

(2020) 01 CAL CK 0230

In the Calcutta High Court

Case No : C. Appeal From Order (FMA) No. 70 Of 2020, Tender Of Mand Appl (MAT) No. 1384 Of 2019, Civil Application (CAN) No. 9587, 9589 Of 2019

Ali Mahammad

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Citation : (2020) 01 CAL CK 0230

Hon'ble Judges : Sanjib Banerjee, J;Kausik Chanda, J

Bench : Division Bench

Advocate : Soumya Majumdar, Sandip Kumar Dey, Amit Chaudhury, Indranil Roy, Sunit Kumar Roy

Final Decision : Dismissed

Judgement

In view of the good grounds shown, the delay of about 400 days in preferring the appeal is condoned and the appeal is taken on record.

CAN 9589 of 2019 is allowed.

The stay application and the appeal are taken up together. The appeal is directed against an order of July 12, 2018 by which the appellant's writ petition was disposed of at the invitation of the appellant, but the appellant seeks to question the basis of the order on the ground that the disciplinary authority had no jurisdiction to conduct the proceedings.

It is evident from the order impugned that an initial writ petition was instituted against an order of suspension passed against the appellant herein by the respondent school authorities. The suspension order was approved by the West Bengal Board for Secondary Education. Subsequently, the appellant challenged the inquiry proceedings initiated pursuant to the approval granted by the Board. Both the petitions, WP 30767 (W) of 2017 and WP 10538 (W) of 2018, were disposed of by the common judgment and order impugned herein. It appears

from the order impugned that upon noticing that the order of suspension was approved by the Board, the court did not delve any further into the initial writ petition. As to the second writ petition, the court noticed the submission on behalf of the respondents that the writ petitioner was apparently not cooperating with the inquiry officer. The following submission is, thereafter, attributed to the writ petitioner towards the middle of the judgment:

"Learned counsel for the petitioner submits that he is willing to participate in the enquiry proceedings and prays that the same may be directed to be time bound."

On the basis of such submission, both the writ petitions were disposed of by directing the inquiry officer to complete the process of inquiry within a period of eight weeks from the date of the order.

It is now the contention of the appellant that since the Managing Committee of the School ought to have included a President from another school, the Managing Committee should be found to have been improperly constituted and, as such, having no jurisdiction to embark on any disciplinary proceedings. Clearly, such point was not urged before the writ court. Indeed, even if any ground in such regard had been taken in the writ petition, such ground was expressly abandoned by the writ petitioner submitting to the jurisdiction of the disciplinary authority and requesting the court to issue directions for the expeditious completion of the inquiry proceedings. In the light of such conduct of the writ petitioner-appellant, it does not lie in this mouth at this stage to question the constitution of the disciplinary committee or the jurisdiction or authority of such body.

It is submitted by the respondents that the disciplinary proceedings have already been concluded and the proposed penalty is pending approval before the Board. In the light of the above, particularly since the appellant herein invited a direction from the court for the expeditious completion of the inquiry and the disciplinary proceedings, the ground of lack of jurisdiction sought to be urged for the first time at this stage cannot be countenanced.

Accordingly, FMA 70 of 2020 and CAN 9587 of 2019 stand dismissed.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.