

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

and

The Hon'ble Justice Smita Das De

MAT 84 of 2025

with

CAN No. 1 of 2025

CAN No. 2 of 2025

Ratna Mitter & Anr.

VS.

State of West Bengal & Ors.

For the Appellant	:	Mr. Ekramul Bari, Sr. Adv., Mr. S.P. Lahiri, Adv., Sk. Intiaj Uddin Adv.,
For the State	:	Mr. Bhaskar Prasad Vaisya, Ld. A.G.P., Mr. Suman Dey, Adv.,
For the Respondent No. 6 & 8	:	Mr. Sanjay Kumar Baid, Adv., Mrs. Arunima Lala, Adv.
For the W.B.B.S.E	:	Mrs. Koyeli Bhattacharyya, Adv. Mr. Bibek Dutta, Adv. Ms. Keya Panja Adv.
Hearing concluded on	:	29.04.2025
Judgment on	:	14.05.2025

Soumen Sen, J.:-

1. By consent of the parties the appeal and the application are taken up together and disposed of by this order.

2. The appeal is arising out of an order passed by the learned Single Judge, in WP No.7329 of 2022. This writ petition was heard analogously with WPA 3511 of 2022 as the issues were interconnected. However, a composite appeal has been filed by Ratna Mitter, and Anita Nigam being aggrieved by the impugned order dated 8th January, 2025 (hereinafter referred to as the “said order”) by which both the writ petitions were disposed of by a common judgment and order passed by the learned Single Judge.

3. The learned Single Judge refused to interfere with the enquiry proceeding and disposed of the writ petition by giving liberty to the appellants to file their response to the enquiry report within a period of two weeks from the date of the said order.

4. The appellants are aggrieved by this order.

5. Briefly stated the appellants are the assistant teachers of the Convent of our Lady of Providence Girl’s High School (in short, ‘the school’). The said school was established, run and administered by the Christian Community and accordingly it claims privileges and the minority status under Article 30(1) of the Constitution of India.

6. The appellants faced disciplinary proceeding for their alleged misconduct. Disciplinary proceeding was initiated against the writ petitioners by the Management of the said school in accordance with the rules related to terms of employment and service conditions of teaching and non-teaching staff of the Convent of our Lady of Providence Girls’ High School (hereinafter referred to as “the service rules”) framed by the Management of the said school.

7. The writ petitioners were initially placed under suspension pending the disciplinary proceedings. The Secretary of the school sent a proposal to the Board by a letter dated 11th May, 2016 seeking approval to the proposal of suspension against the two petitioners for alleged misconduct. On receipt of the aforesaid proposal the President of West Bengal School Education fixed a hearing. On 28th December, 2016 upon hearing the parties the President did not approve the proposal for suspension of Ratna Mitter, however, the school was not debarred from initiating disciplinary proceedings against the incumbent as per norms. The said approval was obtained in terms of Rule 28(9)(vii)(a) of the Management Rules. The charge-sheet was issued upon the delinquents. It appears that a writ petition was filed being WP No.13226 (w) of 2016 after the initiation of the proceeding alleging that in the domestic enquiry in spite of request the writ petitioners were not allowed to have legal assistance. The said writ was disposed of on 16th November, 2016 whereby the prayer for assistance of lawyers in the domestic enquiry was allowed. Being aggrieved by the said direction the school preferred an appeal being MAT 1800 of 2016 along with an application for stay being CAN 1027 of 2016. The appeal was allowed, however, assistance of any of the colleagues of the writ petitioner during domestic enquiry was allowed. The school is recognised by the Board in terms of provisions contained in Section 45(2)(b) of the West Bengal Board of Secondary Education Act (hereinafter referred to as 'the Act'). In terms of provisions contained in Section 45(2)(d) of the West Bengal Board of Secondary Education Act (hereinafter referred to "as the said Act"), the Management Rules have been framed laying down provisions of composition

of power and duties of the Managing Committee of the said school. Rule 28(8) of the Management Rules conferred power on managing committee subject to approval of the Board to remove or dismiss permanent and temporary teaching and non-teaching staff by initiation of disciplinary proceedings and conduct in the manner as prescribed therein.

8. The Hon'ble Division Bench noticing the aforesaid fact in MAT 1800 of 2016 had expressed surprise with regard to the initiation of the disciplinary proceeding under the Service Rules and not following the procedure mentioned in Rule 28(a). It appears that the Hon'ble Division Bench accepted the submission made on behalf of the writ petitioners that despite grant of recognition by the Board, the Management Rules would not apply to the school in view of the notification no. **641-EDN-(S)-8B-3-69 PT-VII** dated 23rd May, 1974 issued by the State Government. The said notification was issued in exercise of power conferred by Rule 33 of the Management Rules contained in the special rules for management of secondary schools established and run by a Christian Church Missionary School (board) Religious Society, subsidiary trust or their successor in law, in the state of west Bengal. On taking note of the said submission the Hon'ble Division Bench observed:

“Incidentally, rule 33 ordained that nothing in the Management Rules “would affect the power of the State Government to frame, on the application of any Institution or class of Institutions to which the provisions of Article 26 or Article 30 of the Constitution may apply, further or other rules for the composition, powers, functions of the Managing Committee or Committees of such Institution or class of

Institutions". In the schedule to the notification dated May 23, 1974, the name of the school was listed at sl. no. 68. 9. Mr. Mukherjee, learned Additional Government Pleader was quick to react. He pointed out notification no. 1089-SE(S)/1OR-4/2007 dated August 29, 2008, whereby amendments were effected in the Management Rules. Inter alia, our attention was drawn to that part of the said notification by which rule 33 stood omitted. With such omission, he contended that the notification dated May 23, 1974 containing the Special Rules, issued in exercise of power conferred by rule 33 of the Management Rules, stood obliterated; consequently, whatever service rules the management of the school had framed availing the liberty granted by rule 15 of the Special Rules did not survive. The inescapable conclusion, according to him, is that the school continues to be governed by the Management Rules w.e.f. August 29, 2008 and not by the Special Rules. 10. We have read rule 15 of the Special Rules. It enabled the management of the school, in respect of matters not specified in the Special Rules, to "exercise powers in conformity with the general directions from the Founder Body, and also in conformity with the provisions of the rules or orders issued by the State Government or any other authority competent to do so under the provisions of any Act or rules framed thereunder". Despite rule 11 of the Special Rules having provided the procedure for "appointment, confirmation, dismissal, appeal and termination", the service rules too included provisions relating to drawing up of disciplinary proceedings and laid down the procedure for taking such proceedings to its logical

conclusion. Though the service rules framed by the management of the school contained provisions relating to conduct of disciplinary proceedings, the same would obviously yield to the Special Rules so long the Special Rules and the service rules could be regarded to be in existence. Once the State Government has amended the Management Rules and omitted rule 33, the Special Rules and the service rules have ceased to exist in the eye of law. In view of nonexistence of the service rules with effect from August 29, 2008, findings returned by the learned Judge based on His Lordship's interpretation of the service rules become irrelevant.” (emphasis supplied)

9. The argument of the writ petitioners in the aftermath of the extinction of Rule 33 was that if the service rule does not exist post August 29, 2008, the disciplinary proceeding initiated by the school against the writ petitioners on the basis thereof are void ab initio and ought to be declared based on the decision in **M/S Sharma Transports Vs. State Of Maharashtra & Ors.**,¹ in which it was held that if a particular thing is required to be done in a particular manner it has to be done in that manner and/or not at all. This argument was considered in paragraph 13 of the judgment in which it was observed:-

“13. We are of the considered view that this argument is one in desperation and merits outright rejection. It is true that the disciplinary proceedings were initiated against the writ petitioners by the management of the school citing the service rules as the source of its power. It is equally true that the service rules did not exist when

¹ AIR 2011 SC 3279

charge-sheets were issued and served upon the writ petitioners. However, notwithstanding that the service rules did not exist, the Management Rules did exist whereunder power could have been exercised. That apart, even if the contract of employment is silent and does not contain any provision for initiation of disciplinary proceedings, that by itself would not erode the master's power to discipline his servant for misconduct warranting termination of employment. Bearing these principles in mind, initiation of disciplinary proceedings against the writ petitioners can be justified by reference to the Management Rules or the general laws governing master-servant relationship. Since there are statutory rules, i.e. the Management Rules, and rule 28(8) is the relevant rule governing disciplinary control, mere reference to the service rules being the source of the power for initiation of disciplinary proceedings instead of rule 28(8) of the Management Rules would not render the same vitiated. The contention of Mr. Lahiri, thus, stands overruled.” (emphasis supplied)

10. The appeal was, however, allowed inter alia, on the ground that Rule 28(8) provides for reasonable opportunity and a case where the writ petitioners would be proceeded against under Rule 28(8) of the Management Rules which ordains “reasonable facilities” to be given when a delinquent staff to defend himself/herself, the principles laid down by a Co-ordinate Bench in ***Sujit Das Vs. West Bengal Board of Secondary Education***² have to be followed.

11. In ***Sujit Das*** (*supra*) the guidelines to be followed in such domestic enquiry have been succinctly stated in paragraph 30, 31 and 33 of the report. The said paragraphs are reproduced below:

² 1997(2) CLJ 497

“30. A disciplinary proceedings as against a delinquent can be subdivided into 3 parts in terms of Rule 28(8) of the said Rules. The said Rule provides for drawing up of a formal proceeding and issuance of charge-sheet to the teacher and offering him reasonable facilities for defending himself. The word 'formal proceeding' evidently means a proceeding initiated for the purpose of enquiring into the charges against the delinquent employee. In the said proceeding, the delinquent must be offered reasonable facilities for defending himself which, without any shadow of doubt, means that the principles of natural Justice have to be complied with. The Rule of audi alteram partem roots in fairness. It entitles the delinquent to have a fair hearing. Charges when drawn up as against a delinquent are required to be proved in a proceedings after offering him reasonable facilities for defending himself. The word 'facilities' imports procedural fairness.

31. Unless the delinquent is provided with the facilities to have Inspection and/or take copy of the documents upon which the Committee/Administrator relies upon, he cannot file a show cause, nor can the same satisfy the requirements of giving all opportunities to the delinquent Officer to defend himself.

33. Moreover, the principles of natural Justice in relation to a domestic enquiry must be held to comprise of two basic elements, i. e. the right to cross-examine the witnesses examined by the Managing Committee or the Administrator and right to examine witnesses in his favour. He at least is entitled to examine himself and make submissions as regards his defences. Unless, in my considered opinion, the Committee

takes recourse to the said formalities, it cannot be said to have offered reasonable facilities for defending to a delinquent.” (emphasis supplied)

12. The appeal was allowed with the observation that the Management of the School shall bear in mind such principles while proceeding against the writ petitioners.

13. Thereafter, Ratna Mitter filed a writ petition being W.P.A No.3514 of 2022 in which she had, inter alia, prayed for quashing and setting aside of an impugned undated order of the enquiry officer (appointed by the school) and the communications issued vide a reference no.OLP/01/201/2022 dated January, 2022 and for formal closure of the disciplinary proceeding and to execute and implement the order dated 29th April, 2019 issued by the West Bengal Board of Secondary Education and allow her to function in the post of Assistant Teacher in English without any hindrance and other related reliefs. It appears that the school submitted before the learned single judge that there was no fresh disciplinary proceeding initiated by the school in the meantime. In the said proceeding a communication from the board dated 29th April, 2019 was considered which reads as follows:

"Sir,

You are informed that in spite of the order passed by the President of the Board (Memo No. 24/28/C, dtd. 20.02.17) disapproving the suspension order issued to Ratna Mitter, A.T. you have not allowed the incumbent to resume her duty and you have started a domestic enquiry against the said teacher on disciplinary grounds which is in

gross violation with notification no. 214-SE/S/10M-01/18 dated Kolkata, the 8th March, 2018 issued by the School Edn. Deptt. Govt. of W.B. As both these acts are seen as a gross violation of Govt. rules and orders, you are hereby directed to take necessary steps in this matter at earliest in accordance with the concerned rules. Punitive measures from this office will be invited for any further delay on your part in this matter."

14. During the pendency of the writ petition the school in continuation of the disciplinary proceeding terminated the service of the writ petitioner by a letter dated 2nd April, 2022 which was disclosed before the ld. Single Judge in an application being CAN 1 of 2022. The school before the learned Single Judge has pleaded that in view of the Article 30 of the Constitution of India their right to manage and administer institutions according to their own rules cannot be interfered with by any management rules or the disciplinary rules either of 1969 or 2018 for the assistant teachers. The school had contended that they have their own disciplinary rules in existence. The learned Single Judge upon noticing that the letter of termination does not refer to any service rules framed by the school as alleged during the hearing of the matter and that the school did not challenge the managing rules of the board or the disciplinary rules that was referred to by the Board and also having regard to the fact that during the pendency of the writ petition, the school without waiting for the writ court to decide had terminated the service of the writ petitioner which is clearly an act of overreaching the court set aside the letter of termination.

15. In an appeal against the said order the Co-ordinate Bench directed fresh hearing of the writ petition on merits after taking into consideration that the letter of termination was an act to overreach the court and the effect of Amendment of Rules, 2018 till the backdrop of the facts of the case need to be considered upon exchange of affidavits. An earlier order of the learned Single Judge on 1st April, 2022 was also taken note in which the learned Single Judge was poised to examine the entire issue of the pendency of the disciplinary proceeding against the writ petitioner on affidavits and the issuance of its termination on the face of order dated 1st April, 2022 cannot be countenanced.

16. The school preferred a Special Leave to Appeal being No. 22627 of 2022. The said Special Leave Petition was disposed of on 3rd January, 2023, inter alia, with the following directions:

“After we have heard learned counsel for the petitioners for 2 some time and on perusal of order of termination dated 02.04.2022. In our view the order of termination passed by the petitioners is not in accordance with law and deserves to be set aside.

Consequently, we dispose of the present petitions and while setting aside the order of termination dated 02.04.2022, permitting the respondents/employees to continue in service with further after directions that the petitioners are at liberty to proceed further after serving copy of the inquiry report to the respondents/ employees and take decision independently after affording a reasonable opportunity of hearing to him in accordance with law.

However, the respondents/employee is at liberty to challenge the inquiry proceedings/subsequent order, if any, passed by the petitioners in the appropriate proceedings in accordance with law.”

17. Thereafter, in or about 21st March, 2023 the present appellants filed a writ petition in which they have challenged the communication of the school authorities dated 7th January, 2023 by which the petitioners were asked to submit their response to the enquiry report in terms of the aforesaid order of the Hon’ble Supreme Court.

18. In response to the letter dated 7th January, 2022 the writ petitioners filed their representation in which they have specifically raised the issue that in spite of the aforesaid order of the Hon’ble Supreme Court they were not allowed to join in so far as the alleged enquiry report is concerned. The school was informed that the writ petitioner would take appropriate steps and in the meantime the school was requested to release the arrear salary after adjusting the subsistence allowance.

19. The contention of the writ petitioner appears to be that the suspension order as well as initiation of the domestic enquiry was in gross violation of Notification No.214-SE dated 8th March, 2018 and the entire procedure is void ab initio. In view of the aforesaid, the writ petitioners could not be pressurised to submit comments on the alleged enquiry report dated 27th January, 2022.

20. However, the school authorities by communication dated 25th January, 2023, 3rd February, 2023 and 21st February, 2023 refused to reinstate and the arrear salary. The writ petitioners refused to respond to the enquiry report or to appear for hearing on 24th February, 2023, when

the matter was kept for hearing by the disciplinary authority of the school with regard to the proposed punishment. The writ petitioners did not appear although several opportunities have been given to the writ petitioners, including on 6th March, 2023. It appears that during the pendency of the appeal on 13th March, 2025 the school authorities dismissed the service of the writ petitioners by a detailed order. While hearing the writ petition in which the impugned order was passed, the learned Single Judge has framed three issues in paragraph 14 of the order which is stated below:

“14. In these matters, the following issues fall for consideration:

- i. Whether the disciplinary authority is obliged to follow the Rules of 2018 in conducting the subject disciplinary proceedings.*
- ii. Whether the disciplinary authority, in the facts and circumstances of the present case, is required to follow the Rule 28(8) of the Management Rules of 1969 in conducting the subject disciplinary proceedings.*
- iii. Whether the Hon’ble Supreme Court by its order dated January, 03, 2023 had directed the disciplinary authority to conduct the subject disciplinary proceedings de novo.”*

21. The learned Single Judge by referring to Rule 2(1) of the Management Rules 2018 read with the notification no.216-SE/S/OM-01/18 dated 8th March, 2018 and the definition of ‘school’ under Section 2(n) under the West Bengal School Service Commission Act, 1997 was of the view that an un-aided school run by the minority community like the present school does not come within the purview of the definition of the ‘school’ under the Act of 1997. The Management Rules of 2018 does not

have any manner of application in respect of the said school and therefore the school or disciplinary authority is not obliged to follow the Rules of 2018 in conducting the disciplinary proceeding against the writ petitioners. The receipt of the government aid in the form of D.A. of the teachers does not affect the minority status of the school and accordingly the pendency of the writ petition being W.P.O. 1041 of 2013 challenging the decision of the school not to take such aid has no relevance to the issue under consideration. As regards issue no.2 the learned Single Judge considered Sub-Rules 8 and 8(a) of Rules 28 and the decision of the Hon'ble Division Bench dated 6th July, 2018 in MAT 1800 of 2018 read with the decision of the Hon'ble Supreme Court in ***Frank Anthony Public School Employees Association vs. Union of India***³ and ***Chandana Das (Malakar) v. State of West Bengal & Ors.***,⁴ and ***Marwari Balika Vidyalaya & Ors. v. West Bengal Board of Secondary Education & Ors.***⁵. A Division bench decision in ***Sujit Das v. West Bengal Board of Secondary Education***⁶ was considered in which the court arrived at a conclusion that the disciplinary authority is not obliged to follow the mandate of said Rule 28(8) of the Management Rules 1969 save to the extent that it ordains reasonable facilities to the petitioners to defend themselves in the pending disciplinary proceeding. Hence, in the instant case, there is no allegation that such facilities have not been provided to them. As regards issue no.3 the learned Single Judge was of the view that the Hon'ble Supreme Court in the Special Leave Petition permitted the school to proceed with the disciplinary

³ 1986(4) SCC 707

⁴ 2020(13) SCC 411

⁵ 1989 (2) CHN 437

⁶ 1997(2) CLJ 497

proceedings after serving the enquiry report. The said direction cannot be construed as a direction to hold disciplinary proceeding de novo. The learned Single Judge also referred to the earlier writ petitions in which the same enquiry reports were challenged and specific prayers have been made for setting aside of the said reports, however, such prayers were not allowed at any stage of the earlier proceeding. Having regard to the fact that a prayer of the petitioners for setting aside of the said enquiry report was not granted in earlier proceeding it should be deemed to have been refused and would operate as constructive res judicata in the said writ petition is the finding of the learned single judge in the impugned order. However, liberty was given to file response to the said enquiry report within two weeks from the date of the order.

22. Mr. Bari learned Counsel appearing for the appellants have submitted that the school authorities without reinstating the writ petitioners in violation of orders passed from time to time the school terminated the service of Ratna Mitter without following due process and also without initiating de novo enquiry. Insofar as the writ petitioner No.2 is concerned she had already retired from service and as such the question of de novo disciplinary proceeding does not arise. Mr. Bari has argued that there is no escape from the fact that the initiation of the disciplinary proceeding was based on the Management Rules 28(8) of 1969 and the judgment of the Hon'ble Division Bench in MAT 1800 of 2016 dated 6th July, 2018 has clearly referred to the said rules to be followed in letter and spirit in all future proceeding. Although the order of reinstatement has not been interfered with at any stage of the proceeding and the letter of termination

was set aside by the Hon'ble Supreme Court with a further direction to proceed with the enquiry it was incumbent upon the school authorities to initiate fresh proceeding after payment of the arrears salary in accordance with the then existing Management Rules.

23. It is submitted that Management Rules of 2018 cannot have any manner of application as the proceeding was initiated under the Management Rules of 1969 and the school continued with the same. In view of the specific direction of the Hon'ble Division Bench in the order dated 6th July, 2018 the school authority is bound to proceed on the basis of such rule and the procedure laid down with regard thereto is required to be followed.

24. It is submitted that although the Board had contended before the learned Single Judge that Management Rules, 2018 would not be applicable to the respondent school, it is preposterous having regard to the fact that the board itself had made communications to the school in exercise of power under Management Rules of 2018. It is submitted that once the authority lacks the jurisdiction to proceed with the matter as the enquiry conducted by the school is not in accordance with the law as the board is the sole authority to conduct the disciplinary proceeding and in absence of the board approving the charge-sheet and the enquiry proceeding it is no more open for the school to proceed with the matter by usurping the authority of the Board. All consequential actions of the school are therefore void ab initio.

25. Mr. Bari has emphatically referred to the decision of the Co-ordinate Bench in **Sujit Das (supra)** and relied upon the paragraphs already

referred earlier to argue that it is immaterial whether the school is a minority institution or not.

26. Mr. Koyeli Bhattacharyya, the learned Counsel appearing on behalf of the board has submitted that by reason of the management rules of 2018, any action taken under the management rules, 1969 have become redundant. Moreover, the writ petitioners cannot take the benefit of the 1969 rules by reason of definition of “institution” in Rule 2 (l) of the 2018 management rules which refers to Clause (n) of Section 2 of the West Bengal School Service Commission, 1997 for the purpose of defining an “institution” that would come under the category of ‘school’ and in the said definition it has been categorically stated that it does not apply to unaided school run by the minorities.

27. It is submitted that explanation to Section 2 of the act of 1997 Act clearly mentions that the word “aided” in reference to a school would mean a school receiving financial assistance towards basic pay of the teachers of that school and the “basic pay” shall mean the monthly pay of the teacher of the school which corresponds to a stage in the time-scale of pay of the post held by the teacher in that school.

28. It is further submitted that Section 15 of the West Bengal School Service Commission Act makes it clear that the said provision shall not apply to a school established and administered by minority based on religion and language.

29. By reason of deletion of Rule 28 of the 1969 Rules and introduction of Rules 28A to 28E with effect from 28th March, 2018 and

more particularly in view of Rule 28(b)(c) the Board has lost all supervisory power over unaided schools.

30. It is submitted that the school is an un-aided school run by the Minority Community as such enjoys the protection under Article 30(1) of the Constitution of India. The Rules of 2018 came into force with effect from March 08, 2018 vide notification no. 214-SE/S/10M-01/18 of the Government of West Bengal, School Education Department (Secondary Branch), and by another notification of the said authority dated March 08, 2018 bearing no. 216-SE/S/OM-01/18, some rules were omitted and/or repealed from the Management rules of 1969; in consequence thereof, the un-aided school(s) run by the minority community has been excluded from the purview of the Rules of 2018; consequently, it has got no manner of application in the pending disciplinary proceedings against the petitioners.”

31. The learned Additional Government Pleader has adopted the submission of Ms. Koyeli Bhattacharyya and argued that the writ petition itself is not maintainable as there has been no statutory violation. In any event by reason of amendment of Management Rules of 1969 and introduction of Management Rules of 2018. The Board has no role to play in the domestic enquiry proceeding initiated by minority unaided institution.

32. Mr. Sanjay Kumar Baid the learned Counsel appearing on behalf of the school has submitted that the said school is a Christian Minority Community School enjoying the protection of Article 30(1) of the Constitution of India.

33. The said school, though was initially a DA getting school, but on and from September 9, 2013 had stopped drawing such aid from the

Government and had started paying an amount equivalent to such DA from its own funds to the writ petitioners and other teachers of the school and in view thereof the argument that the school is not an unaided private school is fallacious. The school by way of abundant caution sought approval of the orders of suspension of the writ petitioners in view of notification No. S/606 dated 21st June, 1982 and as required under Rule 28 (9) (VII) (a) of the Management Rules of 1969 without prejudice to its rights and contentions of minority status and, therefore, refusal to accord such approval or unsuccessful challenge to the said decision of the Board does not ipso facto lead to the conclusion that the school had conceded to follow the said Management Rules, 1969 in conducting the disciplinary proceedings against the petitioner. Now that during the hearing of the appeal it had transpired that the Management Rules of 1969 are no more in existence and any proceeding under the 1969 Rules in any event would stand lapsed, it is no more open for the writ petitioners to place reliance on such non-existent previous Management Rules notwithstanding the concession made at an earlier stage in ignorance of the Management Rules of 2018.

34. Mr. Baid by referring to the Hon'ble Division Bench judgment dated 6th July, 2018 passed in MAT 1800 of 2016 has submitted that the school at best can be asked and required to follow so much of the provisions of the Management Rules of 1969 which mandate a fair procedure to be followed by providing reasonable opportunity to the delinquent employee to defend himself/herself in the domestic enquiry which would not be in conflict with the minority status of the school. In fact, in the judgment dated 6th July, 2018 it was observed that Rule 28(8) of the Management Rules of

1969 ordains reasonable facilities to be given to the delinquent to defend himself/herself and in the present case there is no allegation that such opportunity was denied to the writ petitioners.

35. Mr. Baid has submitted that the reference to the Management Rules of 1969 in the previous judgments is only for the purpose of demonstrated that the school would be required to follow the fair procedure during the disciplinary proceeding.

36. It is submitted that excepting for prior approval in case of suspension of an employee a minority institution is not required to obtain any approval from the Board or any authority before taking any steps taken in relation to a delinquent.

37. Mr. Baid has placed reliance on paragraphs 19, 20 and 21 of the decision of the Hon'ble Supreme Court in **Frank Anthony Public School Employee' Association** (*supra*) to show that interference with the right of an educational institution to initiate disciplinary proceeding and to pass appropriate order will be within the exclusive jurisdiction of the educational institution enjoying minority status except for the purpose of suspension.

38. In order to show that in case of a teacher terminated by the managing committee of minority school without approval of board would not vitiate the said decision as the minority institution enjoys protection under Article 30 the learned Counsel has relied upon **Marwari Balika Vidyalaya & Ors. vs. West Bengal Board of Secondary Education & Ors.**⁷ Attention of

⁷ 1980(1) CLT 299 SC

this court is drawn to the relevant portion of the judgment where **Frank Anthony** (*supra*) was considered.

39. Mr. Baid has submitted that rule 28 of the Management Rules of 1969 was held to be not applicable to a minority institution in **Chandan Das Malakar vs. State of West Bengal & Ors.**⁸.

40. It is submitted that paragraph 19 in **Frank Anthony** (*supra*) the reason behind prior approval was considered. Section 8(2) of the Delhi School Education Act, 1973 which stipulates that “no employee of a recognized private school shall be dismissed, removed or reduced in rank nor shall be otherwise terminated except with the prior approval of the director” was held to be a clear interference with the right of a minority institution to establish and administer minority educational institution. A Co-ordinate Bench decision in **Shiva Nand Pandey vs. Bhagwan Das Harlalka & Ors.**⁹ paragraph 58 was relied upon to show that in absence of any special rules, the minority institution would abide by the general rules, which are not in conflict with minority status of the institution. The aforesaid decision was relied upon only to emphasise that even in absence of any applicable rules in domestic enquiry the spirit of rule 28(8) or sub-rules framed under Rule 33 would be applicable although the said rules may not apply per se.

41. Mr. Baid submits that the upshot of all these decisions referred to and relied upon would show that the school cannot avoid following a fair and transparent procedure and the enquiry has to be held following the

⁸ 2020 (13) SCC 411

⁹ AIR 1999 Cal 321

principles of natural justice. It is submitted that in **Smt. Vidya Raikar & Ors. vs. The State of Karnataka**¹⁰ paragraph 25 this principle has been reiterated.

42. Mr. Baid has submitted that Mr. Ratna Mitter has since retired and the petitioner no. 2 has been dismissed from service on 13th March, 2025. The said decision was taken by the disciplinary committee upon consideration of the representation dated 10th March, 2025. Although the said representation was filed beyond the time specified by the learned single judge the disciplinary authority accepted the said representation and on due consideration of all aspects of the matter including mitigating factors the authority had arrived at a decision. It is a detailed order and does not call for any interference.

43. Mr. Bari the learned Counsel, in reply, has submitted that the dismissal of the petitioner no.2 clearly is an act to overreach the court as was attempted earlier by the school and a strict view should be taken against by the school. It is further submitted that writ petitioners were not allowed to resume their duty inspite of the order of the Hon'ble Supreme Court, however, they had received their salaries.

44. In the aforesaid backdrop the decision of the learned Single Judge is required to be considered. We have already narrated the provision litigations that had culminated in the letter of termination of the writ petitioner No.2. No proceeding in law is possible against the writ petitioner No.1 as she had already retired from service.

¹⁰ ILR 2015 KAR 3650

45. Irrespective of the aforesaid issue it is still to be decided whether there should be a de novo enquiry following the 2018 Rules or requirement of approval of the Board at every stage before any penalty could be imposed against the writ petitioners.

46. When MAT 1800 of 2016 was decided on 6th July, 2018 the management rules in West Bengal Board of Secondary Education (Appointment), confirmation conduct of Discipline of Teachers and Non-Teaching Staff) Rules, 2018, had come into force. The said Act was published in the Kolkata Gazette external part I on 8th March, 2018. Simultaneously, the Management Rules of 1969 was extensively amended. Original Rule 28 of the 1969 Rules was completely obliterated excepting Rule 28(9). The Rule 28 after amendment read as follows:-

28. Powers of Committee.-

(9) In aided and unaided Institutions the Committee shall have the power-

(i) to grant leave other than casual leave which shall be granted by the Head of the Institution and by the Secretary of the Committee in the case of the Head of the Institution;

Note. The Committee shall grant leave according to rules shown in the Appendix;

47. Thereafter Rule 28A to Rule 25E was inserted by a notification No.216/SE/S/10M-01/18 dated 8th March 2018 with effect from 28th March, 2018. Rule 28B of the amended Rules deal with powers and duties of the committee of a recognized Non-Government Unaided Institution.

48. Amongst various power and duties, the committee would be required to intimate the Board on any matter pertaining to misconduct of any teaching or non-teaching staff of an institution.

49. In absence of any transitional provision and saving Clause in the 2018 Rules in respect of proceedings which were pending under old rules on the date of amendment, all such proceedings shall stand lapsed. This issue has been recently considered by a Coordinate Bench decided in ***Netai Mondol Vs. State of West Bengal & Ors.***¹¹ decided on September 20, 2024 in which the said issue, inter alia, was considered in paragraphs 6 to 8 and 10 which read as follows:

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*

¹¹ FMA 303 of 2022 with CAN 1 of 2022

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-avis the other in relation to this disciplinary proceeding. It cannot be denied that the Managing Committee initiated the disciplinary 6 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.”

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. (emphasis supplied).

50. In view thereof any proceeding pending prior to the Management Rules of 2018 if not concluded shall stand lapsed and fresh proceeding may be initiated depending upon the facts and circumstances of the case. In any event in view of the rationess decidendi in **Frank Anthony** (Supra) and **Chandan Das Malakar** (Supra) prior approval for initiation of a disciplinary

proceeding is not required. In fact in **Frank Anthony** (Supra) while dealing with the issue of prior approval as contemplated under Section 8(a) of Delhi School Education Act, 1973 before suspension it was observed:

“Section 8(4) would be inapplicable to minority institutions if it had conferred blanket power on the Director to grant or withhold prior approval in every case where a management proposed to suspend an employee but we see that it is not so. The management has the right to order immediate suspension of an employee in case of gross misconduct but in order to prevent an abuse of power by the management a safeguard is provided to the employee that approval should be obtained within 15 days. The Director is also bound to accord his approval if there are adequate and reasonable grounds for such suspension. The provision appears to be eminently reasonable and sound and the answer to the question in regard to this provision is directly covered by the decision in All Saints High School, where Chandrachud, C.J. and Kailasam, J. upheld Section 3(3) (a) of the Act impugned therein.”

51. Accordingly Rule 8 (4) of the Delhi School Education Act was found to be eminently reasonable and sound. The judgment of the coordinate bench in MAT 1800 of 2016 has to be read in the context of the aforesaid rules and judicial pronouncements in this regards. The issue before the Hon’ble Division Bench MAT 1800 of 2016 was whether the writ petitioners would be entitled to a legal assistance. The issue was decided against the writ petitioners. However, it was observed that writ petitioner

would be entitled to have assistance of any other colleagues to the domestic enquiry which shall be conducted and concluded in accordance with law.

52. The observations of the Hon'ble Division Bench in this regard have been alluded to above.

53. In the context of 2018 Management Rules it is relevant to refer to the definition an "institution" in Clause (n) of Section 2 of the West Bengal School Service Commission, 1997 its reads as follows.

"Section 2 (n):-

***(n) "school"** means a recognised non-Government aided -*

***(i)** secondary school, or educational institution, or part or department of such school or institution, imparting instruction in a secondary education, or*

***(ii)** higher secondary school, or educational institution (other than a college), or part or department of such school or institution, imparting instruction in higher secondary education, or*

***(iii)** Madrasah,*

and includes a sponsored school.

Explanation I. - "Recognised" with its grammatical variations, used with reference to a school, shall mean -

***(a)** recognised or deemed to have been recognised under the West Bengal Board of Secondary Education Act, 1963, or*

***(b)** recognised under the West Bengal Council of Higher Secondary Education Act, 1975.*

***(c)** recognised or deemed to have been recognised under the West Bengal Board of Madrasah Education Act, 1994.*

Explanation II. - "Aided" with its grammatical variations, used with reference to a school, shall mean aided by the State, Government in the shape of financial assistance towards the basic pay of the teachers of that school.

Explanation III. - *"Basic pay" shall mean the monthly pay of a teacher of a school which corresponds to a stage in the time-scale of pay of the post held by the teacher in that school.*

Explanation IV. - *"Secondary Education" shall have the same meaning as in clause (1) of section 2 of the West Bengal Board of Secondary Education Act, 1963.*

Explanation V. - *"Higher secondary education" shall have the same meaning as in clause (d) of section 2 of the West Bengal Council of Higher Secondary Education Act, 1975.*

Explanation VI. - *"Sponsored school" shall mean a school declared as a sponsored school by the State Government by notification;"*

54. The definition of "institution" in Management Rules of 2018 is as follows.

"Section 2(l):- Institution" refers to a school as defined in clause (n) of Section 2 of the West Bengal School Service Commission Act, 1997 (West Bengal Act IV of 1997) and "Head of Institution" shall have the same meaning as defined in clause (g) of the said Act."

55. Section 15 of the West Bengal School Service Commission of 1997 has referred to various institutions and schools where the said Act would not apply which, inter alia, include in sub-clause (a): "a school established and administered by the minority, whether based on religion or language." Admittedly, the school here is a minority institution where 1997 Act would have no manner of application.

56. In **Shiva Nand Pandey and etc.** (supra) in the context of special rules as envisaged in Rule 33 of the Management Rules of 1969 in relation to a minority institution in para 58 it is stated thus:

“Although a great deal of argument has been advanced that in terms of Rule'33 the State Government can make any further rule only in the event an application is filed therefor a bare perusal thereof would show that the general rules would apply in all cases subject of course to make any further or other rule for the composition, powers, function of the Managing Committee or institution or class of institution, on the application of any institution or the class of institution to which provision of Articles 26 and 30 of the Constitution of India may apply. The words "further or other rules" are significant. It does not show that in absence of any special rules, the minority institution would not abide by the general rules but only the general rules which come in conflict with minority status of the institution would be inapplicable. Thus, only upon an application of any institution or class of institution, other or further rules can be made for the purposes laid down therein by the State Government in terms of its aforementioned power. While doing so, there cannot be any doubt whatsoever that it will be open to the State to arrive at a finding as to whether the same conforms to the provision of Article 30 or Article 30 of the Constitution of India. If it does not conform to the provision of Articles 30 and 30 of the Constitution of India, such application should be rejected. We may, however, hasten to add that the decision of the State Government is not binding and ultimately it is for the Court to decide whether the institution in question is a minority or not.”

57. The unrestricted power of minority institution has to be viewed in the context of the statutory rules that may be applicable to them and consequence of its infraction.

58. The writ proceedings initiated in the year 2022, has ultimately resulted in the order dated 3rd January, 2023 passed in the SLP filed by the school against the judgment of the Hon'ble Division Bench whereby the order of termination was stayed. As it appears the learned Single Judge as well as coordinate bench was of the view that letter of termination was issued hurriedly and without giving any reasonable opportunities to the writ petitioners to respond the enquiry report. The observations of the Hon'ble Supreme Court have been taken note of earlier.

59. In the instant case, the school does not receive any grant in aid from the year 2013. The order of appointment or removal of the teacher of the minority institution does not require any approval of the District Inspector of school. Moreover Rule 28 of the 1969 management rules was not applicable to the minority institution as held in **Chandan Das (Malakar)** (supra).

60. The writ petitioners are not public servants working under the Union of India or State and the employer in the instant case is not an authority or state within the meaning of article 12 of the Constitution of India. This is no breach of any statutory provisions which could have been urged for invoking the writ jurisdiction. The order of approval or dismissal of the writ petitioners does not require prior approval of the Board. It appears to be a master servant relationship in a Minority Unaided Non-Government Educational Institution regulated by the rules and regulations of the school.

It has no statutory force. It is only contractual without any flavour of statutory insulation. The enquiry report was not set aside although it formed the subject matter in the earlier proceedings.

61. However, one cannot disregard that by reason of the order passed in the SLP an opportunity was to be given to the writ petitioners to make representation against the enquiry report and the employer was directed to take a decision “independently after affording a reasonable opportunity of hearing” in accordance with law. The writ petitioners were given liberty to challenge the enquiry proceeding/subsequent order if any passed by the school in appropriate proceedings in accordance with law.

62. It is on such conspectus of facts which clearly reveals that the enquiry proceeding proceeded ex parte as the jurisdiction to initiate was challenged in various earlier proceedings, we are of the view that a fresh opportunity should be given to the writ petitioner No.2 to participate in the disciplinary proceedings, in other words, the disciplinary proceeding should be held de novo from the stage of issuance of charge sheet. Although reply to the charge sheet has been filed but we permit filing of a supplementary reply to the charge sheet within three weeks from date as prayed for on behalf of the appellant No.2.

63. There is no dispute that the school has its own rules and regulations. The enquiry proceeding should proceed on the basis of the rules and regulations of the school and not to be guided by any of the Management Rules of the Government. We have been informed that the enquiry officer was appointed by the school and had past association with the school. In view thereof we direct the school to appoint an independent

and impartial enquiry officer preferably a retired judicial officer with commensurate remuneration to be borne by the school authority.

64. The appointment of the fresh enquiry officer shall be communicated within one week from the date of appointment. The enquiry proceeding shall be concluded preferably within a period of four months from the date of commencement of the enquiry proceeding. The enquiry officer is requested to frame a time line within which all the procedural formalities including the evidence are to be concluded. The writ petitioner no.2 shall participate in the said proceeding. The enquiry officer shall not grant any adjournment unless it is unavoidable. The enquiry report shall be furnished to the party within one month from the date of conclusion of the domestic enquiry.

65. In view of the aforesaid the impugned order dated 13th March, 2025 stands modified. We make it clear that we have not gone into the merits of the matter as we are of the view that a reasonable and fair opportunity is required to be given to the writ petitioner No.2 before a decision is taken by the school. The school shall remain obliged to pay salary to the writ petitioner No.2 till a decision is taken by the school on the basis of the enquiry report. In view of the fact that Smt. Ratna Mitter has retired in the meantime the school authority is directed to release all her retiral and other admissible dues within eight weeks from date upon compliance of all the necessary formalities. The letter of termination dated 13th March, 2025 is set aside and the writ petitioner No.2 shall continue to be in service in terms of the order dated 3rd January, 2023, subject to the outcome of the disciplinary proceeding.

66. The appeal and the connected applications connected thereto are disposed of with the aforesaid direction. However, there shall be no order as to costs.

67. Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

(Smita Das De, J.)

(Soumen Sen, J.)