

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

FMA No. 303 Of 2022

With

CAN 1 of 2022

Nitai Mondal

-Versus-

State of West Bengal & Ors.

For the Appellant : **Mr. Indranil Roy,**
Mr. Sunit Kumar Roy.

For the State : **Mr. Biswabrata Basu Mallick,**
Mr. Sanjib Das.

For the WBBSE : **Ms. Koyeli Bhattacharyya.**

Hearing Concluded on : **14.07.2024**

Delivered on : **20.09.2024**

Prasenjit Biswas, J:-

1. The order passed by the learned Single Bench dated 02.12.2021 is assailed in this appeal. By passing the impugned order the Board was directed to take further steps after considering the charge sheet and reply thereto and after giving opportunity of being heard to the school, D.I. of schools and the writ petitioner.

2. A disciplinary proceeding was initiated against this appellant by the Managing Committee of the School and charge sheet/ Managing Committee Resolutions dated 22.01.2016 was filed under the Rules for Management of Recognized Non-Government Institutions (Aided and Unaided) 1969. The appellant challenged the said charge sheet and the enquiry report submitted by the enquiry officer on the ground that it suffers from irregularity since the same has been filed by the defunct Managing Committee constituted under the Rules for Management of Recognized Non-Government Institutions (Aided and Unaided) 1969.

3. Learned Counsel appearing on behalf of the appellant submitted that under the Management Rules of 1969 the Managing Committee of the school is the Disciplinary Authority and the Board of Secondary Education is the approving authority in respect of first stage and second stage of the disciplinary proceeding. So, direction given upon the Board to take further steps after considering the charge sheet and reply thereto is not permissible under the Law. As per submission of the learned counsel the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching staff) Rules, 2018 has no manner of application in the present case.

4. Rule 28(8) of the Management of Recognized Non-Government Institutions (Aided and Unaided) Rules, 1969 provides as follows-.....

""28. Powers of Committee -.....

28(1).....

28(2).....

28(3).....

28(4).....

28(5).....

28(6).....

28(7).....

28(8) Both in aided and un-aided Institutions the Committee shall have the power, subject to the prior approval of the Board, to remove, or dismiss permanent or temporary teachers and other employees. For this purpose the Committee shall first draw up formal proceedings and issue charge-sheet to the teacher or the employee concerned, and offer him reasonable facility for defending himself. The teacher or the employee proposed to be proceeded against shall submit his explanation, ordinarily, within a fortnight of the receipt of the charge-sheet, explanations submitted by the teacher or the employee concerned and the reasons for which the Committee decides in favour of taking disciplinary action. If the Board considers that there are sufficient grounds for taking disciplinary action the Committee shall issue formal notice calling upon the teacher or the employee considered to show-cause, ordinarily within a fortnight, why he should not be dismissed or removed from service. The Committee shall, then, send again to the Board all relevant papers including the explanation submitted by the teacher or the employee concerned and the recommendations of the

committee for the action proposed to be taken. So far as the Committee is concerned, the decision of the Board shall be final: Provided that the Board may delegate to any Committee constituted under section 24 of the Act the powers and functions conferred on the Board by this sub-rule.”

5. Under the said Rule the Managing Committee had the power to remove or dismiss permanent or temporary teachers and other employees subject to the prior approval of the Board. The entire mechanism has been provided in the Rule.

6. The West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching staff) Rules, 2018 was published by the State Government on 18.03.2018. On the same date another Notification being No. 216-SE was made containing amendments to the Management of Recognized Non-Government Institutions (Aided and Unaided) Rules, 1969. By the said notification Rule 28(8) was omitted and in its place Rule 28A and 28B came to be introduced. As per submission of the learned counsel of the appellant that by notification no. 216-SE dated 18.03.2018 the proceeding instituted under Rule 28(8) of 1969 Rule has become ineffective and the disciplinary proceeding instituted prior to the notification has become infructuous.

7. Reliance has been placed by the learned counsel upon a decision rendered by a Coordinate Bench of this court in case of **Ashish Kumar Tiwari vs the State of West Bengal** (with **Sushil Kumar Rai vs the State of West Bengal**) wherein the Bench held that the powers of the Managing Committee and Board qua disciplinary proceedings as existing under Rule 28(8) of the 1969 Act prior to the notification dated 08.03.2018 must be holistically construed.

8. It is profitable to quote the observation made by the learned Coordinate Bench at paragraph 12 which says as follows-

“12. From the understanding of the law laid down earlier this Court is of the view that with the omission of the Rules in a Statute the proceedings initiated in accordance with the Rules prevalent then becomes ineffective or infructuous.

It is trite that the powers of the Managing Committee and Board qua disciplinary proceedings as existing under Rule 28(8) of the 1969 Act prior to the Notification dated 8.3.2018, must be holistically construed. As would be evident from the facts of this case, the disciplinary proceeding against the said two teachers was initiated by the Managing Committee to be valid upon fulfillment of the role to be exercised by the Board under the pre existing Rule 28(8) (supra).

In such view of the matter with the role of the Board extinguished by the Notification dated 8.3.2018 (supra) the disciplinary proceedings cannot stand partially modified to the extent that the Managing Committee would not complete this disciplinary proceedings from the stage the Board stood left out.

Undoubtedly, from the point of the view of the said two teachers, they acted on the notion that the disciplinary proceedings would be governed and completed under the pre amended Rule 28(8) (supra). With the amendment ushered by the notification dated 8.3.2018, neither of the parties could be placed at a more or less advantageous position vis-a-vis the other in relation to this disciplinary proceeding. It cannot be denied that the Managing Committee initiated the disciplinary

proceeding for fulfillment of the mandate under Rule 28(8) (supra) and, if the original Rule 28(8) does not survive during the pending of the disciplinary proceeding, the same cannot be allowed to be completed in part under the amended Rule but, must go as a whole.

Accordingly, in this instant case the entire proceeding will have to be construed in a holistic manner and not in part. With the omission whatever benefit has been acquired by any of the parties does not remain effective. Along with the omission of the Rules the effect of the said Rule what has taken place till then extinguishes. One cannot have the benefit without taking the negative aspect of the same.

So in this instant case, proceedings against both the teachers up to what extent it has taken place which was in accordance with the earlier Rule does not remain as such the school in question if it feels can taken steps in accordance with the present prevalent Rules de novo from the inception.

Thus, the judgment and order passed in WPA 22714 of 2018, WPA 22721 of 2018, WPA 2561 of 2020 and WPA 2562 of 2020 are set aside the disciplinary proceeding impugned in the writ petition stands set aside as a whole. However the school may proceed de novo under the new Rules if and so advised.”

9. Another point which the appellant has taken is that under the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching staff) Rules, 2018 Board can only consider the chargesheet and the reply to the chargesheet while acting as disciplinary authority but in the present case although the school has been converted as sponsored institution

vide Notification dated 30.09.2015 till date the Managing Committee constituted under the rule 1969 is functioning illegally. It is stated by the appellant that he is entitled to get his all arrear dues after holding the order of suspension dated 02.12.2015 as illegal.

10. We are in agreement with the view as made in the above referred case by the Coordinate Bench of this court that if the original rule 28(8) of Rule 1969 does not survive during pendency of the disciplinary proceeding then the same cannot be allowed to be completed in part under the amended rule but must go as a whole.

11. During hearing we had occasion to go through the 'hearing report' as appended at page 93 of the Paper Book. The relevant portion of the said report is quoted herein below-

"Buddhadeb Jana, Secretary of the school submitted that as per resolution of the M.C. dated 31.12.2015 the following charges were framed against Nital Mandal, the H.M. of the school:

- a) Enjoyment of unauthorized leave w.e.f. 30.06.2015*
- b) No steps in connection with appointment of T.I.C. was taken by the H.M. before 30.06.2015*
- c) Non steps in connection with convince of guardian meeting was taken*
- d) No audit report was submitted before M.C.*
- e) Expenditure of Rupees 28000.00 allotted for Uniform Grant was not properly utilized.*
- f) Grant allotted for construction for toilet and urinal was not properly utilized. As a result construction of toilet and urinal is not completed.*
- g) Some important files of the school was not delivered to the T.I.C.*

The H.M. of the school submitted his reply against charge sheet to the secretary of the school on 18.02.2016. The school authority suspended Netai Mandal, H.M. of the school w.e.f. 02.12.2015 vide reference no.- 106/1 dated 02.12.2015. Copy of the same was also forwarded to the Administrator W.B.B.S.E. for taking necessary action.

Heard the appearing parties patiently, gone through the statement of H.M. Secretary, T.I.C. of the school. Verified supporting documents submitted in support of their statements I am of the view that the suspension proposal sent to the Administrator of W.B.B.E. has not yet been approved. In many cases the allegations against H.M. of the school seem to be true. Different grants sanctioned in favour of the school seem to be not utilized properly. Most of the stake holders/ beneficiaries seem to be deprived of getting the facilities of Government Grants. As such it can be presumed that interest of the student and institution has been violated.

The report is thus placed before D.I/S (SE), Purba Medinipur.”

(emphasis supplied)

12. Where the charge sheet is accompanied by the statement of facts and the allegations are not specific, definite and clear the enquiry should be vitiated. Thus, nowhere should a delinquent be served a chargesheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not stated clearly the chargesheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. If the charges are vague, then it does not save the enquiry from being vitiated, for the reason that there must be fair-play in action, particularly in respect of an order involving adverse

or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges.

13. The purpose of holding an enquiry against any person is not only with a view to establish the charges leveled against him or to impose a penalty, but is also conducted with the object of such an enquiry recording the truth of the matter, and in that sense, the outcome of an enquiry may either result in establishing or vindicating his stand, and hence result in his exoneration. Therefore, fair action on the part of the authority concerned is a paramount necessity.

14. In the present case charges so framed are not specific, definite and giving details of the incident and proceeding cannot stand on these vague charges.

15. So, there is illegality and material irregularity in the impugned order where Board was directed to continue the departmental proceedings even after the retirement of the appellant.

16. Accordingly the impugned order passed by the learned Single Bench is hereby set aside.

17. Appeal is allowed.

18. The Report submitted by the Additional District Inspector of School (SE), Purba Medinipore including the suspension order dated 2nd December, 2015 is hereby set aside.

19. Authority concerned is hereby directed to release the arrear salary if any including all retiral dues to the petitioner within one month from the date of this order along with 9% simple interest on his due retiral benefits from the date of his superannuation till realization of the same.

20. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)