

FMA 366 of 2024
with
IA No. CAN 1 of 2024

**Selina Afroz Begum on the death of
sole petitioner Malekustur @ Malek Rahaman
Vs.
The State of West Bengal & Ors.**

Mr. Ekramul Bari
Mr. Lutful Haque
Mr. Golam Karim
Ms. Taharima Khatun
... For the Appellant

Mr. Uttam Kumar Bhattacharyya
Mr. Kaustav Mishra
Mr. Bishal Bhattacharya
... For the Respondent nos. 5,6 and 7

Mr. Saswati Chatterjee
... For the W.B.B.S.E

1. By consent of the parties the appeal and application are taken up together and disposed of by this common order.
2. The appeal is at the instance of the widow of the deceased. The deceased was at the relevant time working as Headmaster at Amgoria Gopalpur R.G.M Institution (hereinafter referred to the 'said school').
3. On 16th January, 2006 the managing committee of the said school issued a letter to the said Headmaster alleging financial irregularities on his part and asked for clarification. The nature of charges are as follows:-

- (i) Mr. Rahaman collected Rs.910.00 from the students for cultural fund but submitted that amount in his personal account.
- (ii) Mr. Rahaman has also misappropriated Rs.5726.00 which was collected from the students to fund cultural programme.
- (iii) Mr. Rahaman also collected Rs.270.00 from the students in connection with Red Cross training etc. which he did not submit in school account.

4. However, the Headmaster refused to accept the said notice. The managing committee of the school initiated a disciplinary proceeding and issued the suspension order dated 2nd February, 2006 to the Headmaster under Rule 28 of the Management of Recognized Non-Government Institutions (Aided and Un-Aided) Rules, 1969 (for short, 1969 Rules). The said suspension order was unsuccessfully challenged before the learned Single Judge by filing a writ petition being WP 4844(w) of 2006 (for short, the first writ petition). The said writ petition was dismissed by an order dated 25th January, 2007 by the learned Single Judge. The decision of the managing committee dated 2nd February, 2006 was not interfered with by the learned Single Judge. Being aggrieved by

the said order an appeal being MAT No. 808 of 2007 (FMA 2757 of 2007) (for short, 'the appeal') was filed and the same was also dismissed by the Division Bench without interfering with the finding on the factual aspect of the matter dealt with by the learned Single Judge in disposing of the writ petition. However, the coordinate bench had given an opportunity to the original writ petitioner to participate in the disciplinary proceeding by filing his reply to the show-cause notice. Factually, it is not in dispute that the original writ petitioner did not respond to any of the show-cause notices at any stage of the proceeding and had challenged the final decision of the managing committee in dismissing the writ petitioner from service with the approval of the Board.

5. Mr. Ekramul Bari, learned counsel appearing for the appellant, submits that the Board at every stage mechanically affirmed the arbitrary action of the managing committee without adhering to the law laid down by the Special Bench in the case of ***Arun Kumar Hait Vs. State of West Bengal & Ors.***, reported in ***(1999) 1 CHN 521***. Our attention is drawn to paragraphs 41 to 43 of the said special bench decision which are as follows:-

41. *The Managing Committee must then take a decision by recording its reasons which should indicate how it came to the conclusion for taking disciplinary action against the delinquent and such reasons must be supplied by the Managing Committee to the delinquent.*

42. *Similarly in the second stage, after the delinquent is given the opportunity of responding to the proposed punishment, the Managing Committee must give its reasons in support of the proposed punishment and supply the same to the delinquent.*

43. *Finally, the WBBSE would have to grant or refuse approval of the decisions of the Managing Committee at both stages on the basis of the materials on record without considering any document not supplied to the delinquent.*

6. Mr. Bari has also referred to another two decisions of ***Sri Maya Shankar Jha Vs. The State of West Bengal & Ors.***, reported in ***(2010)1 Cal LJ 107*** and ***Mamata Banerjee (Chatterjee) Vs. State of West Bengal & Ors.***, reported in ***(2010)2 Cal LJ 148*** to argue that if the initial order of suspension is bad, the entire disciplinary proceeding is required to be declared as vitiated. Moreover, the Board at every stage of disciplinary proceeding had failed to discharge duties in not assigning proper reasons for continuation of the disciplinary proceeding against the original writ petitioner.

7. We are unable to accept the said submission

of Mr. Bari. It is an admitted position that every opportunity was given to the original writ petitioner to make representation at all stages of the proceeding. It is no more open for the original writ petitioner to allege at this stage that there has been no proper service of the charge-sheet. In an earlier proceeding the findings of the learned Single Judge duly affirmed by the Division Bench had arrived at a finding that the original writ petitioner was refusing service of notice. The Division Bench however, had allowed the writ petitioner to make a representation against the show-cause notice and participate in the disciplinary proceeding. It is now being alleged that the original writ petitioner was prevented from participating in the disciplinary proceeding. However, such allegation could not be substantiated.

8. The Board had filed a detailed affidavit wherefrom it appears that in an unanimous decision of the Managing Committee in its meeting dated 16th January, 2006 to issue a charge-sheet against the original writ petitioner for defalcation of fund. It was issued pursuant to a direction of the learned Single Judge to appoint Secretary of the school as an enquiry officer and he initiated

disciplinary proceeding against the original writ petitioner. The Managing Committee of the school in its meeting dated 1st February, 2006 resolved to appoint an enquiry officer (Secretary of the school) and the presenting officer. As per the direction of the Managing Committee the enquiry officer commenced an enquiry proceeding with the following charges:-

- i) Sri Malek Rahaman defalcated an amount of Rs. 5726/-(five thousand seven hundred twenty six) from the cultural fund of the school.*
- ii) He kept Rs. 7898/- (Seven thousand eight hundred ninety eight) only in his hand for a long time which was the bonus amount of two teachers of the school.*
- iii) It was appeared from the audit report submitted by an auditor that Sri Rahaman had submitted an invalid voucher of Rs.100000.50/- (one lakh and paisa fifty) only which was not approved by the Secretary of the school.*
- iv) He enjoyed unauthorized leave without any prior intimation from the school.*
- v) He did not submit the examined written answer scripts of the test of Higher Secondary exam of the school.*
- vi) He created a ruckus with some anti social in the school premises and snatched Rs.10,000/- (ten thousand) only from the Secretary of the school.*

9. The School authority had lodged an FIR in this regard. The writ petitioner in spite of all

opportunities failed to give any reply to the charge-sheet.

10. Considering the aforesaid, the Managing Committee of the school in its meeting dated 16th March, 2007 resolved to initiate the first stage of disciplinary proceeding against the original writ petitioner. The proposal was sent to the Board. The matter was placed before the Committee constituted under Section 24 of the West Bengal Board of Secondary Education Act, 1963. The Board in its 171st meeting held on 10th June, 2008 approved the proposal and hence the proceeding continued.

11. While the matter was pending the Hon'ble Division Bench on 15th December, 2008 permitted the original writ petitioner to participate in the disciplinary proceeding by filing reply to the show-cause notice. The School Authority was directed to proceed afresh.

12. In compliance of the order of the said Division Bench the Managing Committee in its meeting dated 23rd December, 2008 resolved to issue a charge-sheet and forwarded to the original writ petitioner on 24th December, 2008. The original writ petitioner in spite of receipt of the said charge-sheet did not reply the same. As a

result whereof on 19th January, 2009 the Managing Committee of the school unanimously resolved to appoint an enquiry officer and also a presenting officer for the disciplinary proceeding to be initiated in terms of the charge-sheet. The writ petitioner did not participate in the said proceeding.

13. The enquiry officer submitted its report to the Managing Committee on 24th March, 2009. The enquiry officer has also stated that in spite repeated opportunities being given the writ petitioner did not appear and participate in the said proceeding. On consideration of the said report the Managing Committee on 25th July, 2009 unanimously resolved to issue a show-cause notice to the original writ petitioner requiring the Headmaster to reply as to why his service will not be terminated. The notice was served on him on 27th July, 2009.

14. On 29th August, 2009 the Managing Committee of the school further served a reminder to the show-cause notice to the original writ petitioner giving him further opportunity to submit his reply within 15 days from the date of receipt of the notice. In spite of the said notice, the original writ petitioner did not respond. In view thereof, the Managing Committee in its meeting dated 19th

September, 2009 unanimously resolved to dismiss the original writ petitioner from the school and send the proposal to the Board for necessary approval.

15. The matter was placed in the 179th meeting of the Board held on 4th December, 2009 when the Committee considered the proposal and the matter was fixed on 12th February, 2010 for taking a decision. Thereafter, the Board in its 180th meeting held on 12th February, 2010, after careful consideration of the facts and circumstances of the case and on perusal of the documents, resolved that the proposal for approval of dismissal (second stage of disciplinary proceeding) against the Headmaster of the school was approved with the rider that as on the date of the said decision if there were no contrary order of court in favour of the original writ petitioner. The affidavit filed by the Board has disclosed the documents which show that at every stage the approval was obtained from the Board. In absence of any representation being made by the original writ petitioner at any stage of the disciplinary proceeding, although sufficient opportunity was given to the original writ petitioner to present his case with sufficient documents, we are of the view

that the ratio decidendi of the three decisions relied upon by the original writ petitioner is wholly inapplicable. We are unable to accept the submission made by Mr. Bari that the decision of the Managing Committee suffers from total non-application of mind. Whatever documents the Managing Committee had along with the report of the enquiry officer were forwarded to the Board for consideration. The original writ petitioner had the opportunity at every stage to make his representation to demonstrate that he is innocent. By the reason of his inexplicable conduct and stoic silence maintained at every stage of the proceedings the original writ petitioner cannot now turn around and rely upon the aforesaid judicial decisions which are not only factually distinguishable, could not have any relevance. The said decision cannot be read in isolation and out of context.

16. On such consideration, the appeal being FMA 366 of 2024 stands dismissed along with CAN 1 of 2024.

17. Urgent photostat copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Smita Das De, J.)

