137** to the writ petition.

11. Being aggrieved with the said decision for dismissal of the original writ petitioner taken by the school, the original writ petitioner has preferred an appeal before the Appellate Committee of the Board from the decision of the Board dated **July 7, 2014, Annexure P-9** at **page 138** to the writ petition. The appeal was registered before the Appellate Committee as **Appeal No. 9 of 2011**. The appeal was heard on **June 30, 2014** and the order of dismissal of the petitioner was affirmed and upheld by the Appellate Committee by its order dated **July 7, 2014**, which is impugned in this writ petition.

12. Meanwhile, challenging the decision of dismissal during pendency of the said **Appeal No.9 of 2011** before the Appellate Committee, the original writ petitioner filed the second round of writ litigation being **WP No. 4521(W) of 2011**. The original writ petitioner did not press the same and a Co-ordinate Bench by its order dated **September 24, 2013** dismissed the writ petition as not pressed on the basis of the prayer made by the original writ petitioner.

13. The reliefs claimed in the instant third round of writ litigation (for short, the third writ petition) are quoted below:-

“a) Writ in the nature of Mandamus commanding the respondents to rescind and cancel the order of disciplinary authority of board dated 12.03.2010 and also the appellate authority of board dated 07.07.2014 and to treat the petitioner as in the service and to extend all benefits to the petitioner including arrear salary and reinstatement in service as a Headmaster to Amgoria Gopalpur RGM Institution.

b) Writ in the nature of Certiorari commanding the respondents to produce before this Hon’ble Court all records relating to the present case and upon perusal of records conscionable justice may be rendered to the petitioner by issuing appropriate writ order or orders.

c) Rule in terms of prayer ‘a’ and ‘b’ above.

d) Interim order restraining the respondents from giving any effect or further effect to the order of dismissal passed by the disciplinary authority as was approved by the board and also the order of the appellate authority dated 07.07.2014 and to reinstate the petitioner in service.

e) Such other or further order or orders as to this Hon’ble Court deem fit and proper.”

14. The order of the appellate authority was passed on **July 7, 2014** and that of the disciplinary authority was passed on **March 12, 2010**, however, the instant writ petition was filed on or about **August 9, 2018**.

15. Since filing of the writ petition, several orders were passed but there was no direction for filing and exchange of affidavits.

16. During pendency of the instant writ petition, the original writ petitioner passed away on **July 1, 2021**. The widow filed an application for substitution being **CAN 3 of 2022** seeking to be impleaded as the substituted petitioner. By an order dated **September 30, 2022** passed by a Co-ordinate Bench, the said substitution application being **CAN 3 of 2022** was allowed and the widow was impleaded as the substituted writ petitioner in place and stead of the said original writ petitioner. Today, the widow has pursued the writ petition for final disposal.

17. Considering the long pendency of the writ petition and considering the fact that materials relevant for adjudication of the instant writ petition being on record, this Court finds that no useful purpose shall be served by keeping this writ petition pending any further and accordingly has taken up the same for its final disposal.

Submissions:

18. Mr. Ekramul Bari, learned Counsel appearing for the petitioner while arguing the writ petition has raised the following points, on which he has argued the writ petition on merit:

- (i) The approval of suspension order issued by the Board was not there at all and in absence of such an approval which is a statutory requirement, the suspension was bad;
- (ii) The proposal for dismissal of the original writ petitioner from his employment at the second stage of the disciplinary proceeding was without reason as regards approval for such proposal for dismissal;
- (iii) Referring to the communication of the Board dated **August 26, 2009 at page-136** to the writ petition, the point was raised that the Board had asked the school to clarify whether the show-cause notice was served upon the petitioner or not, there was no clarification furnish by from the school and the Appeal Committee of the Board while affirming the order of dismissal failed to decide the issue and,
- (iv) The Appeal Committee had erred in approving the second stage of disciplinary proceeding without furnishing any reason, as such the approval was bad in law.

19. Mr. Bari referring to the final order of approval of dismissal of the original writ petitioner by the appeal committee, which is impugned in the writ petition dated **July 7, 2014** submits that, on the face of it. It would

be demonstrated that, the appeal committee has failed to ascribe any reason whatsoever in support of its finding. He submits that, the entire disciplinary proceeding was conducted ex parte as against the petitioner and the petitioner did not get any opportunity of hearing to place its defence. He submits that in absence of any approval for the second stage of disciplinary proceeding, the entire proceeding against the petitioner stood vitiated in law.

20. Mr. Bari then submits that while conducting a disciplinary proceeding against a delinquent, it is the bounden duty and the obligation of the authority conducting such proceeding that at every stage whenever any decision is taken against the delinquent, such decision must be supported with reasons so that the delinquent can understand as to the application of mind of the authority and on what score the decision of the authority has gone against him.

21. In support, the learned counsel for the petitioner has relied upon two decisions of Co-ordinate Benches of this Court, which are:

(i) Sri Maya Shankar Jha –vs- The State of West Bengal & Ors. reported at 2009 SCC Online Cal 1717; (2009) 4 Cal LT 572; (2010) 1 Cal LJ 107.

(ii) Mamata Banerjee (Chatterjee) –vs- The State of West Bengal & ors. reported at (2010) 4 CHN 800 (Cal):

22. Learned counsel further submits that even if the entire proceeding has gone ex parte against the original writ petitioner, the said

1969 Rule should have been followed in so far as the disciplinary proceeding was concerned against the original writ petitioner.

23. Mr. Uttam Bhattacharyya, learned counsel, appears for the respondent no.7/the School Authority referring to the said order of the Co-ordinate Bench dated **January 25, 2007** submits that, the contention of the writ petitioner that the proceeding was initiated and proceeded against the original writ petitioner ex parte is totally baseless, frivolous and untenable. He submits that, all the facts recorded in the said order dated **January 25, 2007** would show that at every stage repeated attempts were made with all *bona fide* by the School authority to serve notice/show cause notice/charge-sheet upon the original writ petitioner following the due process of law and the original writ petitioner at every stage on repeated occasions refused to accept those. Referring to the said order of the Hon'ble Division Bench dated December 15, 2008, he submits that the factual finding of the Co-ordinate Bench were not at all interfered with by the Hon'ble Division Bench, save and except the conclusion arrived at by the Co-ordinate Bench was modified to the extent that by granting an opportunity to the original writ petitioner to defend disciplinary proceeding and the proceeding was expedited. Referring to the various portions from the enquiry report being **annexure p-5** starts at **page-43** to the writ petition, he submits that all the relevant materials were placed before the enquiry officer/enquiry committee, and the enquiry committee after carrying out a detailed fact finding enquiry on the basis of such relevant materials, came to its conclusion on the charges against the petitioner and

prepared its report. At least on three occasions, the original writ petitioner was granted opportunity to defend the disciplinary proceeding but he chose not to do so.

24. Though not part of the record, Mr. Bhattacharyya submits that by a **Memo. bearing No. 24-11/C dated February 28, 2008**, the approval for suspension of the original writ petitioner was granted by the Board. Similarly, he submits that the Managing Committee of the school by its resolution dated **August 18, 2009** adopted a resolution showing that the second show-cause notice for dismissal was also issued to the original writ petitioner and was received by him on **September 1, 2009**.

25. Learned counsel for the school submits that, the entire disciplinary proceeding was undertaken in strict compliance of the **1969 Rules** and there was no infirmity in it. Learned counsel further submits that, the allegations/charges against the petitioner for defalcation of school fund, which itself is very serious in nature, the school authority took all the measures in accordance with law to proceed against him and ultimately the decision of dismissal was ratified by the Board and affirmed by the appeal committee.

26. Learned counsel for the school referring to the impugned order passed by the appeal committee submits that, sufficient reasons are there and the reasons are also in conformity with the Inquiry report submitted by the inquiry authority, as referred to above. He submits that, there is no

merit in the writ petition and, as such, the same should be dismissed and the order of the appeal committee should be affirmed.

27. Ms. Saswati Chatterjee, learned advocate appearing for the respondent nos.3, 8 and 9 adopted the submission of Mr. Uttam Bhattacharya, appeared for the school in entirety. She also submits that, the Board has proceeded in compliance with the relevant provisions of law and sufficient reasons are there in the impugned order passed by the appeal committee as would be evident on the face of it. She submits that, there is no perversity in the impugned order passed by the appeal committee.

28. Mr. Supriyo Chattopadhyay, learned Additional Government Pleader has also adopted the entire submissions made by Mr. Uttam Bhattacharya, learned counsel for the school. He further submits that, in the facts of this case, the writ petition as stands today by the widow of the original writ petitioner, is also not maintainable as the relief claimed by the original writ petitioner in the writ petition cannot be granted to the widow.

Decision :

29. After considering the rival contentions of the parties and upon perusing the materials on record, this Court first proceeds to deal with the ***maintainability issue*** raised by the learned Additional Government Pleader.

30. Considering ***prayer (a)*** to the writ petition it appears to this Court that, there are two parts. The ***first part*** claims cancellation of the ***orders*** of the disciplinary authority of the Board dated ***March 12, 2010*** and

the appeal committee of the Board dated **July 7, 2014**. On harmonious and conjunctive reading of those two, it would show that, the original writ petitioner had prayed for cancellation of the decision for dismissal from service of the original writ petitioner. The **second part** of the relief claimed by the original writ petitioner was to treat him as an '**in service candidate**' with all arrear payment and reinstatement in service. Since the original petitioner has died, the second part has become automatically redundant and no relief can be granted thereupon. The monetary claim, if the first part succeeds, can be granted to the widow being the substituted petitioner. If the substituted petitioner being the widow succeeds insofar as the first part of the relief is concerned to have the order of dismissal of the original petitioner cancelled, then consequently, as a legal heir, she would have a right to claim on the employment benefits of the original writ petitioner. Therefore, after segregation of the reliefs claimed in **prayer 'a'** to the writ petition, which consists of two parts, this writ petition survives insofar the **first part** is concerned, as referred to above. Accordingly, this Court is of the considered view that, this writ petition is maintainable at the behest of the widow insofar as the **first part of prayer 'a'** is concerned. Thus, the point of **maintainability** raised by the State **stands overruled and rejected**.

31. While considering this writ petition on the available materials on record it appears to this Court that, the factual finding in the said order of the coordinate Bench dated January 25, 2007 was not at all interfered with by the Division Bench in its said order dated December 15, 2008. The

factual finding made by the coordinate Bench in its said order dated January 25, 2007 also stood corroborated with the inquiry report of the inquiry committee being **Annexure-P5** to the writ petition. Despite repeated opportunities being granted, the original writ petitioner chose not to defend the disciplinary proceeding at any stage save and except by filing the reply dated January 8, 2009, **Annexure-P4** to the writ petition pursuant to the liberty granted by the Hon'ble Division Bench. Even thereafter, repeated notices though sought to be served upon the petitioner for the second stage of disciplinary proceeding, the materials on record depict that, the original writ petitioner refused to accept such notices and, as such, refused to defend himself in the disciplinary proceeding. In **paragraph 21** to the writ petition the original writ petitioner had contended as follows :

“21. An order of the Appellate Authority or the disciplinary authority both suffers from non application of mind and also the same is perverse. The order of Appellate Authority did not consider that the allegation leveled against the petitioner is vague and baseless and there is no cogent evidence to prove the alleged charges leveled against the petitioner. The Appellate Authority or the disciplinary authority of the board did not consider that the enquiry committed proceeded arbitrarily and illegally ex parte against the petitioner without giving any opportunity of hearing to the petitioner and allegation of commission of offence of defalcation suffers from non application of judicial mind. The Board did not consider the life of the petitioner since was at stake and since no protection was

afforded to the petitioner as to his security the petitioner was duly prevented from participating in the disciplinary proceeding. Copy of the Appellate Authority order is annexed hereto and marked P/9.”

32. On perusal of the said **averments** from the writ petition it appears that, for the first time in this writ petition this contention was raised by the original writ petitioner, that too, without disclosing any materials in support thereof.

33. On a close scrutiny of the **grounds** mentioned in the writ petition, it appears to this Court that, the principal challenges enumerated in the writ petition was that, the disciplinary proceeding was conducted *ex parte* against the original petitioner without granting an opportunity of hearing to him. The order of the disciplinary authority, as also approval by the Board, was cryptic and perverse and the decision of dismissal was taken without considering the charges brought against the original petitioner and without being proved. The allegations against the petitioner were vague and cryptic. The petitioner was never served with the report and the finding of the inquiry officer in order to give reply to the second show cause notice.

34. The inquiry report shows the clear application of mind by the inquiry officer who had applied his mind upon each and every material before him and then came to the conclusion, as mentioned in the inquiry report. The original petitioner despite having opportunity to defend himself, chose not to do the same and failed to defend ultimately.

35. The documents being **Annexure-P7** and **Annexure-P8** to the writ petition clearly show that, the relevant authorities upon careful consideration of the documents resolved the proposal for approval of dismissal (second stage of disciplinary proceeding) against the petitioner. The materials found in the inquiry report would also justify such conclusion of the relevant authorities, both the Board and the school. Insofar as, the document at **page 136** to the writ petition is concerned, the inquiry report shows that, the show cause notice was served and the second show cause notice was also served for dismissal upon the original petitioner.

36. The relevant observation of the appeal committee of the Board is quoted below :

“But, being aggrieved by the aforesaid order the appellant filed FMA No.2757/2007 before the Hon’ble Division Bench of the Hon’ble High Court, Calcutta, and the Hon’ble Division Bench by judgment dated 15.12.2008 directed the Board to act upon the enquiry report submitted by the school authority and the school authority was further directed to proceed afresh by giving one more opportunity to appellant who was also giving liberty for showing cause and to present his case before the disciplinary authority. There was an enquiry by the disciplinary authority and ultimately The West Bengal Board of Secondary Education was pleased to approve the proposal for approval of dismissal

(2nd stage of disciplinary proceedings) against Sri Malek Rahaman, the Headmaster of the school as well as the appellant of this appeal vide memo no.24/58/C dated 12.03.2010. There after the appellant presented this appeal no.09/2011. During pendency of this appeal Malek Rahaman again preferred a Writ Petition being W.P. No.4521 (W) of 2011 but appellant prayed for dismissal of the said Writ Petition and the Hon'ble High Court was pleased to dismiss the said petition as it was not pressed vide order dated 24.09.2013. This is the backdrop of present appeal.

Heard the appellant himself and the Ld. Advocate representing the school authority and perused the judgment of Hon'ble High Court and all other documents in the case record. It appears from the report of the enquiry committee that several charges including the charge of defalcation of money from the school fund were proved depending upon the evidence and documents against the appellant. I find from the enquiry report that the suspended Headmaster was not present for days after days before the enquiry committee and the enquiry committee rightly was compelled to take ex parte decision in the departmental proceeding also. The enquiry committee also found that most of the

vital charges including the charge of defalcation of school fund was proved against the appellant and the West Bengal Board of Secondary Education vide there memo no.24/58/C dated 12.03.2010 approved the proposal for approval of dismissal (2nd stage of D.P.) against the appellant.

It appears from the letter under memo no.944(8) dated 23.08.2011 issued by the District Inspector of Schools, Burdwan, to the Officer-in-Charge, Ketugram Police Station under district of Burdwan that the appellant after dismissal of service forcibly entered in the school compound and trying to act as Headmaster of the school forcefully and creating horrible situation even. The appellant tried to make this Appellate Court to understand that he already joined in the school again. But including the pending criminal case (G.R. Case No.57/2006 in the court of Ld. A.C.J.M., Katwa) and the charge sheet there in after police investigation u/s. 147/148/149/379/420/504/506 /406 I.P.C., I find no reason to hold that the forcible entry of the appellant into school office after dismissal of service can be treated his joining in the school lawfully.

Under the above circumstances, I find no merit in this present appeal.

Hence ordered –

That the appeal no.9/2011 is dismissed on contest against the respondent. I make no order as to costs.”

37. Upon careful scrutiny of the said impugned order, passed by the appeal committee of the Board and on a harmonious consideration thereof, on the face of it, it appears that, the appeal committee after due consideration of all the materials before it had ascribed its reasons to reach at the conclusion affirming the order of dismissal of the original petitioner.

38. Therefore, there is no infirmity in the decision making process of the appeal committee of the Board.

39. Inasmuch as, since the dispute is being adjudicated upon before a Writ Court which is also a court of equity, the Writ Court must consider the conduct of the original petitioner being the delinquent in the facts and situation of this case. The original petitioner chose not to defend the disciplinary proceeding as would be evident from the materials on record through out, save and except filing the reply pursuant to the liberty granted by the Division Bench. Even thereafter, the petitioner chose not to defend the disciplinary proceeding despite repeated notices. The order impugned was passed by the appeal committee of the Board on **July 7, 2014** and the writ petition was filed in **August 2018**. The petitioner allowed at least about four years to pass. Therefore, no equity could be exercised in favour of the original writ petitioner in the facts of this case, consequently such equity

cannot be exercised in favour of the present petitioner who was substituted in place and stead of the original writ petitioner.

40. After the death of the original writ petitioner there is no scope to start the proceeding de novo as because, even if, a further opportunity could have been granted to the original writ petitioner during his lifetime to defend the disciplinary proceeding, the same cannot be granted at this stage. The charges cannot be reassessed any further after the demise of the original writ petitioner. The law is settled that if the delinquent chose on repeated occasions despite valid notice, not to appear and defend the disciplinary proceeding, it would be open for the authority to proceed with such disciplinary proceeding without any fetter on the basis of the available materials. The charges shall be assessed and examined accordingly. This exactly had happened in the instant case and the charges were assessed, examined and ultimately resulted against the original writ petitioner. The charges were equally grievous.

41. In the matter of: Sri. Maya Shankar Jha (supra) the Coordinate Bench had observed as under:

“8. Even though the Board while passing order at the first stage may simply approve the decision of the Managing Committee, it cannot in the process avoid the duty of assigning some reason in support of the action proposed to be taken by the Managing Committee of the school. That an order of affirmation is required to be supported by some reason is settled law. Reference in this connection may be made to the decision of the Apex Court in Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney reported in (2009) 4 SCC 240. Paragraphs 5 and 7 of the decision being relevant are extended below:

“51. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact the said decision in Prabhu Dayal Grover case has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

7. In the present case, since the appellate authority's order does; not contain any reasons, it does not show any application of mind.”

9. *In the present case application of mind by the section 24 Committee is not reflected at all.*

10. *Mr. Bose, learned counsel appearing for the Board, has very fairly submitted that the Board is agreeable to re-consider the issue and pass a fresh reasoned order.*

11. *The impugned communication dated 9.6.2009 containing the decision of the section 24 Committee stands set aside. The said Committee shall not re-consider the issue of approval strictly in accordance with law”.*

42. In the matter of: Sri. Maya Shankar Jha (supra) the Assistant Teacher himself was the writ petitioner who pursued the writ petition whereas in the instant case the widow of the deceased teacher after being substituted has pursued the writ petition. The law is well settled that an order of affirmation need not contain as elaborate reason as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. The appellate order should disclose application of mind. Whether there was an application of mind or not can only be seen from the reasons, the same may be in brief, mentioned in the

order of the appellate authority but the order of affirmation need not contain any reason is not the law. In the light of the said settled principles of law, upon scrutiny of the impugned order dated July 07, 2014 passed by the appeal committee of the board, it appears that, in support of the finding of the appeal committee, the finding of facts was duly noticed from the enquiry report prepared in the enquiry proceeding which was avoided by the original writ petitioner. The finding of the enquiry committee on the basis of the available material stood and crystallized as uncontroverted since the original writ petitioner chose not to defend himself in the enquiry proceeding and voluntarily allowed it to proceed. As such the conclusion was arrived at by the enquiry committee. Moreover, the decision of the Coordinate Bench dated January 25, 2007 after accepting the factual finding of the enquiry report had passed the order and such factual finding was not interfered with by the Hon'ble Division Bench. This clearly shows that there was a clear application of mind by the appeal committee of the board while passing the impugned order dated July 07, 2014. Moreover ***In the matter of: Sri. Maya Shankar Jha (supra)*** learned counsel appearing for the board was agreeable to reconsider the issue and pass a fresh reasoned order. Hence, the ratio decided ***In the matter of: Sri. Maya Shankar Jha (supra)*** is not applicable in the facts and circumstances of the instant case.

43. *In the matter of: Mamata Banerjee (Chatterjee) (supra)* the teacher herself was the writ petitioner who pursued the writ petition. There

the learned counsel for the school conceded that the school was confused consequent to the board's letter approving the decision of the managing committee to initiate disciplinary proceeding against the petitioner for it felt that the same amounted to grant to approval of the first stage. No presenting officer was appointed in the enquiry proceeding. The enquiry proceeding did not record the questions posed by the enquiry officer to the members of the managing committee, guardians of the students and others who appeared before him as witness. The proceedings recorded in the register which was produced before the coordinate bench, did further seem to suggest that the witness was either inimical towards the petitioner or tutored or gave vent to their ill feelings against the teacher concern in a manner towards which only people wreaking vengeance would seem to do. In the instant case, the enquiry report would reveal that the same was prepared and submitted by the enquiry officer upon detail consideration of all the relevant materials. Despite repeated opportunities granted to the original writ petitioner, he chose not to defend the enquiry proceeding. He allowed the enquiry proceeding to be proceeded with ex parte. Pursuant to the liberty granted by the Hon'ble Division Bench the original writ petitioner filed its reply to show cause but then again he chose not to defend the disciplinary proceeding. No contemporaneous objection was raised as to the any alleged infirmities while conducting the disciplinary proceeding. In the meantime the original petitioner died and his widow has pursued the writ petition after being substituted. All the factual disputes raised against the

original petitioner cannot be again gone into or enquired into in absence of the original petitioner for corroboration or not. The charge against the original petitioner who was a teacher was heinous and the same was proved before the enquiry officer. Referring to a particular **Memo bearing no. 24-11/C dated February 28, 2008**, the learned counsel for the school submitted that, the approval for suspension of the original writ petitioner was duly granted by the board. Similarly referring to a resolution of the managing committee dated **August 18, 2009**, he submitted that the second show cause notice for dismissal was also issued upon the original writ petitioner and was received by him on September 01, 2009.

44. In view the law settled as discussed above, for providing reason by the appellate authority, it appears from the impugned order passed by the appeal committee of the board that sufficient reason was there on the basis of the finding made by the enquiry committee in the enquiry report, which remained uncontroverted by the original writ petitioner. Hence, the ratio decided by the coordinate bench ***In the matter of: Mamata Banerjee (Chatterjee) (supra)*** is of no assistance to the writ petitioner and would not apply in the fact situation of this case.

45. The law is also settled that the ratio of a particular judgment has to be understood and read in the particular fact situation in which the judgment is delivered. Applying the said principles, this Court is of the considered view that, the ratio of the either of the judgments relied upon by the learned counsel for the petitioner would not apply in the set of facts in

the instant case.

46. On the overall assessment of the fact situation in the instant case, this Court is of the considered view that, the disciplinary proceeding against the original writ petitioner in any event could not be reopened or revisited and cannot be interfered with, more so the original writ petitioner himself chose not to defend the disciplinary proceeding all along.

47. In view of the foregoing discussions and reasons, this Court is of the considered view that there is no reason to interfere with the said impugned order dated **July 07, 2014** passed by the **appeal committee** of the board and the same **stands affirmed**.

48. If there is any due lying with the State authorities and/or the school authorities payable to the original writ petitioner on account of his suspension, the same shall be released forthwith in accordance with law to the writ petitioner herein being the widow of the original writ petitioner after causing the necessary calculation in this regard and all authorities must and shall take steps to release and pay the amount, if any, found to be payable in accordance with law to the widow, if not paid already, on account of his deceased husband's employment during his suspension and the same shall be paid and released to the widow, if not paid already, positively within a period of **six weeks** from the date of communication of this order upon production of all relevant documents and records before the appropriate authority and upon compliance of all the required formalities in law.

49. In view of the above, this Court is of the firm view that, this writ petition is devoid of any merit and should be dismissed.

50. Accordingly, this writ petition **WPA 15094 of 2018** stands ***dismissed***, without any order as to costs.

51. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)