

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)

Present:

The Hon'ble Justice Biswajit Basu.

W.P.A. 7894 of 2022

**CONVENT OF OUR LADY OF PROVIDENCE GIRLS'
HIGH SCHOOL, THROUGH THE HEADMISTRESS &
ORS.**

-Vs-

THE STATE OF WEST BENGAL & ORS.

With

W.P.A. 7897 of 2022

**CONVENT OF OUR LADY OF PROVIDENCE GIRLS'
HIGH SCHOOL, THROUGH THE HEADMISTRESS &
ORS.**

-Vs-

THE STATE OF WEST BENGAL & ORS.

With

W.P.A.7329 of 2023

RATNA MITTER & ANR.

-Vs-

THE STATE OF WEST BENGAL & ORS.

For the petitioners

In **WPA 7894 of 2022** and
WPA 7897 of 2022

&

For the respondent nos. **6** to **8**

In **WPA 7329 of 2023.**

:

Mr. Sanjay Kumar Baid,
Ms. Arunima Lala.

For the respondent no. **5**

In **WPA 7894 of 2022** and
WPA 7897 of 2022

&

For the petitioners

In **WPA 7329 of 2023**

:

Mr. Ekramul Bari,
Mr. Sk. Imtiaz Uddin,
Mr. Syed Mansur Ali,
Mr. Alauddin Ahmed.

For the State In WPA 7894 of 2022	:	Mr. Biswabrata Basu Mallick, A.G.P, Ms. Parna Roy Choudhury.
For the State In WPA 7897 of 2022	:	Mr. Supriyo Chattopadhyay, A.G.P, Mr. Iti Dutta.
For the State In WPA 7329 of 2023	:	Mr. Bhaskar Prasad Vaisya, A.G.P, Mr. Suman Dey.
For the W.B.B.S.E.	:	Ms. Koyeli Bhattacharyya, Mr. Bibek Dutta, Ms. Keya Panja.
Last heard on	:	23.12.2024
Judgment on	:	08.01.2025

Biswajit Basu, J.

1. The issues under consideration in these three writ petitions are intermingled; as such, they are taken up for analogous hearing and disposal.
2. *The Convent of Our Lady of Providence Girls High School* (hereinafter referred to as '**the school**' in short), is established, run and administered by the Christian Community; as such, enjoys the privileges envisaged under Article 30(1) of the Constitution of India.
3. The school, in the first two writ petitions being WPA 7894 of 2022 and WPA 7897 of 2022, *inter alia*, has sought for a declaration that the provisions of *West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staff) Rules, 2018* (hereinafter referred to as "**the Rules of 2018**" in short) are *ultra vires* to the Constitution of India.

4. Two Assistant Teachers of the school are the petitioners of the third writ petition being WPA 7329 of 2023 (hereinafter referred to as the **“the petitioners”**); they are facing disciplinary proceedings for their alleged misconduct. The *Enquiry Officer* appointed in relation to the said disciplinary proceedings had invited the petitioners to participate in the enquiry but the petitioners, though initially had participated, had subsequently refused, alleging that it was not being conducted in terms of the Rules of 2018. The enquiry officer, however, upon conclusion of the said enquiry, had filed his report holding that all charges against the petitioners have been proved; the same was communicated to the petitioners vide letter dated January 27, 2022.

5. The petitioners, challenging the said enquiry report, had filed two separate writ petitions being *W.P.A. 3511 of 2022* and *W.P.A. 3512 of 2022*, which were admitted and a returnable date was fixed, directing the parties to exchange their affidavits in the meantime. The Disciplinary Authority, however, during the pendency of the said writ petitions, had concluded the proceedings by imposing penalty of termination of service. The petitioners, by filing two applications in the said two pending writ petitions, had brought the said fact to the notice of the learned Single Judge; in pursuance thereof, the said writ petitions and the applications thereto, vide order(s) dated April 08, 2022, were disposed of by setting aside the order(s) of termination of service of the petitioners.

6. The school had assailed the said decision of the learned Single Judge in appeals being *MAT 698 of 2022* and *MAT 617 of 2022*. The Hon'ble

Division Bench on August 23, 2022 had disposed of the said two appeals by restoring the said two writ petitions and by directing disposal of the said matters on merit after exchange of affidavits by the parties, and till such time, the operation of the order(s) of termination of the service of the petitioners were *stayed*.

7. The school, challenging the said order(s) of the Hon'ble Division Bench, had preferred *SLP(C) No. 22627 of 2022* and *SLP(C) No. 22516 of 2022* before the Hon'ble Supreme Court. The Hon'ble Supreme Court, by a common judgment and order dated January 03, 2023, had disposed of the said Special Leave Petitions by setting aside the said orders of termination of service of the petitioners, with a liberty to the disciplinary authority to proceed with the disciplinary proceedings after serving copy of the enquiry report to the petitioners and to take decision independently after affording a reasonable opportunity of hearing to the petitioners in accordance with law and the said writ petitions were also disposed of.

8. The school thereafter under a letter dated January 07, 2023 had again served the said enquiry report and had requested the petitioners to submit their replies. The petitioners, instead of filing their replies to the enquiry report; by their letter dated January 12, 2023, had informed the disciplinary authority that '*So far Enquiry Report is concerned, appropriate steps will be taken within the stipulated time*'; they, however had refused to submit such replies alleging gross violation of the said Rules of 2018 in conducting the said Disciplinary Proceedings.

9. The petitioners, in WPA 7329 of 2023, *inter alia*, have prayed for quashing of the said enquiry report; the letters whereby they have been asked to submit their replies to the said enquiry report; and setting aside of the entire disciplinary proceedings alleging that in conducting the said proceedings, the Rules of 2018 have not been followed.

10. Mr. Ekramul Bari, learned counsel for the petitioners in WPA 7329 of 2023 submits as follows:-

(i) The school was a Dearness Allowance (**'D.A.'** in short) getting school and the appointment of the petitioners in the school 30 years back were approved by the concerned District Inspector of Schools. The unilateral decision of the school not to take the contribution of the Government towards the D.A. for its teachers on and from September, 2013, was challenged by the petitioners along with other teachers in *W.P.A. 1041 of 2013*, which is still pending; besides, in two other writ petitions being *W.P. 455 of 2013* and *W.P. 456 of 2013* filed by some other teachers, the school was directed to extend the benefits of scale of pay as revised from time to time by the School Education Department, Government of West Bengal; therefore, the claim of the said school that it is an un-aided private school, is not tenable, either in law or in fact; consequently, the disciplinary authority is bound to follow the Rules of 2018 in conducting the disciplinary proceedings against the petitioners.

(ii) The school authority, in terms of the Rule 28(9)(vii)(a) of the Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969 (hereinafter referred to as '***the Management Rules of***

1969' in short) had sought approval of the orders of suspension of the petitioners, but the President of the Board vide Memo dated December 28, 2016 had refused to accord such approval; therefore, the disciplinary authority, at least cannot deny the applicability of the Management Rules of 1969 in conducting the said disciplinary proceedings. Moreover, the Hon'ble Division Bench in the decision dated July 06, 2018 passed in *MAT 1800 of 2016* has held that the Management Rules of 1969 is required to be followed in conducting the disciplinary proceedings against the petitioners, but the same has not been followed; consequently, the entire disciplinary proceedings have been vitiated, as such, liable to be quashed and/or set aside.

(iii) The earlier orders of termination of the service of the petitioners were on the basis of the enquiry report dated January 27, 2022, with the setting aside of the said orders of termination by the Hon'ble Supreme Court; the said enquiry report has lost its force, therefore, the disciplinary proceedings, on the basis of the selfsame enquiry report, cannot proceed. The disciplinary authority, in terms of the liberty granted by the Hon'ble Supreme Court, must start the proceedings *de novo*.

11. Mr. Sanjay Baid, learned counsel for the said school submits as follows:-

(i) The school is a Christian Minority School; as such, is enjoying the protection of Article 30(1) of the Constitution of India and it is affiliated to the Board. The said school, though was initially a D.A. getting school, but

on and from September 09, 2013, had stopped drawing such aid from the Government and had started paying an amount equivalent to such D.A. from its *own* funds to the petitioners and other teachers of the school; therefore, the argument that the school is *not* an unaided private school, is fallacious.

(ii) The school, in terms of Notification No. S/606 dated June 21, 1982 and as required under *Rule 28(9)(vii)(a)* of the said Management Rules of 1969 had sought the approval of the orders of suspension of the petitioners without prejudice to its rights and contentions of minority status; therefore, refusal to accord such approval and unsuccessful challenge to the said decision of the Board do not lead to the conclusion that the school had conceded to follow the said Management Rules of 1969 in conducting the disciplinary proceedings against the petitioners.

(iii) The school at best, is obliged to follow that much of the provisions of the said Management Rules of 1969 which are not in conflict with its minority status such as providing reasonable opportunity to its delinquent employee to defend himself/herself. The Hon'ble Division Bench was conscious about such position; as such, in its judgment dated July 06, 2018 passed in *MAT 1800 of 2016*, had observed that the Rule 28(8) of the said Management Rules of 1969 ordains reasonable facilities to be given to a delinquent staff to defend himself/herself; in the present case, there is no allegation that such opportunity was *denied* to the petitioners.

(iv) The decisions of the Hon'ble Supreme court in the case of **FRANK ANTHONY PUBLIC SCHOOL EMPLOYEES ASSOCIATION vs. UNION OF**

INDIA reported in **(1986) 4 SCC 707**, in the case of **CHANDANA DAS (MALAKAR) vs. STATE OF WEST BENGAL AND OTHERS** reported in **(2020) 13 Supreme Court Cases 411** and the decision of the learned Single Judge of this Court in the case of **MARWARI BALIKA VIDYALAYA AND OTHERS vs. WEST BENGAL BOARD OF SECONDARY EDUCATION AND OTHERS** reported in **(1989) 2 CHN 437** are relied on to contend that the control sought to be maintained through Rule 28(8) of the said Management Rules of 1969 is an interference with the administration of the minority institution, as such is violative of Article 30(1) of the Constitution of India. The decision of another learned Single Judge of this Court in the case of **SHIVANANDA PANDEY AND ORS. vs. BHAGWANDAS HARLALKA**, reported in **AIR 1999 Calcutta 321** is relied on to contend that the Minority Institution will have to abide by only such of the general rules which do not come in conflict with the minority status of the institution.

(v) The Hon'ble Supreme Court, after setting aside the orders of termination of the petitioners, had directed the disciplinary authority to proceed further after serving the copy of the enquiry report, the interpretation of the said order to suggest that the said proceedings are required to be started *de novo* after conducting enquiry afresh is preposterous inasmuch as the Hon'ble Supreme Court consciously used the word '*further*', not '*de novo*' and the word '*further*' does not mean *from the very beginning*.

(vi) The petitioners had refused to participate in the disciplinary proceedings alleging that those are being conducted without following the

Rules of 2018 and the whole allegation in the writ petition is as such, but the petitioners have now *abandoned* their said plea as soon as the Board has clarified that the Rules of 2018 are not applicable to the said school for its nature; besides, the provisions of the Rules of 2018 itself clearly show that the school, for its nature, does not come within the definition of ‘school’ in respect of which the Rules of 2018 applies. The school since is not coming within the definition of ‘school’ under Section 2(n) of The West Bengal School Service Commission Act, 1997, the Rules of 2018 are not applicable in respect of the said school; in view of such position, the school, in the fact and circumstances of the present case, is not *pressing* the point of the constitutional validity of the Rules of 2018, as raised in WPA 7894 of 2022 and WPA 7897 of 2022.

12. Mrs. Koyeli Bhattacharya, learned counsel for the Board submits 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.

13. Mr. Bari, in reply, submits that there is no challenge to the decision of the Hon'ble Division Bench passed in *MAT 1800 of 2016*, as such the issue that the disciplinary authority is bound to follow the Management Rules of 1969 in conducting the disciplinary proceedings against the petitioners, has attained finality; consequently, the issue cannot be re-opened as it is barred by the principle of *res judicata*.

Heard learned counsel for the parties and perused the materials-on-record.

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*.

15. The issue no. (i)

15.1 It appears from the record that the petitioners though had initially participated in the enquiry proceedings, but had subsequently

refused on the allegation that the Rules of 2018 are not being followed in conducting the disciplinary proceedings.

15.2 Let me now consider how far the disciplinary authority is obliged to follow the Rules of 2018 in conducting the subject disciplinary proceedings. The Government of West Bengal, School Education Department (Secondary Branch), in exercise of the power conferred upon it by sub-section (1), and clauses (d) and (o) of sub-section (2) of Section 45 read with Clause (j) of sub-section (2) of Section 27 of the West Bengal Board of Secondary Education Act, 1963 had promulgated the Rules of 2018 vide Notification No. 214-SE/S/10M-01/18 dated March 08, 2018. Rule 2(l) of the Rules of 2018 defines ‘institution’, in respect of which, the said rules are made applicable; the said Rule is quoted below for ready reference:-

“2.Definitions...a....b.....c....d....e...f...g....i...j..k.....
(l) “institution” refers to a school as defined in clause (n)
of section 2 of the West Bengal School Service
Commission Act, 1997(West Ben. Act IV of 1997) and
“Head of institution” shall have the same meaning as
defined clause (g) of the said Act;.....”

15.3. The Government of West Bengal, School Education Department (Secondary Branch) simultaneously vide notification no. 216-SE/S/10M-01/18 dated March 08, 2018 had omitted certain rules of the said Management Rules of 1969 viz. sub-rules(1), (1a), (2), (3), (4), (5), (6), (7), (8), (8a) and (8b) of Rules 28 of the said Rules.

15.4 The West Bengal School Service Commission Act, 1997(hereinafter referred to as ‘**the said Act of 1997**’ in short) defines

‘school’ under Section 2(n) thereof, the said definition is quoted below for ready reference:-

“2.Definitions:..(a)...(b)...(c)...(d)...(e)...(f)...(g)...(h)..(i)...(j)...(k)...(l)...(m).....

(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. or

(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.”

15.5. An un-aided school run by minority community, like the said school since does not come within the purview of the aforementioned definition of ‘school’ under the said Act of 1997, the Rules of 2018 have no manner of application in respect of the said school, therefore, the said

school/disciplinary authority is not obliged to follow the Rules of 2018 in conducting the disciplinary proceedings against the petitioners.

15.6 The receipt of Government aid in the form of D.A of the teachers does not affect the minority status of the school; as such, 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 issues under consideration in the present matters; consequently, cannot be a bar in disposal of the present matters.

16. The issue no. (ii)

16.1 It is argued on behalf of the said teachers that the Management Rules of 1969 was in force when the charge-sheets in relation to the subject disciplinary proceedings were issued and in terms of the Rule 28(8) thereof, the disciplinary authority sought approval of the suspension of the petitioners from the Board, besides the Hon'ble Division Bench of this Court in its judgment dated July 06, 2018 passed in *MAT 1800 of 2016* had observed that the petitioners should be proceeded against under the said Rule 28(8) of the Management Rules of 1969, therefore, the disciplinary authority since at one stage, had followed the said Rule 28(8) of the Management Rules of 1969, cannot avoid following it, particularly, in view of the *specific* observation of the Hon'ble Division Bench of this Court in the said judgment.

16.2 An un-aided school prior to deletion and/or omission of sub-rules (8) and (8a) under Rule 28 of the said Management Rules of 1969 was

obliged to take approval of the Board to remove and/or dismiss a permanent, temporary teacher or its other employees but such requirement ceased to exist after those rules have been omitted by the aforementioned notification dated March 08, 2018.

16.3 The said omitted sub-rules (8) and (8a) of Rule 28 of the said Management Rules of 1969 are quoted below to appreciate its scope:-

“28. Powers of Committee –

(1)...(2)...(3)...(4)...(5)....(6)....(7).....

(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 facilities 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, the committee shall send to the Board all relevant papers including 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 concerned to show-cause, ordinarily within a fortnight, why he should not be dismissed or removed from service. 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.

(8a) In case of lapses on the part of the permanent or temporary teachers and other employees of an institution, which do not warrant removal or dismissal of the persons concerned, the Committee may impose minor penalties, like stoppage of one to three increments in pay, reduction of pay in the time scale and censure with the prior approval of the Board. In all such cases, the Committee shall observe the procedure laid down in sub-rule. (8).”

16.4 Rule 28(8) of the said Management Rules of 1969 mandates that to initiate a disciplinary proceeding against the employees of the aided and un-aided schools and also for their removal from service, the prior approval of the Board is necessary.

16.5 The Hon'ble Supreme Court in the case of **FRANK ANTHONY PUBLIC SCHOOL EMPLOYEES' ASSOCIATION (supra)** had the occasion to consider the obligation of a minority institution to have the prior approval of the Director of Education, Delhi for dismissal, removal or reduction in rank of an employee of a minority institution in terms of Section 8(2) of The Delhi School Education Act, 1973. In the said decision, it has been held that the said requirement under the said *Section 8(2) of the said Act of 1973 is inapplicable to unaided minority institutions as it interferes with the right of administration of such minority institutions*. Paragraph 21 of the said decision, being relevant, is quoted below:-

“.....21. The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void **except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions**. We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of the case of the Frank Anthony Public School. The management of the school is directed not to give effect to the orders of suspension passed against the members of the staff.”

16.6 The Hon'ble Supreme Court, in the case of **CHANDANA DAS(MALAKAR) (supra)**, at paragraph 27, has held that the said Rule 28 of the said Management Rules of 1969 cannot apply as there would be a

serious infraction of the right of the minority institution to administer itself, the said paragraph of the said judgement is quoted below:-

“.....27. A reading of the aforesaid judgment would leave no manner of doubt that if Respondent 4 is a minority institution, Rule 28 of the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided) 1969, cannot possible apply as there would be a serious infraction of the right of Respondent 4 to administer the institution with teachers of its choice. ”

16.7 The learned Single Judge of this Court in the case of **MARWARI BALIKA VIDYALAYA(supra)** has also held that Rule 28(8) of the Management Rules of 1969 confers unlimited power on the Board either to approve or not to approve any dismissal; consequently it directly encroaches upon the right of management of a minority educational institution.

16.8 The Hon’ble Division Bench of this Court in the *MAT No. 1800 of 2016* has observed that the petitioners would be proceeded against under Rule 28(8) of the Management Rules of 1969 *which ordains reasonable facilities to be given to a delinquent staff to defend himself/herself* and in this regard, the principle laid down by another Hon’ble Division Bench of this Court in the case of **SUJIT DAS vs. WEST BENGAL BOARD OF SECONDARY EDUCATION** reported in **1997(2) CLJ 497** was directed to be followed. It would suffice to quote Paragraph 30 of the said decision of **SUJIT DAS** (supra) to understand the extent of obligation of the disciplinary authority to follow the Rule 28(8) of the said Management Rules of 1969.

“.... 30. A disciplinary proceedings as against a delinquent can be sub-divided 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 audi alteram partem roots in fairness.** It entitles the delinquent to have a fair hearing. Charges when drawn up 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.”

Summing the discussion made above, it can be safely concluded that the disciplinary authority is not obliged to follow the mandate of said Rule 28(8) of the Management Rules of 1969 *save to the extent* that it ordains reasonable facilities to the petitioners to defend themselves in the pending disciplinary proceedings but there is no allegation that such facilities have not been provided to them.

17. The issue no. (iii)

17.1 The petitioners, by two separate writ petitions being *W.P.A. 3511 of 2022* and *W.P.A. 3512 of 2022*, had challenged the enquiry report on the ground that the enquiry officer has conducted the said enquiry without following the Rules of 2018. The petitioners in the said two writ petitions *inter alia* had prayed for setting aside of the said Enquiry Report.

17.2 The learned Single Judge of this Court had directed listing of the said two writ petitions for hearing after exchange of affidavits by the parties. The disciplinary authority, before the returnable date of the said two writ petitions had passed the order of termination of service of the petitioners. The petitioners, by way of applications, had brought the said

orders of termination on record and the learned Single Judge of this Court had set aside the said orders of termination of service of the petitioners and had also disposed of the said two writ petitions. The said school had assailed the said order in appeal which the Hon'ble Division Bench of this Court had allowed thereby restoring the said writ petitions for their disposal on merit after exchange of affidavits and till such time, the operation of the orders of termination of service of the petitioners were stayed.

17.3 The said school had challenged the said orders of the Hon'ble Division Bench in *Special Leave Petition (C) No. 22627 of 2022 and Special Leave Petition (C) No. 22516 of 2022*. The Hon'ble Supreme Court by the order dated January 03, 2023 had disposed of the said Special Leave Petition, which is quoted below:-

“ The present petitions have been filed assailing the order passed by Division Bench of the High Court of Calcutta dated 23.08.2022 while granting stay of the order of termination dated 02.04.2022 and relegating the parties to the learned Single Judge to decide WPA No. 3512/2022 and WPA No. 3511/2022 to be heard on merits.

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.**
(Emphasis Supplied)

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. With the above directions, the present petitions stand disposed of and the pending WPA No. 3512/2022 and WPA No. 3511/2022 also stands disposed of in terms of the order indicated above.

Pending application(s), if any, stands disposed of accordingly.”

17.4 The Hon’ble Supreme Court, in the aforesaid order, had directed the disciplinary authority to proceed further after serving the enquiry report, the said direction unmistakably suggests the service of the enquiry report *already on record*; by no stretch of imagination, the said direction can be construed as a direction to hold the subject disciplinary proceedings *de novo*.

17.5 The petitioners, in their earlier writ petitions had challenged the selfsame enquiry reports and had prayed that the said enquiry reports be set aside; the said writ petitions were disposed of, but without setting aside and/or quashing the said enquiry reports as prayed for. In the appeals from the said orders, the said writ petitions though were restored for disposal on merit, but the Hon’ble Supreme Court, by the aforesaid orders, has disposed of the said writ petitions without setting aside and/or quashing the said enquiry report, which also signifies that the Hon’ble Supreme Court, by permitting the school to proceed with the subject disciplinary proceedings, did not direct to conduct the said disciplinary proceeding *de novo*. That apart, the prayer of the petitioners for setting aside the said enquiry report since was not granted in the earlier proceedings, *which amounts to deemed*

refusal to the said prayer, therefore, the petitioners are not entitled to renew their said prayer as it is barred by the doctrine of *constructive res judicata*.

Summing up the discussions made above, WPA 7329 of 2023 is dismissed without any order as to costs; however, the petitioners are at liberty to file their response to the said enquiry report within a period of ***two weeks from date***.

Mr. Baid submits that the Board since has accepted that the said Rules of 2018 have no manner of application in respect of the said school as it is an un-aided Christian minority school, his client i.e. the school, in its writs petitions, are not pressing their challenge to the said Rules of 2018 on the ground of its constitutional validity.

In view of such stand of the school, WPA 7894 of 2022 and WPA 7897 of 2022 are also dismissed as *not pressed* without any order as to costs.

Parties to act on the server copy of this judgment duly downloaded from the official *website* of this Court.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(BISWAJIT BASU, J.)