

06 11.04.2025

Ct-08

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MAT 529 of 2025

with

IA No. CAN 1 of 2025

CAN 2 of 2025

Keshub Academy & Anr.

Vs.

Shri Tapan Kumar Samanta

(suspended Headmaster) & Ors.

Mr. Anjan Bhattacharya

Ms. Anita Shaw

Ms. Salma Sultana

... For the Appellant/Petitioner

Mr. Bikash Ranjan Neogi

Mr. Joydeep Sen

Ms. Ananya Neogi

Mr. Guddu Singh

Mr. Anushka Ghosh

... For the Respondent no. 1

Mrs. Koyeli Bhattacharyya

Mr. Bibek Dutta

Ms. Keya Panja

... For the W.B.B.S.E

Mr. Santanu Kumar Mitra

Mr. Subhabrata Das

... For the State

1. By consent of the parties the appeal and all the applications including the application for leave to appeal are taken up together and disposed of by this common order.

2. The writ petitioner was the Headmaster of Keshub Academy. A disciplinary proceeding was pending against the Headmaster for the last 11 years. In the writ petition disciplinary proceeding was initiated in terms of Rules for Management of Recognised Institutions (Aided and Unaided) 1969

and West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Disciplinary Proceedings of Teacher and Non-Teaching Staff) Rules, 2018 has been promulgated. The fate of all the disciplinary proceedings that was initiated under the Management Rules 1969 were not safe under the 2018 Regulation by reason where of the Division Bench in **FMA 303 of 2022 (Nitai Mondal Vs. State of West Bengal & Ors.)** held that a de novo proceeding is required to be initiated in the event the school authorities are desirous of continuing with the disciplinary proceeding that had lapsed by reason of 2018 Regulation.

3. Learned Single Judge has taken into consideration the said decision **Nitai Mondal (supra)** along with the subsequent decision relying upon the ratio decided in **Ashish Kumar Tiwari Vs. The State of West Bedngal & Ors.** and **Sushil Kumar Rai Vs. The State of West Bengal & Ors.** held that if the original Rule 28(8) of Management Rules of 1969 does not survive during the 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. In the instant case it was at the second stage of

the disciplinary proceeding after the enquiry officer has filed a report finding the writ petitioner guilty of misconduct. However, having regard to the ratio of the coordinate benches with regard to the interpretation of Rule 28(8) of the Management Rules of 1969 the de novo proceeding is required to be initiated.

4. On such consideration, we do not find any reason to interfere with the order of the learned Single Judge. However, we feel that the school should have been made party and an opportunity of hearing ought to have been given to the school before deciding the matter, although it would not turn much on the appearance of the school by the reason of the ratio decided in **Nitai Mondal(supra)**.

5. It is submitted on behalf of the school authorities that the instant matter is pending with the Board as to whether the appellant/writ petitioner shall be kept under suspension.

6. The Board shall decide the matter afresh as to whether the suspension of the writ petitioner shall continue during the de novo proceeding.

7. The Headmaster may join the school but shall not have any access to the records for the time being till the issue is decided by the Board

and shall not sign any matter involving any serious administrative issue for a period of two weeks within which time the Board shall communicate its decision to the school authority with regard to the issue of suspension of the petitioner.

8. On such consideration, the appeal being MAT 529 of 2025 stands disposed of along with CAN 1 of 2025 and CAN 2 of 2025.

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

(Soumen Sen, J.)

(Smita Das De, J.)

