
(2005) 06 CAL CK 0004

In the Calcutta High Court

Case No : Writ Petition No. 20366 (W) of 2003

Sri Chandan Kr. Singh alias Sinha

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-06-2005

Acts Referred:

Constitution of India, 1950 — Article 26, 29, 30, 30(1)
West Bengal Board of Secondary Education Act, 1963 — Section 24
West Bengal Board of Secondary Education Management Rules, 1969 — Rule 28, 28(9), 33
West Bengal Board of Secondary Education Special Rules, 1974 — Rule 1, 10, 12, 15, 2

Citation : (2006) 1 CALLT 510 : 110 CWN 326 : (2006) 2 ILR (Cal) 285

Hon'ble Judges : Maharaj Sinha, J

Bench : Single Bench

Advocate : D.P. Majumdar and B.K. Samanta, for the Appellant; D.K. Samanta, M. Dutta and A.K. Pal, for the Respondent

Judgement

Maharaj Sinha, J.—An order of suspension dated 8 September, 2003 (reference No. GB/44/03) issued against the writ petitioner herein, Chandan Kr. Singh, by the Secretary on behalf of the governing body of the founder body of Diocese of Barrackpore is essentially under challenge in this writ application.

2. By virtue of the said order of suspension the petitioner has still remained suspended and has not been able to discharge his duties as the headmaster of C.M.S. St. John's High School, at Krishnagar, in the District of Nadia, ever since though the said order of suspension was not approved "by the Committee constituted u/s 24 of the West Bengal Board of Secondary Education Act 1963" and though the concerned district Inspector of Schools informed the Secretary of the said C.M.S. St. John's High School, at Krishnagar, (hereinafter referred to as the said school) that the petitioner, Chandan Kr. Singh should be allowed to join "his duty and act as per order of the Secretary, West Bengal Board of Secondary Education" meaning thereby the said order of disapproval of the said order of suspension against the petitioner of the said Section 24 Committee dated 9

February 2004.

3. When the present writ petition was first moved an interim order was made by this Court on 23 December 2003 to protect the interest of the petitioner and by virtue of the said interim order the school authority was restrained from dismissing the petitioner from his post of the headmaster of the said school or rather prohibited from adopting any resolution for dismissing the petitioner from his headmastership of the said school.

4. After the above interim order the petitioner made an application on the basis of some subsequent events that took place after the initiation of the writ proceeding for a direction upon the school authority that the petitioner should be allowed to resume his duty as the headmaster of the said school as before. In the said application the petitioner, in fact, relied on the said order of disapproval of the said Section 24 Committee of the West Bengal Board of Secondary Education dated 9 February 2004 whereby the said committee by its resolution decided not to approve the said order of suspension against the petitioner herein.

5. Needless to mention that the said order of disapproval of the said Section 24 Committee was made on 9 January 2004 after the writ petitioner initiated the writ proceeding and obtained the said interim order in his favour on 23 December 2003.

6. The learned Counsel Dr. D.P. Majumdar, appearing on behalf of the writ petitioner, said with much emphasis that in any event since the Board or rather the said Section 24 Committee decided at its meeting held by it on 9 January 2004 not to approve the said order or rather the proposal of suspension of the petitioner and since the said order of suspension, in fact, was not approved by the said Committee the said order of suspension dated 8 September 2003 of the authority, namely the said governing body could not survive any longer and since the said order of suspension lost its legal existence by virtue of the said order of disapproval of the said Committee the petitioner was entitled to join the school and should have been allowed to resume his duty by the authority of the said school as the headmaster of the school in question and that according to Dr. Majumdar and is the most natural and probable consequence of the said order of disapproval of the said Committee.

7. In his submission Dr. Majumdar also pointed out that since the school authority did not or rather failed to draw any proceeding against the petitioner, the said order of suspension stood automatically withdrawn in the first place in terms of the provisions of the said Sub-Rule 9(VIIa) of Rule 28 of the management of recognized non-government institution (aided and unaided) Rules 1969.

8. Needless to mention that Dr. Majumdar also argued that the present case was squarely governed by the relevant provisions, namely the said Sub-Rule 9(VIIa) of Rule 28 of the said 1969 Rules and in support of his submission he inter alia relied on the provisions of Rule 15 of the Special Rules for management of

secondary schools established and run by Christian Church/Missionary Society(Board) /Religious Society/Subsidiary Trust or their successors of law, in the State of West Bengal, (hereinafter referred to as the Special Rules, 1974).

9. The learned Counsel, Mr. Dilip Kr. Samanta on the other hand argued that the said 1969 Management Rules could not. in any event, apply to this case as the school in question being a minority institution within the meaning of Article 30 of the Constitution of India and being governed by the provisions of the said Special Rules of 1974 the provisions made in the said Special Rules of 1974 alone would govern the case of the petitioner and not the said Management Rules of 1969 and as such even though the said order of suspension by the school authority was not approved by the said Section 24 Committee that order of disapproval of the said Committee did not and could not make the said order of suspension against the petitioner invalid and the school authority or rather the said governing body of the said founder body referred the said order of suspension to the West Bengal Board of Secondary Education or rather to the said Section 24 Committee by sheer mistake and that the school authority and/or the said body did not have any legal obligation under the provisions of the said Special Rules, 1974 to refer the order of suspension to the said Board or to the said Committee for its approval in the first Place.

10. On the basis of the facts of this case and the respective contentions on behalf of both the writ petitioner being the headmaster of the said school and the school authority in question the question that arises for consideration is whether the said, order of suspension made against the petitioner by the school authority could still survive after the said order of disapproval of the order of suspension by the Section 24 Committee as contained in the letter of the Secretary of the West Bengal Board of Secondary Education dated 9 February, 2004, when, admittedly the validity of the said order of disapproval of the said order of suspension had or rather has never been questioned or challenged by the school authority or by the said governing body of the founder body before any forum at any stage at all.

11. If, however, the answer to the above question is in the affirmative namely, that inspite of the said order of disapproval of the order of suspension against the petitioner of the said Section 24 Committee, the order of suspension can still survive, then and in that event, whether in the facts and the circumstances of this case should the order of suspension be otherwise treated to be invalid.

12. In order to consider the above question or questions and the respective contentions of the learned Counsel for the writ petitioner and the school authority the chain of events leading to the initiation of the present writ petition since the time of appointment of the petitioner as the headmaster of the said school need, I think, be mentioned in brief.

13. On the basis of the advertisement in the newspapers inviting applications for the post of headmastership of the said school the petitioner applied for the said

post and was duly selected after the selection committee interviewed three candidates including the petitioner who applied for the said post of headmastership. On the basis of such selection the petitioner was duly appointed as the headmaster by the governing body of the founder body of the said school,

14. After the petitioner was appointed as the headmaster of the said school the appointment of the petitioner was" challenged by one Ashis Mukherjee but eventually the said writ petition of As his Mukherjee was dismissed for non-prosecution. But according to the petitioner at the instigation of the said Ashis Mukherjee two writ petitions were moved by two other persons and also by one Kalyan Biswas, the assistant headmaster of the said school, inter alia challenging the validity of the appointment of the petitioner as the headmaster of the said school.

15. From, the order or orders passed in the said writ applications including the writ application of the petitioner wherein the petitioner claimed that his appointment as the headmaster of the said school was valid and the orders passed by the district Inspector of Schools , were illegal, two appeals were preferred and the said two appeals were considered on merits and disposed of by the Appeal Court by its order dated 21 January 1998.

16. The Appeal Court after considering the facts and the circumstances of the respective writ petitions, essentially challenging the appointment of the petitioner as the headmaster of the said school, was of the opinion that the writ petitioner, Chandan Kr. Singh was able to make out a strong prima facie case in his favour and show that he would suffer irreparable injury if the order of the concerned District Inspector of Schools withdrawing the order of approval of the appointment of the petitioner as the headmaster of the said school was not set aside. The Appeal Court, however, found that the above order of the concerned District Inspector of Schools withdrawing the order of approval of the appointment of the petitioner as the headmaster of the school in question was wholly without jurisdiction.

17. By virtue of the Appeal Court the above writ proceedings including the writ petitioner's came to an end and the appointment of the petitioner as the headmaster of the said school was confirmed to be a valid appointment. The Judgment of the Appeal Court is reported in 1998(1) CHN 410 (wrongly printed as 1988(1) CHN governing body of founder body. Diocese of Barrackpore and Ors. v. State of West Bengal and Ors.

18. The said Ashis Mukherjee, thereafter, in the year 2001 was made the Secretary of both the Managing Committee and the said governing body of the founder body of the said school and one B.M. Malakar became the President thereof.

19. In the month of February 2003, to be precise on 25 February 2003, the school authority and the petitioner the West Bengal Board of Secondary for appointment of two assistant teachers in two different subjects. The said Ashis

Mukherjee, according to the petitioner, took the fullest advantage of his position as the member of both the screening and selecting committee of the said school and empanelled his son for appointment as assistant teacher in Zoology. When the petitioner came to know of these facts the petitioner found that such empanelment was made by the said Ashis Mukherjee in violation of statutory Rules, the said Ashis Mukherjee placed his son Tapan Mukherjee in the first position of the panel. The petitioner protested these illegalities committed by the said Ashis Mukherjee by writing to the President of the Governing body of the said founder body but the President did not take any action against such illegal empanelment of the son of the said Ashis Mukherjee by Mukherjee himself but on the contrary, the petitioner was made to sign the panel by the President of the said governing body of the founder body so that necessary to approval of the said panel could be obtained from concerned District Inspector of Schools. When the said panel was sent for approval of the concerned District Inspector of Schools, the petitioner, on or about 27 March, 2003, wrote to the concerned District Inspector of schools apprising him of the illegality committed by the said Ashis Mukherjee in selecting and empanelling his son as the first candidate.

20. On the basis of the above allegations, the learned Counsel, Dr. Majumdar submitted that the said Ashis Mukherjee, who according to Dr. Majumdar, "was and is a very powerful man," and who became the Secretary of the managing committee and the Governing body of the founder body of the said school carried a personal animosity against the writ petitioner through out. Firstly, said Dr. Majumdar, the said Ashis Mukherjee challenged the valid appointment of the petitioner as the headmaster of the said school and he caused others to challenge the said appointment of the petitioner and when eventually the appointment of the petitioner was declared to be perfectly valid by the orders of this Court in the above writ proceedings, his animosity against the petitioner increased and when the petitioner questioned the utter illegal attempt on the part of the said Ashis Mukherjee to appoint his own son as an assistant teacher of the said school, the said Ashis Mukherjee with sheer vengeance became determined to remove or dismiss the petitioner as the headmaster of the said school in which he had been unsuccessful so far in spite of his relentless effort therefor.

21. The said Ashis Mukherjee according to the petitioner served notices one after the other asking the petitioner to show-cause. The first of such, notice for showing cause was served upon the petitioner on 28 May, 2003 just after the petitioner wrote to the concerned District Inspector of Schools on 27 March, 2003 informing him the said illegality committed by the Ashis Mukherjee in selecting and empanelling his son for his appointment as an assistant teacher of the said school. The petitioner duly replied to the said show-cause dated 28 May, 2003 on 13 June, 2003. Thereafter on 17 June, 2003 the said Ashis Mukherjee served yet another notice asking the petitioner why disciplinary action should not be taken against him. The petitioner replied to the said second show-cause on 28 June, 2003. Again on 4 July, 2003 yet another notice was served upon the

petitioner by the said Ashis Mukherjee asking him again to show-cause why disciplinary action should not be taken against him. The petitioner replied to the said show-cause on 11 July, 2003.

22. After having received the replies to the above three show-cause notices. Dr. Majumdar pointed out, the said Ashis Mukherjee or rather the school authority did not proceed against the petitioner any further but on 8 September, 2003 Ashis Mukherjee as the Secretary of the Governing body of the founder body of the said school issued the said order of suspension against the petitioner informing the petitioner inter alia that the order of suspension would take immediate effect.

23. Dr. Majumdar pointed out on behalf of the petitioner at the hearing that though the said order of suspension contains four dates on which notices of show-cause were served upon the petitioner but the petitioner was not, in fact, served with, any show-cause notice on 30 June, 2003 as wrongly mentioned in the said order of suspension but he received a letter from the said Ashis Mukherjee seeking certain information from the petitioner duly replied to the said letter by his letter dated 30 June, 2003 itself. The said order of suspension is annexure - P/11 to the writ application appearing at page 18 thereof and the said letter dated 30 June, 2003 and reply there dated 30 June, 2003 are both part of annexure - P/12 appearing at page 87 and 88 of the writ petition respectively. The copies of the above-mentioned three notices of show-cause are also annexed to the writ petition together with the copies of the reply thereto by the petitioner.

24. As aforesaid, Dr. Majumdar submitted on the basis of the above allegations in the writ petition that it is because of personal animosity of the said Ashis Mukherjee against the petitioner. The said order of suspension was issued against him with the ultimate object of dismissing and/or removing the petitioner from his headmastership of the said school. Neither the school authority nor the said Ashis Mukherjee, however, could make any allegation of any financial irregularity against the petitioner at any point of time Dr. Majumdar also emphasised on behalf of the petitioner.

25. I have given the history of the past litigations between the petitioner and the said Ashis Mukherjee and/or the school authority and also the present facts or the allegations upon which the present writ petition is based only for the proper appreciation as to under what circumstances the said "show-cause notices" were issued against the petitioner. I do not think I need to embark upon an inquiry as to whether the allegations contained in the said several notices served upon the petitioner for showing cause really have merits or not nor do I think it necessary to embark upon an inquiry as to the truth of the allegations against the petitioner contained in the said several notices of show-cause for too purpose of deciding whether the impugned order of suspension still remains valid after the said order of disapproval of the order of suspension by the said Section 24 Committee as contained in the letter at the Secretary of the West Bengal Board of Secondary Education dated 9 February 2004.

26. Since the institution in question, namely the said C.M.S. St. John's High School was established and was and is run by Christian Church/Missionary Society the said school is a Christian minority school and as such the provisions contained in the said Special Rules of 1974 govern the said school. From Rule 1 of the said Special Rules, it appears, that the said Special Rules were made for the management of Secondary schools established and run by a Christian church/ Missionary Society(Board)/Religious Society/Subsidiary Trust or their Successors in law in the State of West Bengal and as such those Rules apply to all such junior high and higher secondary schools (aided and unaided).

27. Since the school of the writ petitioner is governed by the said Special Rules the further particulars provided in sub Rule 2 of Rule 1 are not required to be mentioned herein. Rule 2 of the said Special Rules gives the definition of the words "founder body", "Governing body", "school committee", "headmaster", "headmistress" etc.

28. The said Special Rules 1974 were made in exercise of the power conferred by Rule 33 of the management of recognized non-government institution (aided and unaided) Rules 1969 and from the notification itself, it appears, that the said Rules were made for the compositions, powers and functions of the managing committee of such minority institutions governed by the said Special Rules of 1974.

29. Rule 33 of the said management Rules of 1969 empowers the State Government to frame "on the application of any institution or class of institution to which the provisions of Article 26 or Article 30 of the Constitution of India may apply, "further" or "other Rules" for the composition, powers, functions of the managing committee or committees Of such institution or class of institutions."

30. In the above Rule 33 the words further or other Rules are, in my opinion, of immense importance and I shall shortly explain why these, I think, are so important.

31. Since the validity of the order of suspension against the petitioner is in issue the provisions in Rule 12 of the said 1974 Special Rules assume fundamental importance here. The school committee of the minority institution under the said Rule 12 may suspend any employee on two conditions. Firstly, where a disciplinary proceeding against an employee is contemplated or pending or secondly, where on account of criminal charge against him or her an investigation is proceeding or he or she is undergoing trial in a Court of law. I am not concerned with the second proviso contained in Clause (b) of Rule 12 of the said 1974 Rules because no investigation on account of criminal charge against the petitioner is proceeding nor he was or is undergoing a trial on the basis, of any criminal charge against him in a Court of law.

32. I am solely concerned with the question whether at the time of issuance of the said order of suspension a disciplinary proceeding was pending against the petitioner or the same was in contemplation of the concerned school authority.

33. From the facts of this case it is clear that at the time when the said order of suspension was issued to and/or served upon the petitioner on 8 September. 2003 no disciplinary proceeding was pending against him, but since, rightly or wrongly, certain notices were served upon the petitioner asking the petitioner to show-cause why no disciplinary proceeding should be initiated against him can safely be said to satisfy the requirements in Clause (a) of the said Rule 12 of the said Special Rules as the said notices for showing cause upon the writ petitioner were served as the school authority either rightly or wrongly was contemplating disciplinary proceeding against him.

34. Whether. I repeat, the said notices for showing cause against the petitioner were rightly or correctly served or the allegations contained in the said notices were correct or true are of no concern of mine and not relevant at this stage for the purpose of holding whether the school authority was within its jurisdiction in exercise of its power under the provisions of Rule 12 of the said Special Rules 1974.

35. One of the chief contentions on behalf of the petitioner is that though the said provisions under Rule 12 of the said Special Rules empower the school authority to suspend the petitioner on the alleged ground of "contemplated disciplinary proceeding" but since the said Rule does not make any further provision as to how and in what manner the school authority and/or the school committee should proceed after suspending the petitioner, the provisions under Sub-Rule 9(VIIa) of the Rule 28 of the said Management Rules of 1969 would come into play and the institution of the petitioner being a 100% aided school is bound to follow the procedure contained in the said Sub-Rule 9(VIIa) of Rule 28 of the said Management Rules of 1969. The said Rule 12 of the Special Rules of 1974, admittedly, does not provide any procedure to be followed by the school authority after it has suspended an employee including the headmaster or headmistress of such institution.

36. The contention of Dr. Majumder proceeded on the basis that since the provision contained in Rule 12 of the said 1974 Rules regarding suspension "do not contain any procedure which the school authority or school committee should follow after suspending an employee including the headmaster or headmistress of such institution the provisions of Rule 15 of the said Special Rules 1974" would come into play. According to Dr. Majumder in Rule 15 it is provided that in matters not specified in the 1974 Rules the school committee of a minority institution governed by the said Special Rules 1974 should exercise powers in conformity with the general directions of the founder body and also in conformity with the provisions of the rules or orders issued by the State Government or any other authority competent to do so under the provisions of any act or rules framed thereunder and since the institution of the petitioner is a 100% aided institution and there is a prescribed procedure regarding suspension of the teachers and non-teaching staff in the said Management Rules of 1969 and since no procedure has been prescribed in the 1974 Rules regarding suspension the

school in question was bound to follow the procedure regarding suspension provided in the said Management Rules 1969 and the provisions of Sub-rule 9(VIIa) of Rule 28 were and "are fully applicable to the case of the petitioner." In support of this contention Dr. Majumder also referred to the provisions in Rule 33 of the said Management Rules 1969 which empower the State Government to make further or other Rules for the minority institutions, as aforesaid.

37. By the said provisions in Rule 33 of the Management Rules, 1969 the State Government, as aforesaid, indeed has the power to frame.... further or other rules. The word "further", I think, means in addition to the rules made in the said Management Rules 1969 and the "other" means rule or rules other than the rules in the said Management Rules 1969 regarding composition, power, function of the managing committee or committees of the minority institutions.

38. On a combined reading of the provisions contained in Rule 33 of the said Management Rules of 1969 and the provisions contained in Rule 12 and 15 of the said Special Rules of 1974 it is clear that since the provisions in Rule 12 of the said 1974 Rules do not contain any procedure which the school authority of a minority institution should follow after it suspends an employee including the headmaster and headmistress of such institution it should follow the procedure contained in the Sub-rule 9(VIIa) of Rule 28 of the said Management Rules 1969 as the school committee is under an obligation to act in conformity with the rules or orders issued by the State Government or a competent authority under the provisions of a statute or rules framed thereunder and since a complete procedure regarding suspension has been provided under the provisions of the said Sub-rule 9(VIIa) of Rule 28 in the said Management Rules 1969 for aided and unaided schools and since the institution in question though a minority institution in a 100% aided institution it is under a legal obligation to follow the said procedures or follow the procedure regarding suspension contained in the said Management Rules 1969 in substance and that is why, contended Dr. Majumder, the school authority referred its order of suspension against the petitioner to the West Bengal Board of Secondary Education or to its sub-committee constituted u/s 24 of the West Bengal Board of Secondary Education Act 1963 for its approval of the said order of suspension made against the petitioner on 8 September 2003.

39. Dr. Majumder on behalf of the petitioner also submitted that the writ petitioner had no other alternative efficacious remedy apart from initiating this writ proceeding for protecting his interest and for his relief and this writ application "is perfectly maintainable against the school authority as the school in question is not only a minority institution but at the same time receiving "100 per cent aid" from the Government of West Bengal." I do not think I need to spend much time on this point as I do not doubt the maintainability of the writ application against the school authority and the school authority itself, it must be said, did not question the maintainability of the writ application against it, learned Counsel Mr. Samanta, quite rightly, did not raise this point at the hearing.

40. The right or rights, submitted Dr, Majumder, enjoyed by a minority institution within the meaning of Article 30(1) are not absolute. The Supreme Court in T.M.A. Pai Foundation v. State of Karnataka reported in AIR 2003 SC, categorically stated that the Government could not be prevented from framing regulations that are made in the national interest and a regulation framed in the national interest would apply to all educational institutions irrespective of the status of such institutions, a minority institution or otherwise.

41. On the basis of the above Supreme Court decision Dr. Majumder said that regulations could be framed by the Government for governing the service conditions of teaching and non-teaching staff for whom aid is provided by the State. The teaching and the non-teaching staff of the said school, therefore, according to Dr. Majumder, as the staff of a 100 per cent aided institution cannot be denied the protections and/ or the rights given by the said Management Rules 1969 more so as the said Special Rules of 1974 for the minority institutions do not contain any procedure that should be followed by such minority institutions in a case of suspension of an employee including the headteacher of such institutions.

42. The school authority has since the date of making the order of suspension against the petitioner on 8 September, 2003 has sat tight over the matter and kept the petitioner under suspension, only to prove, I think, the might of the school authority or rather the said governing body of the founder body of the said school, on the plea that the school being a minority institution is not bound by any procedure regarding suspension against the petitioner contained in the Rules 1969 or in any other rules and since the said Special Rules 1974 do not provide any procedure to be followed by a minority Institution once such institution passes an order of suspension against its employee including the headteacher thereof it can go on keeping its employee concerned including the headteacher under suspension so long it wishes without holding any disciplinary proceeding against him irrespective of disapproval of such order of suspension by the Board or the said Section 24 Committee in exercise of its Jurisdiction under the Management Rules 1969. The above, I find, is the stand of the institution in regard to the continuation of its order of suspension against the petitioner.

43. Mr. Samanta, learned Counsel on behalf of the school authority, however, relied on the provisions in Rule 12 of the said Special Rules 1974 regarding suspension and said that the school being a minority institution was not bound by the provisions of the said 1969 Management Rules at all and that the references made by the school authority to the Board for its approval of the order of suspension was a sheer mistake and in support of his submission he relied, as aforesaid, on the said Division Bench Judgment in Governing Body of the Founder Body, reported in 1998(1) CHN 410 (supra) or rather paragraph 7 of the said Judgment and the decision of the Supreme Court inst, The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, . Firstly, in the said decision of the Division Bench in Diocese of Barrackpore

1998(1) CHN (supra), the Court was primarily concerned with the appointment of the headmaster or rather the power of appointment of the headmaster by a minority institution as provided in Rule 10 of the said Special Rules, 1974. The Court found that since there was a specific provision in the said Special Rules for appointment of a headmaster or headmistress Rule 15 of the said Special Rules could not apply as Rule 15 would "only apply in a, case where other did not hold the field".

44. The Division Bench was of the opinion that only because the minority institution was an aided, one, the same did not mean that the State should have an unfettered right to interfere in the internal management of the school, meaning thereby an aided minority institution, but the Court at the same time made it quite clear that on the basis of Articles 29 and 30 of the Constitution a minority institution cannot claim to have an unfettered right as the provisions of the above Articles do not grant any unfettered right to the governing body of a minority institution to mismanage the school. It said "the governing body of a minority institution in the name of managing the school cannot mismanage the same". The Court also said "it is further beyond any shadow of doubt that for the purpose of regulation the function etc. the State has the right to issue directions or frame regulations which would be applicable in relation to the minority institution also."

45. The fundamental distinction between the case before the Division Bench in Diocese of Barrackpore's (supra) and the present one is however, in my opinion, a fundamental one. In that case the Court found that since there was a specific provision for appointment of headmaster or headmistress of a minority institution in Rule 10 of the said 1974 Special Rules, Rule 15 of the said 1974 would not apply, whereas in the present case though Rule 12 of the said 1974 Special Rules gives the authority of a minority institution the power to suspend an employee on the grounds mentioned therein but it does not provide any procedure, as I have said more than once, which the school authority should follow after it has made an order of suspension against its employee including the headteacher or headmaster thereof.

46. It is in such a situation the provisions of Clause 15 would come into play and I have given my reasons as to why I think that the minority institution in the present case being a 100 per cent aided institution is bound to follow the provisions made in Sub-rule 9(V1 la) of Rule 28 of the said Management Rules 1969 at least in substance.

47. The decision of the eight Hon'ble Judges of the Supreme Court in St. Xaviers College (supra), in my opinion, does not support the stand taken by the school authority or rather by the learned Counsel on behalf of the school authority to any extent whatsoever. The Supreme Court in that case while recognising, the right of a minority institution conferred under Article 30(1) of the Constitution made it clear that such right was not free from regulation. "Just as measures are necessary for maintaining the educational character and content of minority

institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration". The right to administer is not the right to maladminister.... The right of minority institutions to administer institution implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. Regulations are, therefore, necessary to see that/there are no divisive or disintegrating forces in administration".

48. In my opinion, however, both the above decisions, namely the Division Bench decision of this Court and the decision of the Supreme Court 1974 (supra), are now to be read in the light of the said decision in T.M.A. Pai Foundation v. State of Karnataka (supra). The eleven Hon'ble Judges of the Supreme Court, inter alia, dealt with and answered the question whether a minority institution has an absolute right to administer a minority institution under Article 30 of the Constitution. For the present purpose it is not necessary to deal with the above decision of the Supreme Court in any detail as Dr. Majumder referred to the said decision or rather the relevant portions thereof in support of his submissions which submissions I have mentioned in brief in this Judgment. Needless to mention that having considered the said decision of the Supreme Court in T.M.A. Pai Foundation (supra), I am in complete agreement with the submissions of Dr. Majumder made on behalf of the petitioner.

49. The majority view of the Supreme Court in the above case on the question as to how far the statutory provision should regulate the administration of minority institution such as, control over educational agencies, control over governing bodies, conditions of affiliation including recognition or withdrawal thereof and appointment of staff, employees, teachers, principals including their service conditions and regulation of fees etc., made a distinction between the minority institutions which receive aid from the State and the minority institutions which do not receive any aid from the State or rather unaided institutions. In case of an unaided minority educational institution the Supreme Court recognized that the regulatory measure of control "should be minimal". Regarding the minority institutions which receive aid from the State the majority view of the Supreme Court expressly recognized and approved the power of the State and/or the Government to frame regulations for governing the service conditions of teaching and other staff of aided minority institutions without however, interfering with the overall administrative control of the management of the staff of such aided minority institutions, (see para 162-G at page 420 of the report).

50. There is no doubt, however, and it is an admitted position as well that after the said order of suspension was made against the petitioner the school authority itself referred the matter to the West Bengal Board of Secondary Education so that the said order of suspension made against the petitioner could be approved by the Board. Apart from empowering the school committee or the school authority of a minority institution to suspend an employee on the grounds

contained in Rule 12 of the said Special Rules 1974, no procedure has been prescribed in the said Special Rules for the school committee or the authority of the school to follow after it has suspended an employee on the ground or grounds mentioned in the said Rule 12. If it is contended, as it has been, that a minority institution is not bound by any procedure provided elsewhere namely, in the said Management Rules 1969, regarding an order of suspension, then, that would lead to some absurd result, in that event, a school committee or school authority would be in a position to exercise that power under Rule 12 at its sheer whim, it can keep an employee under suspension indefinitely or for so long as it wishes without holding any disciplinary proceeding against him at all.

51. The legislators and/or the rule makers, I am confident, did not intend to confer such an absolute and/or arbitrary power upon the authority of a minority institution under the provisions of Rule 12 of the said Special Rules to keep an employee including the headmaster or headmistress of such institution under suspension for an indefinite period, no matter how long the said period may be or so long the school authority of such institution is pleased to keep its employee or a teacher or headmaster thereof under suspension.

52. Under Rule 15 of the said Special Rules the school authority should exercise its power in conformity with the provisions of the rules or orders issued by the State Government or any other authority competent to do so under the provisions of any act or rules framed thereunder regarding matters which have not been specifically provided for in the said Special Rules.

53. The school in question, being a minority institution is also a 100% aided school. Admittedly no procedure has been prescribed either by the school committee or in the said Special Rules 1974 which the school authority should follow after it suspended the petitioner under the provisions of Rule 12 of the said Special Rules. In such a situation, I do not think, the school committee of such minority institution has been given an absolute power to act the way it wishes to act or to act at its whim.

54. On a combined reading of the provisions of Rule 33 of the said Management Rules 1969 and Rule 12 and 15 of the said Special Rules 1974, I am of the opinion that the school authority, in the instant case being an aided minority institution was and is bound to act at least in conformity with the procedures prescribed under the provisions of Sub-rule 9(VIIa) of Rule 28 of the said Management Rules 1969 in the absence of any prescribed procedure regarding suspension in the said Special Rules.

55. At this stage it should be pointed out that even though the petitioner was suspended way back on 8 September, 2003 the founder body of the said school did not issue any general direction regarding the procedure that was to be followed by the school authority regarding the suspension of the petitioner as contemplated in Rule 15 of the said Special Rules, 1974. On the other hand, the school authority or rather the governing body of the founder body, as aforesaid,

referred the matter to the Board for its approval of the order of suspension against the petitioner dated 8 September, 2003.

56. Since the school authority itself referred the matter to the Board for its approval and since after having considered the entire facts and the circumstances of the case, a body, such as, the Board or its said Section 24 Committee with its expertise considered the case of the petitioner and found that the order of suspension could not be approved and as such did not approve the order of suspension made against the petitioner by the school authority, the school authority and/or the governing body of the founder body should have, in any event, honoured that decision, specially so when the school authority or the governing body of the founder body did not challenge the order of disapproval of the Board of the said order of suspension against the petitioner, in any forum at all.

57. The said order of disapproval of the order of suspension against the petitioner, in my opinion, binds the school authority including the governing body thereof. The school authority or the governing body cannot ignore or avoid the said order of disapproval just by saying that the school being a minority institution is not bound by the provisions of Sub-rule 9(VIIa) of Rule 28 of the said Management Rules or for that matter by the said Management Rules of 1969 altogether. The school being a fully aided minority institution just cannot avoid the said order of "disapproval" of the order of suspension on the above plea. This, in my opinion, has been made clear by, the majority view of the Supreme Court in the said decision T.M.A. Pai Foundation (supra).

58. In my opinion, the employees of both the institutions, namely an institution governed by the said Management Rules 1969 and a minority institution which receives aid from the State, the school with which I am concerned receives 100% aid from the State, as aforesaid, also have the same status. If it is said or contended, as it has been, that the Management Rules 1969 or rather Sub-rule 9(VIIa) of Rule 28 cannot apply to the school in question since the school is a minority institution, then and in that event, the employees of the present institution including the headteacher would be denied their rights to receive equal treatment or right to equality guaranteed by the Constitution. The employees of a minority institution though such institution is an aided one would, in that event, be subjected to vicious discrimination once an order of suspension is made against an employee of such institution by its authority as the said Special Rules 1974, as aforesaid, do not contain any procedure which the school authority should follow after the school authority makes an order of suspension against its employee, or employees and on the other hand, the employees of the other institution governed by the said Management Rules 1969 would get the full benefits of the procedures regarding suspension as contained in Sub-rule 9(VIIa) of Rule 28 of the said 1969 Rules.

59. The school authority of a minority aided institution would in the above event be entitled to keep its employee or employees under suspension without holding

any disciplinary proceedings against them for indefinite period or for so long as the authority would want whereas on the other hand, the school authority or authorities governed by the said Management Rules 1969 would be, as they are, obliged to follow the procedure contained in the said Sub-rule 9(VIIa) of Rule 28 of the said Management Rules 1969. Thus, in the absence of any procedure which a school, authority of a minority institution should follow after it makes an order of suspension against its employees the aided minority institutions are, in my opinion, legally obliged to follow the procedures regarding suspension contained in the said Sub-rule 9(VIIa) of Rule 28 of the 1969 Management Rules for the aided and unaided institutions in general. This view of mine is also supported by the provisions in Rule 15 of the said special Rules 1974.

60. I have no-doubt in my mind now to observe what I have observed hereinabove that after the said Supreme Court in decision in T.M.A. Pai Foundation (supra) especially after the views expressed by the majority in the said decision regarding the power of the State to frame regulations for governing the service conditions for the teaching and other staff of aided minority institutions, there remains no doubt that the provisions in Sub-rule 9(VIIa) of Rule 28 of the Management Rules 1969, would apply. However, if the school authorities of the aided minority institutions are made to follow the procedure as contained in Sub-rule 9(VIIa) of Rule 28 of the said Management Rules 1969 as the said 1974 Special Rules do not contain any procedure regarding suspension or rather after an order of suspension is made by a school authority of a minority institution, then, it would not, in my opinion, be an interference with the overall administrative control of the management of the staff of such aided minority institutions at all.

60.1. On the above basis and especially since the continuation of the order of suspension against the petitioner was disapproved by the Board or the said Section 24 Committee the said order of suspension could and cannot validly exist and continue against the petitioner in the first place and as such the petitioner should be allowed to join the said school as the headmaster thereof forthwith. No disciplinary proceeding has yet been initiated against the petitioner though there had or has not been any restraint order against, the school authority from initiating and/or concluding such disciplinary proceeding against the petitioner at any point of time.

61. Thus, in the facts and the circumstances of this case and having regard to the said order of disapproval of the order of suspension made by the Board or the said Section 24 Committee and having regard to the facts that the said order of disapproval has never been challenged by the school authority in any forum and in view of the fact that the school authority being an aided minority institution cannot be allowed to abuse its power under the said Special Rules 1974 by keeping the petitioner under suspension without holding any disciplinary proceeding so long it wishes, the said order of suspension against the petitioner dated 8 September, 2003 is set aside.

62. The school authority and the concerned authorities are directed to allow the petitioner to resume his duties as the headmaster of the said school as before. The concerned respondents including the school authority are restrained from issuing an order of suspension against the petitioner on the basis of the allegations already contained in the said show-cause notices served upon the petitioner which notices have been mentioned in detail hereinbelow.

63. Needless to mention that the petitioner would be entitled to receive his salary in arrears and other allowances, if any, from the date of the order of suspension against him i.e. dated 8 September, 2003. The amounts on account of the subsistence allowance already received by the petitioner, however, shall be adjusted with the salary in arrears from the date of the petitioner's suspension.

64. It is made clear that the petitioner should be allowed to resume his duties within 48 hours from the date of communication of this order. The order of resumption of the duties of the petitioner as the headmaster of the said school by virtue of this order and the order of setting aside of the said order of suspension dated 8 September, 2003 are made without prejudice to the right of the school authority or rather the concerned respondents to initiate disciplinary proceeding against the petitioner in accordance with law and without prejudice to the right of the petitioner to defend himself, but if such disciplinary proceeding is initiated the same shall be completed within a period of six months from the date of initiation of such proceeding against the petitioner.

The writ application is, thus, disposed of in terms of the above order.

There will be no order as to costs.

Urgent xerox certified copy of this Judgment, if applied for, be given to the learned Advocates of the parties expeditiously.