
(1998) 12 CAL CK 0011
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction Original Side W.P. No. 1975 of 1996

Shree Ahinsa Prachar Samity and Another	APPELLANT
Vs	
The Appeal Committee and Others	RESPONDENT

Date of Decision : 03-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 26, 29, 30
Management of Recognized Non Government Institutions (Aided and Unaided) Rules,
1969 — Rule 28(8), 33
West Bengal Board of Secondary Education Act, 1963 — Section 22, 22(3)

Citation : (1999) 1 CALLT 271

Hon'ble Judges : Mahemmad Habeeb Shams Ansari, J

Bench : Single Bench

Advocate : Dr. Samir Chakraborty, for the Appellant; Mr. A.P. Sircar and Mr. Saugata Bhattacharyya, for the Respondent

Judgement

M.H.S. Ansari. J.

1. The present writ application is filed by the Society administering the school in question. The petitioner No.1 is registered as a Society under the Societies Registration Act, 1860 and the petitioner No. 2 is the Secretary of the said Society. It is averred in the application that the object of petitioner No. 1 Society inter alia, as follows;

"to establish, maintain and run a Vidyalaya to be named Shree Digambar Jain Vidyalaya and other institutions for imparting education in literature, science, commerce, industry, fine arts and other useful knowledge including Digambar Jain religion."

2. Pursuant to the aforesaid object. It is stated, that the petitioner No. 1 founded and established Shree Digambar Jain Vldyalaya in the year 1956 and Shree Digambar Jain Balika Vidyalaya in the year 1960. In the instant writ petition, we are concerned with Shri Digambar Jain Balika Vldyalaya and for the sake of convenience, it is hereinafter referred to as the school in question.

3. The petitioners claim that the society is founded and established by Jains and that Historically, Philosophically and in terms of Customs, usage, dogma, doctrine, objects, forms, methods and ritual of worship, pantheon of Tirthankaras, epistemology, cosmology, cosmogony, ethics, places of pilgrimage and in myriad other ways, Jainism has always been a distinct religion and that its followers constitute a significant minority in India.

4. It is the further claim of the petitioners that in the country as a whole and in all the States, Jains have the status of minority community on the basis of the census report. The entire population of Jains which includes the Digambar Jain community in India, it is stated, is hardly one percent of the total population of the country and so far as the State of West Bengal is concerned, the said percentage is even less.

5. For the management and administration of the said schools including the school in question which have been founded by the said community a separate written Constitution/rules for management and administration of the said schools was framed and forwarded to the Department of Education, Government of West Bengal for necessary action in accordance with the Rule 33 of the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969 (for short 1969 Rules) framed under the West Bengal Board of Secondary Education Act, 1963 (for short the Act.).

6. The petitioners claim that the State Government had already approved special rules for the management and administration of Shree Jain Swetambar Terapanthy Vidyalaya Society and Shree Jain Vidyalaya, Calcutta, two Swetambar Jain Schools founded and administered by Swetambar Jain Society under Rule 33 of 1969 Rules, treating them as minority Institutions. There is no justification, it is contended, for the respondent No. 7 herein not approving the special rules in respect of the petitioner No. 1 Society and according the schools managed by it, with the status of minority Institutions.

7. According to the petitioners although 20 (twenty) years have elapsed since request was made by the petitioners for approving the constitution/ special rules but no action has been taken thereon as yet by the State. The petitioners Society, however, in the meanwhile have been following the Rules framed by it for administering the said schools.

8. The foremost relief prayed for in the present writ application is for a declaration that the petitioner No. 1 and the institutions founded and administered by it are minority institutions entitled to protection as guaranteed under Articles 29 and 30 of the Constitution of India and for a direction to the State of West Bengal, respondent No. 7 herein to approve in accordance with the Regulation 33 of the 1969 Rules, the constitution/ rules of the petitioner No. 1 Society.

9. The petitioners have also sought a writ in the nature of certiorari for quashing the order passed by the Appeal Committee, respondent No. 1 herein contained in

annexure "O", being letter No. 9598/G dated 31.7.96 communicating the orders in Appeal Nos. 15/95, 16/95 and 17/95.

10. The said appeals were preferred before the Appeal Committee by the respondent Nos. 4, 5 and 6 who are teachers in the school in question. By the impugned order being annexure "O", the Appeal Committee allowed the appeals of respondent Nos. 4, 5 and 6 herein and directed the respondent therein (school authorities) to allow the said teachers to sign the attendance register as they are in service and to pay them their respective pay and other admissible allowances from the date of forceable prevention from signing the attendance register i.e. from 25.6.95 and further directing that the said teachers shall get their pay and admissible allowances month by month.

11. The said order of the Appeal Committee being annexure "O" has been assailed in the above writ petition on several grounds.

12. It must be stated here that the facts leading to the filing of the respective appeals before the Appeal Committee by the respondents Nos. 4, 5 and 6 were that the appellants therein were forcibly prevented from signing the attendance register. In the statutory form of appeal, in the column 13 in respect of the query;

"Whether the grievance is the out come of any decision of the Managing Committee?"

The respondents have stated as under;

"I am in the dark whether I was obstructed or not from working under any decision of the Managing Committee or not. The Headmistress and the Secretary were repeatedly requested to furnish the resolution of the Managing Committee. But giving hoax they delayed the matter and did not give the decision. Hence a diary was lodged on 22.7.95 with the local P.S. Jorabagan.

"I was obstructed from working on and from 26.6.95."

13. According to the petitioners and as averred in the writ application, the respondents-teachers regularly absented themselves without any prior intimation and also arrived late after starting of school and moreover, since the academic year 1988-89, the school in question has been gradually changing over from being a Hindi medium school to a English Medium School. In the academic year 1995-96 upto Class VII was converted into English medium and the petitioners had planned for converting Class VIII to English medium from the academic year 1996-97. The qualification required for teachers in an English medium Secondary School is minimum M.A., B.Ed, and Post Graduate qualification in a major subject. Since the said respondents did not have such required qualification, the petitioners could not continue with their services as teachers with the said school. In that view, a decision was taken by the Managing Committee of the school that the services of the said respondents be dispensed with and as a consequence thereof by a letter dated 13th May, 1995, the Headmistress of the

said school intimated the said respondents by separate letters, all said to be dated 15th May, 1995 about the above mentioned decision of the Managing Committee to terminate their service as teachers. Copies of the said letters are annexed to the writ petition and have been collectively marked as annexure "G". According to the petitioners, the respondents refused to accept the said letters and the notice pay tendered and the petitioners thereafter had no option but to refuse the said respondents from working in the said school when they forcibly tried to do so on 27.6.95.

14. Mr. Arun Prokash Sarcar, learned senior counsel for the respondents teachers objected to the petitioner raising a new contention for the first time in the present writ petition as to the termination of the services and the alleged letters of termination. Mr. Sircar referred to the objection being annexure "I" filed by the petitioners before the Appeal Committee and also to the impugned order being annexures "C" to the writ petition in support of his contention that the said contention was never raised before the Appeal Committee, nor the alleged letters of termination were either pleaded or placed before the Appeal Committee. It is the submission of Mr. Sircar that the petitioner should not be allowed to raise the said contention or to rely upon the said letters.

15. A perusal of annexure "I", being the objection filed by the Secretary of the School in question before the Appeal Committee shows that there is no averment with respect to the termination of the services of the respondents nor any reasons have been stated for the action impugned in the appeal. The only objection taken before the Appeal Committee is as to the maintainability of the appeal on the ground that the said school has been established and administered and is being run and managed by its special Constitution under Articles 26, 29 and 30 of the Constitution of India.

16. In the impugned order passed by the Appeal Committee also it has been observed that the only contention of the school authorities is as to the jurisdiction of the Appeal Committee on the ground of Articles 26 and 30 of the Constitution of India. Further, it has been held in the impugned order of the Appeal Committee that no termination letters were issued and no appointment letters were also issued.

17. The above is a finding of fact reached by the Appeal Committee. The same is not questioned on the ground of perversity. A new contention is sought to be raised in the present writ application which was not raised before the Appeal Committee, the same is not liable to be entertained in the instant writ petition. The petitioners had an opportunity of raising those contentions and placing the relevant documents upon which they relied upon including annexure "G" before the Appeal Committee and failed to do so. No reliance can, therefore, be placed upon the said letters of termination, nor any contentions based thereon can be allowed to be raised or considered in these proceedings.

18. As to the jurisdiction and authority of the Appeal Committee to entertain or

decide the appeals filed by the respondents-teachers, it must be noted that the special rules/special constitution has neither been approved nor the rules framed by the state under Rule 33 been made applicable and therefore, the school in question continues to be governed by the 1969 Rules which are applicable to all Recognised Non-Government institutions (Aided and Unaided).

19. Under Rule 33 of the 1969 Rules, power has been conferred upon the State Government to frame, on the application of any institution or class of Institutions to which the provisions of Articles 26 and 30 of the Constitution of India may apply, further or other rules for the composition, power, functions of the Managing Committee or Committees of such institutions or class of institutions. The application made in that behalf by the petitioners is pending consideration before the State Government but the institutions in question have not been so accorded the status of minority institutions nor have the special Constitution been approved nor any special rules been approved or framed by the State Government in exercise of the power vested in it under the said Rule 33 nor the Rules framed under Rule 33 been made applicable to the institution in question.

20. Therefore, even if it is assumed for the moment that the institution in question is a minority institution, the power of the Appeal Committee to entertain the appeals cannot be denied.

21. u/s 22 of the Act, an Appeal Committee has been constituted. Sub-section 3 of section 22 stipulates that the Appeal Committee is empowered to hear and decide the appeals by teachers and other employees against the decisions of the Managing Committee of the institutions adversely affecting them. The Appeal Committee is to be guided and controlled by statutory regulations. The right of appeal is limited to only -those decisions of Managing Committee of institutions which adversely affect the teachers or other employees of the institution concerned. The Appeal Committee is an impartial body and has to follow the principle of natural justice and to decide the matter impartially and to pass reasoned order.

22. A close scrutiny of sub-section (3) of section 22 would show that a right is vested in the teacher to file an appeal and a duty is cast and thereby jurisdiction is conferred upon the Appeal Committee to decide the appeal against any decision of the Managing Committee adversely affecting the teacher. The ouster of jurisdiction to conferred upon the Appeal Committee will not be lightly inferred. In the absence of any statutory provisions to the contra, it cannot be said that the Appeal Committee has no jurisdiction to hear the appeals filed before it by the respondents teachers. In the instant case, no rules or further rules which the State is empowered to frame for any institution in exercise of the power vested in it have been so framed for the institution in question whereby the jurisdiction of Appeal Committee can be said to be ousted.

23. In *Maheswari Balika Vidyalaya & Ore. v. State of West Bengal & Ors.* reported in 1988 (2) Cal L J 104 the jurisdiction of the Appeal Committee of the

Board of Secondary Education to hear the appeals of suspended or dismissed teachers of Minority Educational institutions was upheld relying upon the judgment of the Supreme Court in *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*, .

24. In the light of the above discussion it must be held that the finding of the Appeal Committee that the institution in question is governed by the rules for Management of Recognised Non-Government institution (Aided and Unaided) Rules, 1969 and that the Appeal Committee has the jurisdiction to hear the appeals by teachers, as in the instant case, against any decision adversely affecting such teachers, suffers from no legal infirmity.

25. Dr. Samir Chakraborty, learned advocate for the petitioner sought to contend that the impugned order is vitiated on the ground of violation of principles of natural justice in that the decision has been passed ex-parte.

26. From a perusal of the impugned order of the Appeal Committee, it is seen that on 7.2.96 due to the absence of the respondents therein (Petitioners herein), appeals were adjourned by the Appeal Committee with a direction that if they did not appear on the next date of hearing, the appeals would be heard ex-parte. On 16.5.96, the respondents before the Appeals Committee (Petitioners herein) were represented by their learned advocate and appeals were adjourned to produce decisions of the High Court and the Supreme Court which were relied upon by the learned advocate, in support of their contention that the institution being a minority institution is governed by the special rules framed under Rule 33 of the 1969 Rules and for production of necessary papers to show that the State accorded such special status upon the institution in question. The Appeal was thereafter heard on 7.6.96 when none appeared on behalf of the school authorities and a petition for adjournment was filed. The adjournment was sought on the ground that the school is closed for summer vacation. The Appeal Committee rejected the said request on the ground that no sufficient reason has been put-forth for grant of adjournment of the appeals. The appeals were then taken up for ex-parte hearing.

27. No doubt, as contended by Dr. Samir Chakraborty, learned counsel for the petitioner that the principles of natural justice have to be adhered to by the Appeal Committee. What has to be considered in the instant case is whether reasonable opportunity of being heard was or was not afforded to the petitioners by the Appeal Committee? Reasonable opportunity of being heard has two elements, (1) opportunity to be heard and (2) opportunity must be reasonable. Both are justiceable and it is for the court to decide whether an opportunity has been given and whether the same has been reasonable.

28. In the instant case, it cannot be denied that the petitioner herein have been afforded opportunity of being heard before the Appeal Committee. The matter was adjourned only for the purpose of enabling the learned advocate for the school authorities to place the judicial precedents upon which they relied in

support of their contention as to the jurisdiction of the Appeal Committee to entertain the appeals and for production of documents upon which they relied in support of their contention that the institution enjoyed special rules as envisaged in Rule 33 of the Management Rules. The school authorities were represented before the Appeal Committee by a learned advocate. The school authorities merely filed an application for adjournment and none chose to appear on their behalf on the date fixed for hearing. The school authorities wrongly assumed that on their application the matter would be adjourned notwithstanding that sufficient cause for adjournment was made out or not. Having already obtained adjournment on the earlier occasion, it was but proper that the school authorities should have appeared before the Appeal Committee, ready to proceed with the matter on the said date, in case the adjournment prayed for was refused. Having failed to do so and choosing to remain ex-parte, the school authorities have only themselves to blame. It is not therefore, not open to the school authorities now to contend that there has been violation of principles of natural justice or that they had not been afforded reasonable opportunity to be heard.

29. The instant case is not in that class of cases where the petitioners were not afforded an opportunity of being heard or that the opportunity afforded was not reasonable. The petitioners failed to avail of the reasonable opportunity afforded to them.

30. Moreover, the only objection raised by the school authorities before the Appeal Committee was with respect to the jurisdiction of the Appeal Committee to hear the appeal. The said question having been decided as above, I am of the view that no prejudice has been caused to the petitioner herein to warrant interference on the alleged ground of violation of principles of natural justice.

31. Dr. Samir Chakraborty, learned counsel for the petitioners next contended that the impugned order of the Appeal Committee is vitiated for non-compliance with the procedure prescribed in provision of Regulation 7, of the Appeal Regulation regarding the manner of hearing and deciding the appeals by the Appeal Committee (in short the Regulation). In short, it is the contention of Dr. Samir Chakraborty that the exercise of power by the Appeal Committee in disposing of the appeal without compliance of Regulation 7 is without authority and jurisdiction.

32. It was further contended by Dr. Samir Chanraborty that there was non-compliance with the provisions of Regulation 9(1)(b). The Appeal Committee, it was contended have to exercise its mind independently and come to an independent decision as to the nature of relief to be granted to the appellants before it, even in a case where the termination/dismissal is set aside and appeal is allowed, the order of reinstatement would not follow automatically. It is contended that there are three alternatives before the Appeal Committee in an appeal against an order of termination or dismissal. There has been no application of mind by the Appeal Committee as to why reinstatement has been ordered and the other alternatives have not been taken into consideration and

thereby the impugned order is vitiated by non-application of mind and non-compliance with the provisions of Regulation 9 (i) (b), it was contended.

33. Dr. Samir Chakraborty, learned counsel for the petitioner has relied upon the judgment of the Division Bench of this High Court in *Motilal Kala & Anr. v. Hari Govind Rai & Ors.*, reported in 1978 (2) CLJ 259 and a judgment of a learned single judge of this court in *Tarapada Roy & Ors. v. West Bengal Board of Secondary Education & Ors.* reported in 1979 (1) CLJ 387.

34. Mr. Arun Prokash Sircar, learned senior counsel for the respondents No. 4, 5 and 6 sought to counter the said contentions by submitting that the appeals in the instant case were preferred by the teachers aggrieved against the action of the school authorities in not permitting them to perform their duties or sign the attendance register. The appeals were not against any order of dismissal or termination of service. The action impugned before the Appeal Committee by the teachers-respondents Nos. 4, 5 and 6 herein was against the action of the school authorities adversely affecting them and the question of compliance with the provisions in Regulation 7 (i) (b) would arise only when there was an enquiry conducted by the school authorities and not otherwise. In the instant case, the respondents-teachers were not dismissed nor their duties or to sign the attendance register. There was no disciplinary proceedings or enquiry proceeding the impugned action, and, therefore, the requirements of "further enquiry" referred to in Regulations 7 (i) (b) of the Appeal Regulations does not arise, it was contended.

35. The question of the Appeal Committee considering the three alternatives in Regulation 8 (i) (b) also does arise, it was submitted by Mr. Sircar, as the case is not one of termination or dismissal of service.

36. Mr. Sircar, learned senior counsel relied upon the judgments in the case of *Lila Nandi v. West Bengal Board of Secondary Education & Ore.*, reported in 74 CWN 325 and 1975 (1) CLJ 295 (*Anup Kr. Ghosh v. State of West Bengal & Ors.*).

37. To appreciate the rival contention with respect to the non-compliance of the regulations, it would be appropriate to refer to the relevant provisions of the Appeal Regulations regarding the manner of hearing and deciding the appeal by the Appeal Committee (hereinbefore referred to as the Regulations). The relevant provisions of regulations i.e. 6 to 9 read as under:

"6(1) On receipt of a memorandum of appeal the Secretary to the Board shall forward a copy thereof by registered post with acknowledgement due to the Managing Committee concerned inviting its comments if any:

(2) The Managing Committee shall forward its comments, in triplicate by registered post with acknowledgement due, to the Secretary to the Board within three weeks from the date of receipt of the said memorandum of appeal,

(3) On receipt of such comments from the Managing Committee within the time mentioned in sub-regulation (2) the Secretary to the Board shall forward a copy

thereof, by registered post with acknowledgment due, to the appellant who may within a fortnight from the date of receipt of such copy forward to the Secretary of the Board, by registered post with acknowledgement due, his explanation if any on such comments;

7(1) The Secretary to the Board shall-

(a) within a fortnight from the date of expiry of the time mentioned in sub-regulation (2) of Regulation 6 in the event of non-receipt of any comments from the Managing Committee, or

(b) within a fortnight from the date of expiry of the period referred to in sub-regulation(3) of regulation 6, place all records of the case with or without the comments of the Managing Committee and the explanation of the appellant as the case may be, before the Appeal Committee for a decision whether further enquiry into the case is necessary or not. The decision of the Appeal Committee in this respect shall be final.

(2) If the Appeal Committee decides to have a further enquiry into the case, the Secretary to the Board shall, within one month from the date of such decision, forward such records of the case as were placed before the Appeal Committee to the Director of Public instruction, Government of West Bengal, who shall as soon as possible after holding such enquiry as he considers necessary, send a report containing his view to the Appeal Committee. The Secretary to the Board shall then send a copy of such report to the appellant, by registered post with acknowledgement due, inviting his comments therein within a fortnight from the date of receipt thereof.

(3) Where the Appeal Committee decides under sub-regulations (1) that a further enquiry into the case is not necessary and also where the comment of the appellant referred to in Sub-regulation (2) is or is not received within the period mentioned therein, the Secretary to the Board shall place the case before the Appeal Committee for decision of the appeal.

8(1) The Appeal Committee may, at its discretion, hear the appellant or the Secretary to the Managing Committee or its representative personally and for that purpose may Issue an order directing the appellant or the Secretary to the Managing Committee or its representative to appear before it with such papers and documents as the appeal Committee may require.

(2) When an order is issued under sub-regulation (i) the party shall appear before the Appeal Committee on the date and time fixed in the said order. In case any of the parties or both the parties fail to appear, the Appeal Committee may proceed with the case without granting further time to the absentee party.

9(1) The Appeal Committee may, on consideration of all the materials before it-

(a) In an appeal against an order of reduction in rank or the withholding of salary or a portion thereof or the withholding of the increment in pay, or against any

like order affecting the appellant, (i) allow the appeal and grant such relief as it considers appropriate. If It is of the opinion that the order appealed against is based on insufficient or unsatisfactory grounds, or (ii) dismiss the appeal, if it is of the opinion that there are no grounds for interference with the order appealed against;

(b) in an appeal against an order of discharge or dismissal.

(i) allow the appeal and make an order directing reinstatement of the appellant with or without such relief as may be found consequential to such reinstatement, if it is of the opinion that such rein-statement is appropriate and proper, or

(ii) allow the appeal and make an order directing payment of gratuity to the appellant calculated at the rate of one month's salary for each completed year of service subject to a maximum of twelve months salary if it is of the opinion that such payment of gratuity would be appropriate relief to the appellant instead of making an order of reinstatement, or

(iii) dismiss the appeal, if it is of the opinion that there are no good grounds for interference with the order appealed against,

(2) The Appeal Committee in all cases shall record reasons for its decision."

38. It must also be stated here that under Rule 28(8) of the 1969 Rules, as noticed above, which are applicable to the institution in question, the procedure has been laid down for taking disciplinary action by the Managing Committee before permanent or temporary teachers or other employees are removed or dismissed. Such disciplinary proceeding contemplates an enquiry and further prescribes a second show cause notice calling upon the teacher of the employee concerned to show cause why he should not be dismissed or removed from service. The Managing Committee Is then required to send to the Board all relevant papers including the explanation submitted by the delinquent and the recommendations of the Committee for the action proposed to be taken.

39. In Tarapada Roy's case (cited supra), the question of non-compliance of regulations 7 and 8 was considered. It was observed therein that the exercise of power of hearing an appeal by the Appeal Committee is subject to the provisions contained in the regulations including Regulation 7. The statutory provisions relating to hearing of an appeal by the Appeal Committee cannot be dispensed with. Justice Bimal Chandra Basak (as he then was), opined that exercising of power by the Appeal Committee in disposing of the appeal without compliance of regulation is without authority and jurisdiction. Reference was made by the learned Judge to another judgment of a learned single Judge in Radharaman Das Vs. Appeal Committee of The West Bengal Board of Secondary Education and Others, wherein it was observed that the first stage contemplated in the hearing of the appeal by the Appeal Committee is in Regulation 7 (i) (b) which is that after the Managing Committee in an appeal by a teacher has made its comment and the appellant has given his explanation on such comments, the Secretary

has to place all records of the case with or without comments of the Managing Committee and the explanation of the appellant as the case may be, before the Appeal Committee for a decision whether further enquiry in the case is necessary or not. If no further enquiry is directed, then only the Secretary has to place the papers again before the Appeal Committee for a decision on the appeal itself as provided in Regulation 7 (2) or 7 (3). Order for enquiry may be given under regulation 7 (2) referring it to the Director of Secondary Education, Government of West Bengal or such other agency as may be considered fit and proper by the Appeal Committee, which shall as soon as possible after holding such enquiry, as he considers necessary, send its report containing its view to the Appeal Committee. The Secretary of the Board shall then send a copy of such report to the appellant inviting his comment thereon.

40. In the instant case, admittedly, no such action was taken by the Secretary nor any decision was taken by the Appeal Committee whether further enquiry into the case is necessary or not. There has been non-compliance with the procedure prescribed in regulations 7 (1) (b). The question, therefore, that arises for consideration is whether as held in Tarapada Roy's case the non-compliance with the provisions in regulation 7 (1) (b) could vitiate the whole procedure rendering the impugned order as one without authority and jurisdiction, notwithstanding that there was no previous enquiry or any disciplinary proceeding initiated against the teachers in question.

41. In the instant case as already noticed above, no disciplinary proceeding as contemplated in Rule 28 (8) of 1969 Rules was held and no enquiry was conducted against the respondents teachers nor even an order of termination was served upon them. It is on this factual foundation that Mr. Sircar submitted that the further enquiry referred to in Regulation 7 (1) (b) of the Appeal Regulation is not attracted. In other words, it was the submission of Mr. Sircar that the provisions of regulation of 7 (1) (b) are attracted to only those cases where there was a previous enquiry in a disciplinary proceeding.

42. The aforesaid contention of Mr. Sircar, learned senior counsel for the respondents-teachers is supported by the judgment in Anup Kr. Bose (cited-supra), wherein it was held as under:

The words "further enquiry" referred to in regulation 7 (1) (b) of the Appeal Regulation pre-suppose a previous enquiry. So, in my view, the provisions of Regulation 7 (1) (b) are attracted only to those cases where there was a previous enquiry in a disciplinary proceeding."

43. In the light of the above, it must be stated as in Tampada Roy's case that non-compliance with the provisions contained in the regulation 7 (1) (b) would vitiate the proceedings, rendering the order of the Appeal Committee as without authority and jurisdiction where there was a previous enquiry in a disciplinary proceedings. However, where no previous enquiry has been conducted in a disciplinary proceedings initiated against the teacher or employee of the school,

the provisions of Regulations 7 (1) (b) requiring a further enquiry are not attracted nor their compliance can be insisted upon. The words further enquiry referred to in Regulation 7 (1) (b) of the Appeal Regulations pre-suppose a previous enquiry. On the facts of the instant case, it must be held that the non-compliance with the provisions of Regulation 7 (1) (b) would not vitiate the impugned order nor for that reason render the same as without jurisdiction. The contention of the learned counsel for the petitioners has accordingly to be rejected.

44. As to the contention of the learned counsel for the petitioners with respect to non-compliance with the provisions contained in Regulations 9 (i) (b) are concerned, it must be stated that as held in Tarapada Roy's case, even if an appeal is allowed the reinstatement should not automatically follow after allow in the appeal, the Appeal Committee should then apply its mind independently to the question as to whether in the facts and circumstances of the case, reinstatement is justified or not. However, it cannot be lost sight of that the very provisions contained in regulation 9 (1) (b) relate to and are attracted to an appeal against an order of discharge or dismissal. Whereas Regulation 9 (1) (a) confers power upon the Appeal Committee to pass such orders as are specified in sub-clauses (1) and (11) in an appeal against an order of reduction in rank or with holding of salary or increment or any like order.

45. In the instant case as noticed above, the respondents teachers (respective appellants before the Appeal Committee) were neither discharged nor dismissed. The Appeal Committee constituted by and u/s 22 of the West Bengal Board of Secondary Education Act has been conferred with the power and duty to hear and decide appeals by teachers and other employees against the decisions of the Managing Committee adversely affecting them. The jurisdiction of the Appeal Committee to hear appeal is not confined to appeals against orders of termination of service or discharge alone. The appeal can be preferred by teachers or other employees as in the instant case questioning the action of the school authorities where by the respondents-teachers were forcibly prevented from signing the attendance register and obstructing them from working as teachers on and from 26.6.95.

46. The Appeal Committee on the said facts and circumstances joined that the prevention from signing the attendance register. In fact tantamounts to a termination which is wholly illegal and that the appellant are in service and shall be deemed to be in continuous service. The Appeal Committee accordingly ordered that the appeals be allowed and directed the respondent-school authority to allow the appellants therein to sign the attendance register as they are in service and for Immediate payment of their respective pay and other admissible allowances.

47. Learned counsel for the petitioner sought to found his contention as to the non-compliance with regulation 9 (1) (b) on the statement of the Appeal Committee, that the prevention from signing the attendance register

tantamounts to termination. As already noticed, the respondents teachers were neither dismissed nor their services discharged. The Appeal Committee has also on facts held that the appellants are in service and shall be deemed to be in continuous service. The stray observation in the impugned order that the prevention from signing the attendance register tantamounts to termination would not make it a case of termination or discharge from service. It can hardly be denied that whether a particular order constitutes a termination of service or not, was not a question of fact but one of law, (See-Mr. Lila Nandi v. West Bengal Board, of Secondary Education & Ors. 74 CWN 325).

48. Mere legal flaw in an order which does not go to the root of the matter or affect the jurisdiction of the authority cannot constitute a ground for vitiating the order or rendering it a nullity. What has to be seen is whether the authority passing the order had jurisdiction to pass the order. The assumption made by the Appeal Committee was on a question of law. It did not affect either the jurisdiction of the Appeal Committee nor the erroneous assumption of law was of such nature as to vitiate the order passed by it or going to the root of the matter. The order passed by the Appeal Committee was one directing the respondents therein (school authorities) to allow the appellants therein (teachers) to sign the attendance register and for immediate payment of their respective pay and other allowances. The said direction was within the jurisdiction and authority of the Appeal Committee.

49. Accordingly, I am not inclined to hold that there is any error apparent on the face of the record warranting interference with the impugned order of the Appeal Committee. No infirmity, in the circumstances, can be found with the impugned order directing the respondents therein (petitioners herein) to allow the said teachers to sign the attendance register and continue to allow them to sign the attendance register and to perform their duties as also for payment of their respective pay and other admissible allowances.

50 Now reverting to the reliefs (a) and (b) with respect to the minority status of the petitioners" institution with respect to approval in accordance with the Regulation 33 of 1969 Rules is concerned, it must be stated that the matter has been pending for consideration before the State since 1976 when on 3.6.76, the petitioners were informed by the Government that the consideration of the proposal of the respondent for "special rules" for the institution was postponed and that the matter would be taken up for consideration in due course. The grievances of the petitioner is that till date no action has been taken by the State. Even in the instant writ petition though State is represented by its learned counsel, no affidavit-in-opposition was filed by it. In that view of the matter and keeping in view of the fact that it is for the State to consider and to pass an appropriate orders in exercise of the powers vested in it under Rule 33, it is but appropriate that the State authorities be directed to consider the matter and pass appropriate orders in accordance with the law within a specified time framed. As the matter is pending consideration before the State and in the view

that I have taken as above, it is not considered appropriate by this court to go into the question as to whether the petitioner is or is not a minority institution as also to the other ancillary question.

Let the urgent xerox signed copy of this judgment be furnished to the respective parties, if the same is applied for expeditiously.

51. Petition disposed of