

(2018) 10 CAL CK 0056

In the Calcutta High Court

Case No : Government Appeal No.3741 Of 2017, Arbitration Petition No.O 522 Of 2017, Writ Petition No.482, 517 Of 2017

Gyan Bharati Vidyapith & Ors @APPELLANT@Hash State Of West Bengal & Ors

Date of Decision : 11-10-2018

Acts Referred:

West Bengal Board of Secondary Education Act, 1963 — Section 4, 4A
Management of Recognized NonGovernment Institutions (Aided and Unaided), Rules, 1969 — Rule 28(9)(viiia)

Citation : (2018) 10 CAL CK 0056

Hon'ble Judges : Dipankar Datta, J;Rajarshi Bharadwaj, J

Bench : Division Bench

Advocate : Soumya Majumdar, Saugata Bhattacharya, Sankha Subhra Ray, Anjan Bhattacharya, Tapati Samanta, Santanu Kumar Mitra

Final Decision : Dismissed

Judgement

1. The Court: The appellants before us, by presenting WP 482 of 2017, had challenged an order dated 19th June, 2017 passed by the Adhoc

Committee of the West Bengal Board of Secondary Education (hereafter the Board). By such order, the Adhoc Committee unanimously resolved to

disapprove the proposal of the appellants to suspend 4 (four) Assistant Teachers viz. S/Sri O.P. Mishra, Y.N. Singh, S.K. Jaiswal and I.M.

Shukla. There was a further direction for resumption of duty by such teachers immediately.

2. Despite such order of the Adhoc Committee of the Board, the appellants had not allowed the said 4 (four) teachers to resume duty. Aggrieved

thereby, the said 4 (four) teachers as writ petitioners presented W.P. 517 of 2017 seeking direction on these appellants to give effect to the said order

dated 19th June, 2017 of the Ad hoc Committee of the Board.

3. The aforesaid writ petitions were considered together by a learned Judge of this Court. Learned advocates for the respective parties were heard.

Upon such hearing and for the reasons assigned in His Lordship's common judgment and order dated 9th November, 2017, W.P. 482 of 2017 was

dismissed whereas W.P. 517 of 2017 was disposed of. These appellants were directed to allow the said 4 (four) teachers to join their respective posts

within a period of two weeks from the date of communication of the order.

4. Although two writ petitions were decided by the aforesaid common judgment and order dated 9th November, 2017 and the ultimate direction passed

while disposing of W.P. 517 of 2017 is adverse to the interests of these appellants, they presented only one appeal and that is against dismissal of

W.P. 482 of 2017.

5. Much has been argued on behalf of the respondents 8 to 11 (the petitioners in W.P. 582 of 2017) that without a separate appeal against the order

dated 8th November, 2017 disposing of W.P. 517 of 2017 with direction upon these appellants to allow the petitioners thereof to join their respective

posts within two weeks, no effective relief can be granted while deciding this appeal against the order of dismissal of W.P. 482 of 2017; hence the

same may be dismissed. However, we did not dilate on such argument. This is for the simple reason that on consideration of the relevant facts and

circumstances that have emerged before us, we are of the firm opinion that the appeal against the order dated 9th November, 2017 dismissing W.P.

482 of 2017 is devoid of merit and the judgment and order under appeal does not suffer from any infirmity.

6. The main question emerging before us for consideration is, whether there was/ is a valid managing committee of Gyan Bharati Vidyapith (the

appellant no.1) having the authority to suspend teaching staff in contemplation of disciplinary proceedings as well as to initiate such proceedings

against its teaching staff.

7. This point was examined by the ad hoc Committee of the Board while rendering its order dated 19th June, 2017. These appellants, although put on

notice, did not attend the hearing. They stayed away from the hearing on the ground that the hearing had been convened by the ad hoc Committee of

the Board and not by the Board itself. The ad hoc Committee upon perusal of documents placed before it returned the finding that the managing

committee of the school (appellant no.1) was defunct and such defunct managing committee had no locus standi to suspend the said 4 (four) teachers.

8. In course of hearing before the learned Judge, a technical point on behalf of the appellants was raised. Reference was first made to an order dated

24th January, 2017 passed by a learned Judge of this Court, which required the Board to pass an appropriate order. Such position was reiterated by

another learned Judge in an order dated 18th May, 2017. It was, thus, contended that the ad hoc Committee lacked jurisdiction to convene a hearing

and to pass an order in connection with the proposal to suspend the said 4 (four) teachers. In other words, since the Board had not passed the order

on the proposal to suspend the said 4 (four) teachers, the order of the Adhoc Committee dated 19th June, 2017 is without jurisdiction.

9. On behalf of the Board, the aforesaid contention was opposed. The argument in opposition, as recorded by the learned Judge, reads thus:

“Mr. Mitra, learned advocate appearing for the Board submits that by the West Bengal Board of Secondary Education (Amendment) Bill, 2016, a

new Section 4A was inserted after Section 4 of the West Bengal Board of Secondary Education Act and by the same the President of the Ad hoc

Committee had been authorised to exercise all the powers and functions of the President of the Board and the Ad hoc Committee had been authorised

to exercise all the powers and functions of the Board and the Committee constituted by the Board under the Act. By notification dated 29th July, 2016,

the Governor appointed “the 29th day of July, 2016”, as the date of effect of the West Bengal Board of Secondary Education (Amendment)

Act, 2016 (hereinafter referred to as the Amendment Act of 2016). Subsequent thereto, by a notification dated 30th July, 2016, the Ad hoc Committee

was constituted and on the basis thereof the Ad hoc Committee was competent to pass the order dated 19th June, 2017.”

10. The learned Judge answered the point of jurisdiction by observing as follows:

“The contention of Mr. Majumder that the order impugned dated 19th June, 2017 suffers from a jurisdictional error is not acceptable to this Court

in view of the provisions of the Amendment Act of 2016 and the notification towards constitution of the Ad hoc Committee. A perusal of the

provisions of Section 4A(2) of the Amendment Act of 2016 clearly reveals that the Ad hoc (sic Committee) was authorised to pass the order dated

19th June, 2017.â??

11. We have perused the provisions of law as well as the relevant notification. It appears to us that the learned Judge was perfectly justified in

spurning the objection to the jurisdiction of the Ad hoc Committee to resolve not to approve the proposal to of the appellants to suspend the said 4

(four) teachers.

12. What remains is the question as to whether a validly constituted managing committee of the school (appellant no.1) did exist, which could have

suspended the said 4(four) teachers in contemplation of disciplinary proceedings and/or to initiate disciplinary proceedings against them.

13. The procedure for holding elections for constitution/reconstitution of managing committees of institutions governed by the Management of

Recognized Non-Government Institutions (Aided and Unaided), Rules, 1969 laid down by the Board requires submission of Form 4 (MC) before the

Board, through the District Inspector of Schools concerned, after the office bearers are elected. It could not be shown before us that upon valid re-

constitution of the managing committee, full particulars were furnished in Form 4 (MC) for submission before the Board through the concerned

District Inspector of Schools. A document that was sought to be relied upon in this connection has been seriously disputed by the learned Junior

Standing Counsel appearing for the State and the relevant school inspector. According to counsel, the seal on such document is forged and the relevant

school inspector never received Form 4 (MC).

14. It appears on further perusal of the judgment and order under challenge that the learned Judge specifically asked these appellants as to whether

Form 4 (MC) was submitted to the Board through the relevant school Inspector or not. The order records that no such document could be produced

before His Lordship.

15. The attempt on the part of these appellants to produce before us the disputed document is seen to be a conscious attempt to fill up the lacunae.

16. It is axiomatic that the power to suspend teaching staff in contemplation of disciplinary proceedings conferred by Rule 28(9)(viiia) of the

Management Rules can be exercised by a valid managing committee and not a defunct managing committee. No clinching evidence of proper

reconstitution of the managing committee having been produced before us and the document that these appellants sought to rely on before us having

been disputed by the State as forged, we are of the opinion that a factual investigation is necessary to render a decision one way or the other as to

whether such document is a genuine document or it is forged. Proceedings before the Appellate Court are not appropriate for deciding such

question. No conclusion is recorded by us but the parties are left to pursue their remedy in accordance with law before the appropriate forum. Suffice

it record that this Court would not sit in appeal over the decision of the Ad hoc Committee which, even otherwise, does not manifest itself as perverse.

17. For the reasons aforesaid, we are inclined to and do hold that the finding of the Ad hoc Committee of the Board that the managing committee of

the appellant no.1 is defunct and hence not authorized to order interim suspension in contemplation of disciplinary proceedings, since upheld by the

learned Judge in the impugned judgment and order, does not require interdiction in appeal.

18. There is no merit in this appeal, which stands dismissed. There shall be no order as to costs.