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**FMA 1282 of 2022**  
with  
**I.A No. CAN 1 of 2022**  
  
**Md. Ashique Ikbal Mandal**  
**Vs.**  
**The State of West Bengal & Anr.**  
  
with  
  
**MAT 1381 of 2022**  
with  
**I.A No. CAN 1 of 2022**  
**CAN 2 of 2022**  
  
**Md. Ashique Ikbal Mandal**  
**Vs.**  
**The State of West Bengal & Anr.**

Mr. Sudipta Dasgupta  
Mr. Arkadeb Biswas  
Ms. Dipa Acharyya  
Mr. Sutirtha Nayak  
... For the Appellant in  
both the appeals  
  
Mr. Ananda Gopal Mukherjee  
... For the Private Respondent in  
both the appeals  
  
Mr. Jayanta Samanta  
Mr. Kushal Biswas  
... For the State in  
both the appeals  
  
Mr. Koyeli Bhattacharyya  
... For WBBSE

**Re: CAN 1 of 2022**  
**in**  
**MAT 1381 of 2022**  
**(Condonation of Delay)**

1. There is a delay of 88 days in presenting the memorandum of appeal.
2. We are satisfied with the explanation offered for not being able to file the

memorandum of appeal within the statutory period, we are inclined to condone the delay in presenting the memorandum of appeal.

3. The application for condonation of delay is, thus, allowed without any order as to costs.

4. CAN 1 of 2022 is thus disposed of.

**Re: FMA 1282 of 2022  
&  
MAT 1381 of 2022**

1. We have heard the learned counsel appearing for the parties.

2. By consent of the parties both the appeals and the applications are taken up together and dispose of by this common order.

3. The petitioner is a Headmaster of a Government aided recognized secondary school. He was initially suspended by the disciplinary authority of the Board in terms of the relevant provision of the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teacher and Non-teaching Staff) Rules, 2018 (hereinafter referred to as the "said Rules of 2018") communicated vide memo dated 30<sup>th</sup> December, 2019. Pursuant thereto charge-sheet was issued on 5<sup>th</sup> September, 2020 by the disciplinary authority of the Board for initiation of the proceeding against the petitioner.

This was challenged by the writ petitioner by filing a writ petition being WPA 2480 of 2020 in which Justice Saraf had passed an order on 8<sup>th</sup> March 2021 by which the charge-sheet was quashed on the ground that the said charge-sheet was issued without adhering to Rule 5(2) of the said Rules of 2018. Thereafter, the disciplinary proceeding was initiated by curing defects. The writ petitioner this time challenged the order of continuation of the suspension order as the appellant was of the view that once the charge-sheet was quashed and a fresh order of suspension was not issued within a period of three months, the issuance of suspension order is bad. In any event, the Board has not issued the order of suspension in respect of the writ petitioner/appellant.

4. Learned Single Judge dismissed the second writ petition on the ground that it was barred by constructive res judicata as in the earlier writ petition it was open for the appellant to take this very point and Justice Saraf having not interfered with the order of suspension, the second writ petition challenging the order of suspension is not maintainable. Moreover, the learned Single Judge has also taken into

consideration the earlier proceedings. The coordinate bench while setting aside the charge-sheet granted liberty to the Board to proceed afresh with the Rules 2018. Similar arguments made in the appeal with regard to the Clause in the order of suspension.

5. It is submitted that in view of quashing of the charge-sheet the earlier order of suspension was invalid, unless there is a fresh order of suspension by the by the Board. We are unable to accept the said submission, as the order of suspension was passed in contemplation of the disciplinary proceeding and there was a technical defect for which the earlier charge-sheet was quashed without interfering with the order of suspension. The order of suspension still remains. The disciplinary proceeding was resurrected by issuing a show-cause notice in accordance with Rule5(2) of the said Rules 2018 and thereafter the explanation offered being found unsatisfactory and an enquiry officer was appointed, under such circumstances, we do not find any reason to interfere with the orders under challenge in this appeal.

6. On such consideration, both the appeals fail. However, we direct the enquiry officer to

conclude the proceeding within a period of six months from the date of communication of this order by either of the parties without granting any adjournment to either of the parties. It is needless to mention that an opportunity should be given to the appellant to prove his innocence. The enquiry officer shall not adjourn the proceeding unless there is compelling reason. The enquiry officer shall prepare a schedule of dates in advance, so that the parties are well informed about the dates when they are supposed to appear in the enquiry proceeding.

7. In view of the aforesaid order the appeal being FMA 1282 of 2022 and MAT 1381 of 2022 stand dismissed.

8. In view of dismissal of both the appeals CAN 1 of 2022 in connection with FMA 1282 of 2022 and CAN 2 of 2022 in connection with MAT 1381 of 2022 are also dismissed.

9. However, there shall be no order as to costs.

10. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

