

**(1988) 12 CAL CK 0020**

**In the Calcutta High Court**

**Case No :** Appeal from Appellate Decree No. 229 of 1979

Sidheswar Chatterjee

APPELLANT

Vs

Kharbana High School and Others

RESPONDENT

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**Date of Decision :** 02-12-1988

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23, 9  
Manner of Hearing and Deciding Appeals by Appeal Committee Regulation, 1964 —  
Regulation 11  
West Bengal Board of Secondary Education Act, 1963 — Section 22(4)

**Citation :** (1989) 1 CALLT 184

**Hon'ble Judges :** S.K. Mookherjee, J

**Bench :** Single Bench

**Advocate :** Himangshu Kumar Basu, for the Appellant; Sarda Parmer, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

S.K. Mookherjee, J.—This Second Appeal, at the instance of the plaintiff, is against a judgment and decree of reversal. The Trial Court decreed the Suit instituted by the plaintiff/appellant for declaration that the Order of suspension ending with the Order of dismissal passed by the Managing Committee of the Kharbana High School against the plaintiff was illegal, without jurisdiction and not binding together with a declaration that he was entitled to reinstatement and also that he was entitled to arrears of pay together with all other admissible allowances from the date of his dismissal. The lower Appellate Court reversed the said decree and dismissed the Suit substantially on the ground that the Suit was not maintainable in Civil Court as the plaintiff was entitled to seek relief before the Appeal Committee of the Board of Secondary Education constituted under the West Bengal of Secondary Education Act.

2. The admitted facts are that the plaintiff was a teacher in Kharbana High School and he was put under suspension on the ground of having been guilty of moral turpitude relating to a female escort of the school Smt. Anjali Mukherjee

and was ultimately dismissed from service. From the records another important fact also transpires, namely, that the said female escort Smt. Anjali Mukherjee had ultimately withdrawn her complaint.

3. While allowing the appeal and setting aside the decree granted by the Trial Court, the Lower Appellate Court, it appears, did not go into the merits of the factual contentions but held that the Suit was not maintainable on the ground as stated hereinabove. From a construction of Section 22(4) of the West Bengal Board of Secondary Education Act, Regulation 11 of the (Manner of Hearing and deciding Appeals by Appeal Committee) Regulation, 1964 it appears that an aggrieved teacher might move the Appeal Committee against any Order passed by the Managing Committee and the Order passed by the Appeal Committee will be final and no Suit or proceeding would lie in any Civil or Criminal Court. The Appellate Court, fell into a substantial error of law in holding that the Suit was not entertainable overlooking that the Suit was not against any decision of the Appeal Committee nor the jurisdiction of the Appeal Committee had been invoked by the plaintiff/present appellant. On behalf of the respondent Miss. Parmer has strongly urged that notwithstanding the aforesaid misconstruction the present Second Appeal is liable to be dismissed as it is well-established that no Suit for reinstatement is maintainable except when it falls within the well-known exceptions laid down judicially in *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, . All the said decisions are all distinguishable on facts. In the present case, the substantial grievance is based on absence of any disciplinary proceeding and of prior approval of the Board along with non-consideration of prayer for damages by the Lower Appellate Court. I am unable to accept the said submission of Miss. Parmer as, in my view, the Lower Appellate Court did not at all advert to the said aspect of the matter and did not consider whether such a Suit would be maintainable when allegedly a mandatory provision of the statute or statutory Rule governing dismissal of a teacher by Managing Committee, namely, prior approval of the Board and drawing up of a formal proceeding had not been complied with. Exclusion of Civil Courts jurisdiction is not to be readily presumed. On the basis of the principle laid down in the case of *Omkarmal Khedia v. Sm. Nirmala Patel and Ors.* reported in 1975(1) CLJ 237 the Court of appeal below should have considered the point of maintainability of the present Suit. The other reason for which I feel inclined to send the appeal back for reconsideration is that even if the Suit for reinstatement or for a declaration that the dismissal was illegal becomes not maintainable, the other alternative prayer for damages for wrongful dismissal deserves consideration by the Lower Appellate Court before dismissing the Suit in entirety and relegating the plaintiff to the relief under the West Bengal Board of Secondary Education Act before the Appeal Committee.

4. In the result, the appeal succeeds and is allowed with costs. The judgment and decree of the Lower Appellate Court are set aside and the appeal is sent back to the said Court for reconsideration afresh on merit and in accordance with law on the lines of my observations made herein above. Since the Suit is one of

1972 it is highly desirable that the hearing of the appeal be expedited as far as practicable and should not go beyond six months from the date of communication of this judgment to the Court of Appeal below.

5. Let the records be sent down forthwith.

6. I keep it on record that I have not entered into the merits of the respective contentions raised before me by the contesting parties and the Court below would be free to decide the appeal afresh on all points including that of maintainability of the Suit.