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2025**

Ct. No. 08

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**MAT 50 of 2025
IA No. CAN 1 of 2025**

**The Managing Committee of Tinnallampur
Panchanan Smriti Vidyamandir and another
Vs.
Subhadip Sasmal and others.**

**Mr. Kallol Basu,
Mr. Atreya Chakraborty.**

... for the appellants.

**Mr. Biswaroop Bhattacharya,
Mr. Suman Sankar Chatterjee,
Mr. Pranoy Basak.**

... for the respondent no. 1.

Mr. Biswabrata Basu Mallik, Ld. AGP.

... for the State.

Let the certified copy of the impugned order filed in Court today be tagged with the Memorandum of Appeal.

The writ petition filed by the respondent no.1 is still pending before the Single Bench as the direction is passed upon the respondents to file their respective affidavits within the time limit set forth therein.

However, the impugned order is assailed in a limited contour that the Single Bench ought not to have passed the interim order, which virtually render the writ petition to have been finally decided. What is sought to be projected by Mr. Kallol Basu, learned Advocate appearing on behalf of the appellants, that the Court should not pass any interim order, which would tantamount to deciding the core issue involved in the main proceeding finally.

We are not unmindful of the proposition of law that the Court should not pass an order, which would virtually make the main proceeding infructuous or decided at the interlocutory stage, but we are also not unmindful that in a deserving case, the Court may pass an interim order based upon the findings, which are

tentative in nature. Any observations made in the interlocutory stage is a prima facie finding recorded by the learned Judge, which cannot be said to be sacrosanct for all time to come.

The respondents therein have not disclosed their stand against the allegations/averments made in the writ petition and, therefore, it is expected that the moment such disclosure is made, the Single Bench will decide the same on merit.

By the impugned order, an unprecedented and/or unique decision was taken by the appellants on the eve of the retirement of the teacher in-charge, as highlighted by the Single Bench. The Managing Committee decided to restrict the discharge of duties and functions attributable to the post of teacher in-charge between two persons including the respondent no. 1 for a specified period of six months thereby ignoring the seniority in service.

Mr. Basu tried to justify the stand of the Managing Committee on the score that there are serious lapses, if not negligence attributable to the conduct of the respondent no. 1 and for such reason, such decision was inevitable.

In course of hearing, it is brought to our notice that the Board is the competent authority to take a decision and to initiate a proceeding if it comes within the purview of misconduct, as envisaged in the relevant Rules, but till date no decision is taken. The Managing Committee may have a grievance against a particular teacher, but in absence of any steps have been taken, it cannot act contrary to the Rules nor can import a new idea, which is conspicuously absent in the statutory provisions.

Ordinarily, the senior most assistant teacher in the school acts as teacher in-charge, as the seniority in service is always regarded having an edge over the person, who has joined in service subsequently. The

decision to hold the post of teacher in-charge for a period of six months by the respondent no. 1 and then by the teacher next in line for another period of six months is beyond the scope and ambit of the statutory Rules and, therefore, we do not find any infirmity in the prima facie observation made by the Single Bench in pursuit of passing the interim order.

Admittedly, the respondent no. 1 is the senior in service and in absence of any decision taken by the Board or initiation of any proceedings against him on the perceived misconduct; it is not open to the Managing Committee to act whimsically and contrary to the statutory provisions.

A preliminary objection is raised by the contesting respondent that the certain documents, which are annexed to an application for stay, were not disclosed nor filed in the Trial Court.

Be that as it may, the period for filing the affidavits by the respondents have not expired as yet, it is open to the respondents in the writ petition including the appellants to disclose any documents, which, according to them, have a material bearing on the issue involved in the writ petition.

Since we do not find any grounds warranting interference in the interim order passed by the Single Bench, the appeal and the connected application being CAN 1 of 2025 are, therefore, dismissed.

For abandon precaution it is once again reiterated that the observations made in the impugned order as well as in this order shall not have any persuasive impact at the time of deciding the writ petition upon exchange of affidavits on merit in accordance with law.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

