
(1972) 03 CAL CK 0004
In the Calcutta High Court

Saktipada Karmakar

APPELLANT

Vs

West Bengal Board of Secondary Education and Others

RESPONDENT

Date of Decision : 15-03-1972

Acts Referred:

Citation : (1972) 03 CAL CK 0004

Hon'ble Judges : Chittatosh Mookerjee, J

Bench : Single Bench

Advocate : Harasit Chakraborty, for the Appellant; Madan Mohan Saha for Respondent Nos. 5 to 12, for the Respondent

Judgement

Mr. Justice Chittatosh Mookerjee

1. The point for consideration, in this Rule, is whether the respondent Nos. 3 to 12 are entitled to function as the Managing Committee of Fulkushma High School and to suspend the petitioner from the post of Headmaster of the said School.
2. The West Bengal Board of Secondary Education accorded recognition to the said school in the year 1958. In the year 1961 the Managing Committee of the School was reconstituted in accordance with the rules of management framed by the West Bengal Secondary Education. In the said election respondent Nos. 3 to 12 were respectively elected as office bearers and members of the Managing Committee. The West Bengal Board of Secondary Education granted approval to the Managing Committee with effect from 16th July, 1961. Thus, the term of the respondent Nos. 3 to 12 as members of the Managing Committee expired on 15th July, 1964. Admittedly the Board did not extend the term of the said Managing Committee.
3. In the year 1967 there was a purported election for reconstitution of the Managing Committee of the School. One Sudhanshu Sekhar Saha obtained Civil Rule No. 53 (W) of 1968 challenging the said election. I understand that the said Rule has since succeeded and the election held in 1967 has been quashed.

4. Under Rule 10 of the Rules for Management of Non-Government High Schools including aided schools (published under Notification No. 3765-Edn. (G)/G. 8B-40/59-19th September, 1960) the terms of a Managing Committee by the Board unless the term was extended by the Board for any reason.

5. Similarly the Rule 12 of the new Rules for the Management of Non-Government Institutions (Aided and Unaided), rules, 1969 provides, subject to the approval of the Committee by the Board, the term of then Committee shall be three years from the date on which the constitution or reconstitution is completed by the election of the office bearers and nomination by the Director or from the date of expiring of the term of the previous committee whichever is later, provided that such term may be extended by the Board for good and sufficient reasons so, however, that the period of extension shall, in no case, exceed one year.

6. In the present case the respondent Nos. 3 to 12 whose term of office has admittedly expired are no longer entitled to function. On 16th May, 1970 the respondent No. 5 as the Secretary of the said school money. The respondent No. 5 also lodged a complaint to the police against the petitioner. On 22nd May, 1970, the petitioner showed cause denying that he had misappropriated any money. On 18th July, 1970 the respondent No. 5 intimated the petitioner that in pursuance of a resolution of the Managing Committee of the School passed on 10th July, 1970, the petitioner had been suspended from service with effect from 11th July, 1970. Pending the proceeding of the Criminal case filed against him.

7. I have already stated that the term of the Managing Committee of the School expired long ago. On 10th July, 1970 the respondent Nos. 3 to 12 were not entitled to function as the Managing Committee of the School. Therefore, the resolution adopted on 10th July, 1970, was void and ineffectual. The respondents are not entitled to give effect to the said resolution suspending the petitioner. For the same reason I hold that the respondent Nos. 3 to 12 are not competent to conduct any disciplinary proceeding against the petitioner. Mr. M. M. Saha, learned Advocate appearing on behalf of some of the members of Managing Committee did not also seriously dispute the position that the respondent Nos. 3 to 12 whose term of office has already expired are no longer entitled to function as the Managing Committee of the School. According to Mr. Saha these respondents have been compelled to continue the management of the affair of the school as it has not been possible to complete the reconstitution of the Managing Committee of the School. According to respondents the petitioner who was the Headmaster of the school was himself responsible for this impasse. Mr. Saha further submitted that after this Court quashed the election held in 1967 by the order passed in Civil Rule No. 54 (W) of 1968, have not been put in as yet. Therefore, the New Managing Committee has not been able to assume office and the respondent Nos. 3 to 12 are still continuing. I need not decide the validity of the said reconstitution as the same does arise for consideration in the present Rule.

8. In the facts and circumstances of the case, the West Bengal Board of Secondary Education ought to invoke its power of supervision and control conferred upon it by the West Bengal Board of Secondary Education Act and Rules made there under for the purpose of the due administration of the school in question. Mr. Saha, learned Advocate for the respondent himself submitted before me that the Board ought to appoint an administrator to take charge of the school till the reconstitution of the Managing Committee is completed.

9. I, accordingly, make the Rule absolute in part and quash the resolution dated 10th July, 1970, Annexure e to the petition. Let a Writ of Mandamus be also issued commanding the respondent Nos. 3 to 12 to forbear from proceeding with the disciplinary proceeding against the petitioner. Let a Writ of Mandamus be also issued commanding the respondent No. 1 to appoint an administrator within the period of two months from date to take charge of the school in question till reconstitution of the Managing Committee in accordance with law. The petitioner will remain restrained from functioning as Headmaster of the school till such time as the administrator be appointed by the West Bengal Board of Secondary Education assume office. The administrator after taking charge will be at liberty to decide whether the petitioner should be suspended and whether any disciplinary proceeding should be taken against him or not.

There will be no order as to costs. In this case the respondent did not take any point regarding the maintainability of the writ application against the respondent No. 12, therefore I have not entered into the said point.