

W.P.A. 27026 of 2024

**Tapan Kumar Samanta
Vs.
The State of West Bengal & Ors.**

Mr.Rabin Kumar Garain
Ms. Ananya Neogi
Ms. Anushka Ghosh

...for the petitioner

Mr. Anjan Bhattacharya
Mr. Bibek Dey
Ms. Bidisha Chakraborty

...for the respondent no. 5

Mr. Santanu Kumar Mitra
Mr. Subhabrata Das

...for the State

Ms. Koyeli Bhattacharyya
Mr. Bibek Dutta
Ms. Keya Panja

,,,for the WBBSE

Matter is finally heard in presence of the learned advocates representing the parties. Issue centers around initiation of disciplinary proceeding against the petitioner who is Headmaster of Keshub Academy, Kolkata (hereinafter referred to as 'said school'). In the writ petition initiation of disciplinary proceeding in terms of Rules for Management of Recognised Non-Government Institutions (Aided and Unaided) 1969 and the second show cause notice issued by the said school authority against the petitioner dated 3rd October, 2024 are under challenge. By the impugned second show cause notice dated 3rd October, 2024 the administrator

of the said school directed the petitioner to show cause within a specified time as to why petitioner shall not be removed from service.

Today, Mr. Anjan Bhattacharya, learned advocate representing the administrator of the said school submits that in view of promulgation of West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staff) Rules, 2018 steps taken by the said school authority in initiating disciplinary proceeding against the petitioner cannot survive. Since the disciplinary proceeding was initiated in terms of Rule 28(8) of the Management Rules of 1969 which is no more in vogue.

Such submission made on behalf of the said school authority is supported by the learned advocate representing the Board and in order to fortify the case of the school authority reliance is placed on the judgment of Hon'ble Division Bench dated 20th September, 2024 passed on an intra Court appeal being **FMA 303 of 2022 (Nitai Mondal Vs. State of West Bengal & Ors.)**.

Today, petitioner is also represented by learned advocate who has submitted that there is procedural impropriety in initiating proceeding against him and the charge was of 2010, veracity of which may not be gone into at this belated stage by the authority in terms of 2018 Rules.

Having considered the respective submissions made on behalf of the parties this Court finds that issue is no more *res integra* as the Hon'ble Division Bench relying upon the ratio decided in **Ashish Kumar Tiwari Vs. The State of West Bengal & Ors.** with **Sushil Kumar Rai Vs. The State of West Bengal & Ors.** held in **Nitai Mondal** (supra) that if the original Rule 28(8) of Management Rules of 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.

In the present case at my hand ratio of **Nitai Mondal** (supra) squarely applies since indisputably disciplinary proceeding which was initiated against the petitioner in terms of Management Rules of 1969 by the said school authority has not been brought to logical conclusion till date, meanwhile 2018 Rules were brought in and same was published by the State Government on 18th March, 2018 and vide another notification being no. 216-SE dated 18th March, 2018 Management Rules of 1969 was amended to certain extent, Rule 28(8) was omitted and in its place Rule 28(A) and Rule 28(B) were introduced.

In view of the aforesaid decision of the Hon'ble Division Bench the proceeding which has been initiated by the said school authority against the petitioner stands set aside thereby granting leave to the said

school authority, if it is found expedient at this stage, to initiate *de novo* proceeding against the petitioner in accordance with law.

Since disciplinary proceeding initiated by the said school authority is quashed petitioner shall be permitted to resume his duty as Headmaster of the said school by 7 (seven) days from the date of communication of this order.

The writ petition stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)