

(1987) 09 CAL CK 0002
In the Calcutta High Court
Case No : Civil Rule No. 4215 (W) of 1977

Sudhir Chandra Chakraborty

APPELLANT

Vs

W.B. Board of Secondary Education and Others

RESPONDENT

Date of Decision : 18-09-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 226
West Bengal Board Of Secondary Education Act, 1963 — Section 24

Citation : 96 CWN 411

Hon'ble Judges : Mahitosh Majumder, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahitosh Majumder, J.—This writ petition is directed against the following orders :

(a) A decision of the Appeal Committee of the West Bengal Board of Secondary Education as contained in letter No. S/27 dated 21st May, 1971 of the Secretary of the said Board.

(b) An Order contained in letter No. S/489 dated 28th August. 1974 of the said Board.

(c) An order- contained in the letter dated 29th August, 1974 of the Administrator of Pingla Krishna Kamini institution, Midnapore.

(d) An order of the Appeal Committee of the said Board contained in letter No. 8523/G/1 dated 10th September 1975 of the Secretary of the said Board.

(e) An order of the Appeal committee of the said Board contained in letter no. 768/G/1 dated 1st February, 1977 of the Secretary of the said Board.

In view of the facts and circumstances of this case, the orders an; now required to be quoted below :-

(a) The decision of the Appeal Committee of the Board dated 21st May, 1971 as

follows :-

(a) I am directed to forward herewith the entire decision of the Appeal Committee of the Board taken in its meeting held on 18th May, 1971.

Items no. 32 and 33 :- These two cases have been taken together as the facts of the two cases are the same. The case of the appellant in item no. 32 (Bibhuti Bhusan Maity) is that he was working as the Assistant Headmaster of the school with effect from 16/3/1947. On 12/11/61 he was forced to submit a letter of resignation under duress by the President and other members of the Managing Committee and also some local people. The case of the appellant in item no. 33 (Bhutanath Patra) is that he joined the school as Headmaster on 1/2/61. On 12/11/67, he was forced by the President and some members of the Managing Committee along with some other people to sign a letter of resignation. He was also forced to give the date as 14/11/67. On the next date i.e. 13/11/67, both the appellants met the D.I. of Schools, Midnapore and narrated the incident. A thorough enquiry was made by the D.I. of School, Midnapore. He met several persons during the enquiry. In his report it is stated that the fact of tendering resignation under duress was corroborated by students, teachers and other members of the public and also by circumstantial evidence. The D.I. of Schools came to the conclusion after enquiry that the way in which the appellants were removed from their respective posts had been quite illegal and also inhuman. He recommended immediate reinstatement of the appellants. The present Administrator of the school also says that the resignation of the appellants were obtained by force. He believes the case of the appellant to be true. He has also filed a statement before the Appeal Committee. Considering the facts and circumstances of the case, it is quite clear that the resignation letters were obtained under duress and by force and threat of physical violence. The prayer for reinstatement should, therefore, be allowed.

RESOLVED : that the prayer for reinstatement in both the cases be allowed. The appellants in both the cases be reinstated from 12/11/67. They will receive from the school all their dues for the entire period except the period during which they were in service, if any, elsewhere.

You are, therefore, requested to comply with the aforesaid order of the Appeal Committee of the Board immediately under intimation of compliance to the Board.

(b) An Order No. S/489 dated 28.8.71 as follows : -

(b) I am directed to draw your attention to this office Memo No. S/27 dated 21/5/71 communication decision of the appeal Committee in respect of Sri Bhutanath Patra and Sri Bibhuti Bhusan Maity and to state that the Hon'ble High Court was pleased to dismiss the appeal and rejected the prayer for stay of operation of the orders passed in the case preferred by Sri Chakraborty and Sri Das against the decision of the Appeal Committee.

2. As there stands no legal bar now, you are requested to give effect to the

decision of the Appeal Committee by reinstating Sri Patra and Sri Maity in their respective posts as Headmasters and Assistant Headmaster of the school.

(c) An Order dated 28/8/74 as follows : -

(c) As per judgment dated 19/8/74 of the Hon'ble High Court vide Case No. 149 of 1974 and Memo No. S/489 dated 28/8/74 of the West Bengal Board of Secondary Education Sri Bhutnath Patra, Headmaster. Pingla K.K. Institution has resumed the duties on and from 29/8/74. You are hereby directed to make over all the charges including the keys and all relevant documents etc. in regard to the Administrator of the School to Sri Bhutnath Patra, Headmaster, Pingla K.K. Institution within a week from a date of issuing this letter.

This is for your information and taking necessary action.

(d) An Order No. 8523/G/I dated 10/9/75 as follows :-

(d) I am directed to forward herewith the entire decision of the Appeal Committee of the Board taken in its meeting held on 26/7/75.

These two cases are taken up together as the same questions of law are involved in them.

In these two cases the appellant Sri Anil Kumar Das and Sri Sudhir Chandra Chakraborty have prayed for ad interim stay order. A letter has been received from the respondent praying for time. It cannot be allowed. The prayer is rejected. Heard the parties.

The case of the appellant, is that their service were terminated by an order of the Administrator. By an order of the Appeal Committee Sri Bhutnath Patra and Sri Bibhuti Bhusan Maity were reinstated to the posts of Headmaster and Assistant Headmaster respectively and as a consequence the Administrator asked them to vacate their office. No order for stay can at this stage be granted. The prayer is rejected.

ORDERED that the prayer for ad interim stay be rejected.

(e) An Order No. 768/G/1 dated 1/2/77 as follows :-

(e) I am directed to forward herewith the entire decision of the Appeal Committee of the Board taken in its meeting held on 15/1/77.

The Appeal preferred by Sri Sudhir Chandra Chakraborty against the authorities of Pingla K.K. Institution, Midnapore, was taken up for consideration.

The appellant is present. The respondent-present Administrator and Sri Bhutnath Patra Present Headmaster is present.

Heard the parties.

3. The case of the appellant is that he was appointed the Headmaster of the School with effect from 28/1/68 on a substantive basis in the vacancy caused

due to resignation by Sri Bhutnath Patra, the then Headmaster. On 6/9/74 he received a letter dated 29/8/74 from the Administrator of the School directing him to make over charge to Sri Bhutnath Patra, Headmaster on 28/ 8/74 in pursuance of a decision taken by the Appeal Committee on 18/5/71. Provisions of Rule 28(8) of the Management of Recognized Non-Government Institutions (Aided and Unaided) Rules, 1969 were not observed in terminating his appellant service. He moved the Hon''ble High Court, Calcutta challenging the validity of the said order of the Administrator and his application was disposed of with the observation that it was open to the petitioner to seek appropriate remedy before the Board itself by preferring appropriate appeal thereto.

4. The case of the respondent is that Sri Bhutnath Patra, Ex-Headmaster of the School, was forced to submit resignation letter under duress, Sri Patra preferred an appeal before the Appeal Committee against the forced resignation and the Appeal Committee by its decision on 18/5/71, reinstated Sri Patra to the post of Headmaster with all arrear of salaries. The present appellant, Sri Chakraborty challenged the said decision of the Appeal Committee in the High Court and obtained a Civil Rule No. 1802(W) of 1971 which was discharged on 31 /7/73. Against the above decision the appellant, Sri Chakraborty preferred an appeal before the High Court (FMAT No. 149 of 1974) which was dismissed by the Hon''ble Chief Justice and the Hon''ble Mr. Justice S.K. Roy Chowdhury. Application for Special Leave to Supreme Court was also rejected by Hon''ble High Court.

5. The Administrator confirms that Sri Bhutnath Patra was allowed to resume his duties as Headmaster of the school with effect from 29/8/74.

6. It was contended by the appellant that the Appeal Committee while disposing of the appeal preferred by Sri Bhutnath Patra Ex-Headmaster of the School (Appeal Case No. 77/69(A) on 18/5/71, did not consider what would be the position of the present appellant in case of reinstatement of Sri Patra was ordered. The present Headmaster Sri Bhutnath Patra, however, pointed out that during hearing of the appeal case no. 77/69(A) preferred by Sri Bhutnath Patra Sri Sudhir Chandra Chakraborty (present appellant) represented the respondent and had ample opportunity to plead his case.

7. Be that as it may it is the established position of law that the appeal Committee cannot review its earlier decision. It was submitted by both the parties that Sri Bhutnath Patra has been continuing as Headmaster of the School with effect from 29/8/74 after his reinstatement. It was also noted by the Appeal Committee that the appellant was appointed by the then Managing Committee in violation of the order and direction of the Additional District Inspector of Schools (Special), Midnapore, communicated under his memo no. 9574/1 dated 13/11/1967.

8. After hearing both the parties and considering the facts and circumstances of the case the appeal Committee came to the conclusion that it would not be

proper to reinstate the appellant.

Ordered that the prayer for reinstatement be rejected. The School be directed to make payment to the appellant three months salary in lieu of notice.

9. The said orders are challenged on various grounds which would be dealt with hereinafter.

10. Prior to the moving of the writ application a number of writ proceedings were initiated. Sri Sudhir Chandra Chakraborty (for short the writ petitioner hereafter) also had to come to this court under Article 226 of the Constitution of India on a number of occasions for vindication of his rights. Against the decision of the Appeal Committee of the Board reached at its meeting held on May 18, 1971 the writ petitioner holding the post of Headmaster of Pingla K.K. Institution (for short the said Institution hereinafter) and the Assistant Headmaster moved before this Court under Article 226 of the Constitution of the India whereupon Civil Rule NO. 1802 (W) of 1971 was issued and an order of injunction was passed therein. Thereafter Civil Rule no. 1802(W) of 1971 was dismissed by an order passed on July 31, 1973. An appeal being no. FMA 149 of 1974 against the said order dismissing the writ petition was preferred. The order dismissing the writ application passed by this Court on July 31, 1978 was stayed by the Appeal Court till the disposal of the appeal. In the month of August, 1963 Sri Bhutnath Patra, since deceased (for short the former Headmaster hereafter) and the Ex-Assistant Headmaster took possession of the school forcibly. The appeal being no. FMA 149 of 1974 was contested and after prolonged hearing, the Court of Appeal dismissed the appeal on 19th August. 1974, but no stay was granted. On or about the 28th August, 1974 the Board requested the Administrator to give effect to the order of reinstatement passed on May 18, 1971. On August 29, 1974 the former Headmaster and the Ex-Assistant Headmaster took possession of the School again forcibly with the help of the Administrator by breaking open the locks of the school rooms. Diary was lodged with the local Police Station informing the Police authority about the commission of the aforesaid illegal acts. Against the said orders of the Administrator, dated August 29, 1974 two writ petitions were moved by the writ petitioner and the Assistant Headmaster before the Hon"ble Court and Civil Order No. 6019(W) of 1974 and Civil Order No. 4020(W) of 1974 were issued and interim orders passed therein.

11. Despite the order passed by this Court, the writ petitioner and the Assistant Headmaster were physically restrained from entering the school premises. The diary lodging complaint with local Police Station about the commission of wrongful acts was recorded. Interim orders granted by this Court in Civil Order No. 6019(W) of 1974 and Civil Order NO. 6020(W) of 1974 were vacated by an order passed by Mr. Salil Kumar Roychoudhury J. on September 13, 1974. On September 17, 1974 Salil Kumar Roychoudhury J. recalled all the orders passed by him. The Assistant Headmaster on 27th September 1974 preferred an appeal before the Appeal Committee of the Board. On 28th September, 1974 the writ petitioner also preferred an appeal together with an application for stay of the

operation of the said order to the Appeal Committee. On 30th September, 1974, Anil K. Sen, J. while dismissing the writ petitions passed the following orders :-

These two writ petitions have been assigned to me by the learned Chief Justice for hearing.

12. It appears that on these applications my learned brother S.K. Roychowdhury, J. once issued two Rules on 10th September, 1974 and September 6, 1974 respectively but when Mr. Samanta appearing on behalf of the respondents drew His Lordship's attention to an earlier decision of this court, my learned brother thought it fit to discharge the Rules and vacated the interim order. That he did on 13th September, 1974. Later, however, on an application filed by Mr. Harashit Chakraborty appearing on behalf of the petitioners he recalled all the orders and sent the writ petitions to the learned Chief Justice for assignment to some other Bench in view of the embarrassment pointed out in his order dated 17th September, 1974. This is how these two writ petitions have been assigned to me and are being heard today.

13. The petitioners in these two writ petitions are respectively the acting Headmaster and the acting Assistant Headmaster. They felt aggrieved by two orders bearing the same date namely, August 29, 1974 issued by the Administrator directing them to hand over the charge of their respective office to the previous Headmaster and the previous Assistant Headmaster who had been reinstated under the orders of the Board of Secondary Education as upheld by this Court in FMA No. 149 of 1974 by this Court's judgment and order dated 19th August, 1974. That was the judgment of Mr. Justice S.K. Roychowdhury sitting in the Appeal Court and hence the embarrassment.

14. It appears that previously Bhutnath Patra was the Headmaster of the disputed school and Bibhuti Bhusan Maity was the Assistant Headmaster. There was a dispute over termination of service of these two persons as it was claimed by them that they were forced to resign against their will. That dispute led to appeals before the Board of Secondary Education and the Board upheld their claim that the resignation was not voluntary but amounted to termination as such the Board directed reinstatement of these two persons respectively to the posts of Headmaster and Assistant Headmaster.

15. In the meantime, however, the present petitioners stepped in as the Headmaster and the Assistant Headmaster. Though they are claiming that they became permanent in their respective posts the Administrator claims them to be acting whatever their position it is not in dispute that they disputed the validity of the Appeal Committee's order of reinstatement in the earlier litigation in this court as according to them they are to be affected by the orders of the Board. Unfortunately for them they failed both in the Trial Court as also on appeal and this Court in FMA 149 of 1974 affirmed the order of reinstatement and dismissed the writ petitions filed by these petitioners.

16. Consequent upon the aforesaid order of this Court the Administrator has

issued the Administrative direction that the reinstated Headmaster and the Assistant Headmaster should be given charge of the office and the present petitioners have been directed by the impugned orders to make over charge. On the facts as above. I find no irregularity or illegality in such administrative orders passed by the Administrator.

17. Mr. Chakraborty appearing on behalf of the petitioners, however, is claiming that such order would really amount to termination of service of these people. On the order itself, however, there is no indication of like nature. If it does so, it is still open to these petitioners to seek their appropriate remedy before the Board itself by preferring appropriate appeals thereto.

18. Such being the circumstances, I find no merit in either of the two writ petitions. Both the writ petitions are, therefore, dismissed. The writ petitioner presented SLP being Civil Order No. 169 of 1975 before the Hon"ble Supreme Court. By an order dated February 19, 1975 the Hon"ble Supreme Court allowed the SLP to be withdrawn.

19. The Board by a Memo No. 18523/G/.1 dated 10th September, 1975 communicated decision of the Appeal Committee taken in the meeting held on 26th July, 1975 rejecting the prayer of the writ petitioner for stay of operation of the impugned order of the Administrator dated 29th August, 1974. By an order dated 15th December, 1976 the High Court on an application made on behalf of the petitioner issued Civil Order No. 1439(W) of 1976 commanding the Appeal Committee to dispose of the appeal within two weeks. On January 15, 1977 the Appeal Committee disposed of the appeal being Appeal No. 143 of 1974. Against the order of the Appeal Committee, the writ petitioner initiated an action by presenting the instant writ application before this Court on 21st July, 1977 when present Civil Rule No. 4215(W) of 1977 was issued.

20. The former Headmaster and Ex-Assistant Headmaster of Pingla K.K. Institution (for short the said Institution hereafter) were proceeded against for their willful irresponsible inaction, in-efficiency, mismanagement of the school funds and negligence of duty. The climate of chaos and stalemate condition prevailed during the period between September, 1967 and December. 1967. During the pendency of the instant Civil Rule the former Headmaster died.

21. Sequel to the said proceedings the former Headmaster and the Ex-Assistant Headmaster tendered their resignations on 11th November, 1967 and 14th November, 1967 respectively and they were informed of the acceptance of their letters of resignation. A "No Confidence" motion against Shri Shyamapada Mukherjee, the then Secretary of the school was adopted on 5th November, 1967. The resolution was challenged by Shyamapada Mukherjee (for short the then Secretary hereafter) by filing the writ petition whereupon Civil Rule No. 2460(W) of 1967 was issued by this Court on 7th December, 1967. On May 27, 1971 the said Rule No. 2460(W) of 1967 was discharged on the ground of default.

22. The grievances of the petitioner are in brief as follows : -

That the Appeal Committee while deciding the appeal filed by the writ petitioner as contained in Annexure K to the writ petition did not consider the basic and fundamental grievances of the writ petitioner which may be summarized as follows :-

23. The Managing Committee of the said Institution, Midnapore appointed the writ petitioner as Headmaster with effect from 28th January, 1968 after the fulfillment of all the necessary formalities as were detailed in the advertisement in the "Amritabazar Patrika" dated 10th December, 1967. The writ petitioner was appointed by the Managing Committee of the said Institution in a clear vacancy caused by the resignation of Bhutnath Patra, since deceased (for short the former Headmaster). The resignation of the former Headmaster was accepted by the Managing Committee in its meeting held on 29th November, 1967. The Managing Committee duly informed the former Headmaster the decision dated 29th November, 1967 by a letter dated 29th November 1967 with copies thereof to the District Inspector of School, Midnapore Director of Public Board of Secondary Education.

24. The Managing Committee of the said Institution sought for approval of the appointment of the writ petitioner as Headmaster by a letter dated 18th March, 1968. At the time of appointment, the Director of Public Instruction, West Bengal, was the approving authority; but not the Board. By resolution adopted in the meeting held on 4th April, 1968 the Managing Committee amended the previous resolution regarding the appointment of the writ petitioner and to their letter dated 6th April, 1968 the Managing Committee amended the letter of appointment also. The writ petitioner served the school as Headmaster during the period between 28th January, 1968 and August 29, 1974 to the entire satisfaction of all concerned and as such, the writ petitioner claimed that he was duly approved and confirmed as the Headmaster of the said Institution by operation of law. The name of the writ petitioners appeared in the Electoral Roll, 1970 (District Midnapore Sub-Division Sadar (N & S) Sl. No. 141) of the Board as permanent Headmaster of the school. The Administrator paid the writ petitioner all his pay and allowances including Government Dearness Allowances which was payable only to approved teachers. The said judgment in FMA 143 of 1974 never directed the Administrator of the said Institution to remove the writ petitioner from the post of the Headmaster of the Institution. The writ petitioner was not given any notice nor there was compliance of the Rules of the Management of the New Government Institution (Aided and Unaided) 1969 (for short the said Rules hereafter) before the removal of the writ petitioner.

25. The then Secretary, Convening Authority, attended the meeting held on October 19, 1967 wherein a decision was taken to convene a further meeting on 5th November, 1967; then the then Secretary expressed his unwillingness against the said decision as proposed by the members of the Managing Committee. The said members moved a resolution of No Confidence against the then Secretary and requested the President to convene the said meeting.

26. Accordingly by a Notice dated 19th October, 1967 the President of the Managing Committee convened a meeting on 5th November, 1967. No confidence motion against the then Secretary was one of the Agenda in the meeting. At the meeting of the members of the Managing Committee, all the members including the then Secretary but excluding the former Headmaster was present. By a majority and in presence of the then Secretary, "No Confidence" resolution was passed and it was further resolved that the then Secretary should hand over the charge to the President in presence of the member of the managing Committee at the next meeting. In the same meeting of the Managing Committee dated 5th November, 1967 it was further resolved that the former Headmaster and the Assistant Headmaster should be called upon to show cause why their services would not be terminated for their willful inaction, inefficiency, mis-management of the school funds and negligence of duties. In terms of the said resolution, such show cause notices were issued.

27. Despite the show cause notice being issued the former Headmaster and the Assistant Headmaster sent their resignation letters dated 14th November, 1967 and 10th November, 1967 respectively. In the meantime, the said Secretary put the school office, its laboratory and other departments under lock and key and went away making no arrangement for the running of the said. Institution, holding of the classes and arranging the impending examination; that the members of the Managing Committee had reasonable grounds to believe that the said secretary along with Headmaster and the Assistant Headmaster was acting malafide and highly detrimental to the interest of the said Institution and force it to be closed down under compulsion and by means not at all fair or bonafide. The members of the Managing Committee of the said Institution approached the District Inspector of Schools and sent representation to the West Bengal Board of Secondary Education complaining of the aforesaid wrongful acts of the said Secretary. They had even to take the help of police authorities to have the Institution re-opened.

28. In the background of the facts and circumstances, such conduct was condemned and the resignation the Headmaster and the Assistant Headmaster was duly accepted in a duly convened meeting of the Managing Committee. Sri Anil Kumar Das, an Assistant Teacher of the said Institution was appointed an officiating Headmaster and the writ petitioner was unanimously elected as the Secretary of the said Institution and since November 22, 1967 the writ petitioner was discharging all the functions of the Secretary of the said Institution. Since then neither the former Headmaster nor the former Assistant Headmaster did ever turn up at the said Institution although the said secretary himself was sitting over the funds of the Institution and the accounts thereof.

29. When the said Civil Rule No. 2463(W) of 1967 was pending in the High Court, the Appeal Committee decided the appeal of the former Headmaster. The aforesaid Rule was discharged on 27th March, 1971.

30. During the course of the hearing of the appeal filed by the writ petitioner, the

former Headmaster although not a party to the appeal was present. The writ petitioner requested the Committee to call for the records of the case of the appeal filed, by the former Headmaster did neither present correct state of affairs nor did he produce the records of the case.

The Appeal Committee acted illegally and with material irregularity in acting upon the unfounded allegation of the former Headmaster that during the hearing of the appeal preferred by him, the writ petitioner representing the respondents had ample opportunity to plead his own case, that the Appeal Committee failed to take into consideration the actual state of affairs, that the Appeal Committee acted erroneously and with material irregularity in ignoring the submissions of the writ petitioner in this regard and by not considering the documentary evidence and materials on record. No Memorandum dated 13th November, 1967 was placed before the Appeal Committee. Without any opportunity being accorded to the petitioner of having any access to the said document nor any opportunity was allowed to the petitioner to have his say in respect of the said document, that the Appeal Committee acted on the basis of irrelevant materials and extraneous considerations and did not advert to the relevant facts and circumstance to the alleged Memorandum dated 13th November, 1967 without giving the petitioner any opportunity of looking into the same, the proceeding continued and concluded on the basis of unwarranted allegations made by the former Headmaster and reliance on the alleged admission by the petitioner which is non-existent both in fact as well as in law. The order of the Appeal Committee constituted violation of the principles of natural justice. The respondents Managing Committee filed an affidavit-in-opposition to the present writ petition reiterating that the resignation of the former Headmaster and Bhutnath Bhusan Maity were opened by the President of the defunct Managing Committee of the school, that the said two teachers preferred appeals and representations before the West Bengal Board of Secondary Education for appropriate relief. The West Bengal Board of Secondary Education and the Director of Public Instructions, West Bengal directed the District Inspector of School, Secondary Education, Midnapore to make an enquiry into the matter. It was reported that on 12th November, 1987 a public meeting was held at about 3.30 P.M. and some 200 people gathered and Bhutnath Patra and Bibhuti Bhusan Maity were belaboured and forced to copy out and sign letter of resignation. It was further reported that the term of the Managing Committee expired on 26th June, 1966.

31. The writ petitioner, was illegally appointed by the defunct Managing Committee of the School. The Appeal Committee by its decision dated 18th May, 1971 allowed the appeal of the former Headmaster and Bibhuti Bhusan Maity. The Appeal Committee directed the reinstatement of the aforesaid two teachers. The decision of the Appeal Committee was upheld by this Court. It was prima facie held that there is no valid appointment in favour of the writ petitioner. They had no legal right to be heard. The writ petitioner is frivolous and the writ petition suffered from suppression of material facts. In Affidavit-in-Reply, it is claime and contended by the writ petitioner that the Assistant Teacher of the said

Institution is not a competent to affirm the affidavit and deal with the allegations made in the writ petition.

32. In paragraph 4 of the Affidavit-in-reply, the writ petitioner raised a plea, that the present Secretary was one of the members of the said Managing Committee which affirmed that the petitioner was appointed as permanent Headmaster of the Institution. "The said Secretary cannot volteface suddenly and make an allegation contrary to averment namely that the writ petitioner was not duly appointed as permanent Headmaster. Thus, they have chosen not to file an affidavit. This conduct is rather peculiar. Moreover, the Managing Committee of the said Institution, it is respectfully submitted with the change in its composing from time to time cannot be permitted in law and equity to lake inconsistent stand or position to the prejudice of the writ petitioner, according to the convenience and exigencies of the varying situation and vicissitudes in regard to the persons composing the Managing Committee any particular point of time. It submitted that the affidavit-in-opposition being affirmed by a person not competent to affirm on behalf of the Managing Committee is liable to be discarded in limini". Reference was made to the affidavit-in-opposition that the allegations by the Managing Committee in C.O. No. 2453(W) of 1967 wherein it was, inter-alia stated that in view of serious public grievance arising out of misappropriation of Rs. 16,000/- allotted as science grant by the State Government in favour of the said Institution which was established by the then Managing Committee of the said Institution, Block Development Officer, Pingla and the Officer-in-Charge, the Pingla Police Station and the Internal Audit Commission. The writ petitioner was paid his salaries and admissible allowance including government dearness allowance admissible only to permanently appointed and approved teachers. In the electoral roll for election of members to the Managing Committee 1970 the name of the petitioner was recorded as permanent Headmaster of the said Institution. In the list of teachers maintained by the said Institution, the first 15 were shown as approved teachers. The name of the petitioner was borne against serial no. 1.

33. At the very outset Mr. Samanta raised preliminary objections by contending inter alia that in view of the judgment passed by the Appeal Court in FMA 149 of 1974, this Court will not entertain the grievances of the writ petitioner. Mr. Samanta also pinpointed his submissions by urging that Orders impugned in the writ petition could not be challenged as the Hon"ble Court already decided the entire matter on merits. Mr. Samanta strenuously raised his grievances and submitted that the writ Court will not review the order passed by this Court in C.R. No. 18081(W) of 1971 and FMA No. 149 of 1974. Mr. Samanta further claimed and contended that the doctrine of resjudicata fully applies to the present case on hand.

34. Before giving thoughtful consideration as regards the issues involved, it is appropriate for this Court to deal with the priliminary objections raised by Mr. Samanta and the submission of Mr. Kashi Kanta Moitra on the said preliminary

objections of Mr. Samanta.

35. Mr. Kashi Kanta Moitra, the Senior Advocate, urged that the preliminary objections raised by Mr. Samanta are without any substance. Mr. Moitra pointed out that this Court while deciding C.R. No. 1808(W) of 1971 and FMAT No. 149 of 1974 had no occasion to examine the correctness or otherwise of the orders impugned in the writ application excepting order dated 18th May, 1971. It is also seriously claimed by Mr. Moitra that the other orders impugned in the present writ application merit interference of this Court. While extending submission on the preliminary objections raised by Mr. Samanta, Mr. Moitra drew the attention of the Court that two orders hearing the same dated namely, August 29, 1974 issued by the Administrator were challenged by the writ petitioner before this Court and Anil K. Sen, J. while dismissing the writ application recorded that the orders impugned would really amount to termination of the service of the writ petitioner and other teacher. This Court also recorded in the order itself that it is still open to the petitioner to seek their appropriate remedy before the Board by preferring appropriate appeals thereto. It is to be borne in mind that the impugned order dated August 29, 1974 was presented before the Appeal Committee before the order was passed by Anil Kumar Sen. J.

36. While highlighting the said submissions, Mr. Moitra made his frontal attack against the preliminary objections. It was also seriously contended by Mr. Moitra that the preliminary objections could not be available to the respondents/Managing Committee when all orders excepting the order dated May 18, 1971 and the order dated August 29, 1974 for the first time impugned in the present writ application were not gone into by this Court. As regards the doctrine of res judicata, Mr. Moitra's contention is that it has no manner of application in the facts and circumstances of the case. Mr. Moitra referred to the judgment of the Supreme Court in case of *Indian Oil Corporation Ltd. vs. State of Bihar*; 1986 SCC (L&S) 74 Ors. *Workmen of Chohin Port Trust vs. Board of Trustees of the Cochin Port Trust* and *Anr.* reported in 1978 SCC (L&S) 438; *Ahmedabad. Manufacturing & Calico Printing Co. Ltd. vs. Workmen & Others* reported in 1982 SCC (L&S) 36 (at 39).

37. Mr. Moitra also submitted that in a given situation a party against whom a decision adverse to his right is arrived at pursuant to a prior determination without being impleaded in the said proceedings is entitled to move the Hon'ble Court under Article 226 of the Constitution of India for redressal of his grievances. Mr. Moitra referred to the judgment of the Supreme Court in the case of *Shivdeo Singh & Ors. vs. State of Punjab* reported in AIR 1963 SCC 1909. While relying on the said judgment, Mr. Moitra advances his submissions that the present case also warrants the judicial review of certain orders by reason of the subsequent judgment of the Supreme Court in *Lachmi Ram vs. State of Harayana* and *Ors.* reported in 1981 SCC (L&S) 438, which is quoted below :

38. The only ground on which the writ petition filed by the appellant has been dismissed by the High Court is that the appellant has no locus standi to maintain

the writ petition. The appellant filed the writ petition challenging the action of the government expunging the adverse remarks made in the annual confidential report of respondent no. 6. The High Court took the view that the appellant was not entitled to complain against the expunction of adverse remarks made in the confidential report of another officer. But this view is, in our opinion, erroneous because the effect report of the respondent no. 6 is to prejudice the chance of promotion of the appellant and if the appellant is able to show that the expungement of the remarks was illegal and invalid, the adverse remarks would continue to remain in the confidential report of the respondent no. 6 and that would improve the chances of promotion of the appellant vis-a-vis respondent no. 6. The appellant was, therefore, clearly entitled to show that the government acted beyond the scope of its power to expunging the adverse remarks in the confidential report of the respondent no. 6 and that the expungement of the adverse remarks should be cancelled. The appellant had, in the circumstances, locus standi to maintain the writ petition and the High Court was in error in rejecting it on the ground that the appellant was not entitled to maintain the writ petition."

39. On the question of resjudicata Mr. Moitra referred to the judgment of the Supreme Court in case of Tara Singh and Others Vs. State of Rajasthan and Others, and argued that in view of the order passed by Anil K. Sen, J. all the issues are now left open for determination by this Court. It is also urged by Mr. Moitra that before the action of the respondents was initiated by issuing letter dated August 29, 1974, the petitioner should have been granted an opportunity of hearing and failure of the School Authority to observe the fundamentals of fairness vitiated the order passed on August 29, 1974. In support of his contention that the order of the Appeal Committee is vitiated by arbitrariness, absence of reasons, non-consideration of the case of the petitioner and failure to observe the doctrine of fairness. Mr. Moitra referred to the following judgments of the Supreme Court : -

1. Ashoke Kumar Yadav & Ors. vs. State of Harayana & Ors., 1986 LIC 1417(SC).
2. 1987(1) CLJ 23
3. The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, .
4. Monmohan Singh Jaitla vs. Commissioner, Union Territory of Chandigarh & Anr., 1985 SCC (L&S) 269.
5. 1981 SCC (L&S) 438 (supra)
6. Collector of Customs vs. Biswanath Mukherjee; 1974 CLJ 251.
8. Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, .
9. Council of Civil Services Union & Ors. vs. Minister for Civil Services: (1985)

LRC (Const.) 948 at 1026.

10. Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, .

11. Associated Provincial Picture House Ltd. vs. Wednesbery Corporation: (1948) 1 KB 223.

40. As regards the rival contention that the writ court will not be justified in deciding the entire matter on merits, it is appropriate for the Court to refer I he case of Shivdeo Singh & Ors. (supra) for the purpose of examining the correctness of rival contention of the parities. Before embarking on this aspect of the matter, it is to be borne in mind that the previous decision of the Appeal Committee allowing reinstatement of the former Headmaster, was made without the writ petitioner being impleaded therein. Mr. Moitra invited the Court to consider the order of the Appeal Committee. It is an admitted position that the petitioner was not given any Opportunity of hearing by the Appeal Committee allowing the appeal of Bhutnath Patra, the former Headmaster. The Appeal Committee fell into grave error in overlooking the fact that the petitioner preferred an appeal against the order passed by the Administrator on 29th August, 1974. All the issues raised by the petitioner in the appeal are left open for consideration by the Appeal Committee. There is no question of review, if the basic grievances of the petitioner involve the determination of the matter on merits. The Appeal Committee in my view, acted with procedural impropriety and irrationality in shutting out such pleas as were raised by the petitioner. It was incumbent upon the Appeal Committee to consider the basic and fundamental grievances of the petitioner. The order of the Appeal Committee is wholly vitiated by overlooking the grievances of the petitioner, as a result, the grave failure of justice is committed. When the petitioner's right to employment was imperilled by the order dated 29th August, 1976 the petitioner rightly challenged the entire matter as the order dated 29th August, 1976 affected the livelihood of the petitioner and thereby the petitioner was placed in serious jeopardy. The Appeal Committee instead of deciding the matter on merits resorted to the plea of review for denying justice to the writ petitioner.

41. The contention of Mr. Moitra was that the High Court would be justified in entertaining the basis objections of the petitioner on the ground that the action of the respondents in issuing the letter dated 29th August 1974 was not only without any reason but the same involved civil consequences. On this aspect, I am in agreement with the contention of Mr. Moitra that this Court can entertain basic objections as are available to the petitioner. The right of appeal is a valuable right. The petitioner preferred an appeal; this Court also permitted the petitioner to seek their appropriate remedy before the Board. The Appeal Committee according to Mr. Moitra instead of preventing miscarriage of justice and correcting grave and palpable errors rejected the appeal.

42. Similarly, the writ Court is not incompetent to consider such grievances as

are raised before the Appeal Committee, which should have examined the pros and cons of the case as was canvassed before the Appeal Committee. In view of the judgment of the Hon''ble Supreme Court in Sukdeo Singh's case (supra), the basic grievances of the petitioner even if it were within the confines of the review cannot be shut out.

43. I am unable to accept the contention of Mr. Samanta that after the order passed by Mr. Anil K. Sen, J. the high Court is incompetent to go into the matter on merits. While dealing with such pleas, the Court is not unmindful of the judgment of the Supreme Court in Lachmi Ram vs. State of Harayana (supra) which, in my view, squarely applies to the case on hand. The Appeal Committee instead of refusing to exercise its power on the bogey of review should have decided the matter on merits. The Appeal Committee did not consider that the petitioner having been appointed as Headmaster against the permanent vacancy von the basis of an advertisement made by the Managing Committee after resignation of the former Headmaster. His appointment was not open for termination or not could be thrown out of his employment by a stroke or pen. In view of the direction passed by this Court, the Appeal Committee was incompetent to ignore the grievances as are raised in the appeal. Reinstatement of the former Headmaster, by an order of the Appeal Committee where the petitioner was not impleaded as a party in my view, could not be interpreted in such manner as would give rise to passing of the order of automatic termination.

44. Assuming but not admitting the petitioner was appointed pending the determination of the appeal preferred by the former Headmaster even then, the petitioner served the school for more than six years. The Appeal Committee acted with illegally in not taking into account all these facts. The Managing Committee by Resolution confirmed the service of the writ petitioner as per the Board Circular No. 43/56 dated 28th August, 1956.

45. The Appeal Committee while refusing to grant relief to the petitioner did not consider the fundamental facts which are set out below : -

(i) Since January 28, 1968 the petitioner was discharging the function, duties and powers of the Headmaster of the said school and no objection was raised by the District Inspector of School's Midnapore or by the Board;

(ii) The petitioner was being paid his salary and admissible allowance including government dearness allowance which was admissible only to permanently appointed and approved teachers and Headmaster and funds were released on the recommendation of the District Inspector of Schools, Midnapore;

(iii) In the electoral roll for election of members to the Board, 1970 the petitioner's name was recorded as permanent Headmaster of the said School;

(iv) In the list of teachers maintained by the School the first 15 were shown as approved teachers. The name of the petitioner was borne against serial no. 1;

iv) The said Memo of the District Inspector of School dated November 13, 1967

was never furnished to the petitioner and as such, the petitioner could not make any comment as regard contents thereof. The petitioner submitted that the said Memo of the District Inspector of Schools could not take away the status acquired by the petitioner as permanent Headmaster of the said Institution. Status earned by the petitioner as permanent and approved Headmaster could only be taken away in accordance with rules framed under West Bengal Board of Secondary Education Act, 1963;

46. The Appeal Committee, in my view, being in heated an earlier determination of the Appeal Committee in the case of Bhutnath Patra, since deceased, did not at all consider the basic and fundamental grievances of the petitioner which according to Mr. Moitra constituted relevant matters. It is pertinent to refer to the cardinal principles laid down by the Court in case of Biswanath Mukherjee Vs. Collector of Customs (supra). The principles laid down in the said judgment are quoted below : -

- (a) The Tribunal has come to the finding on no evidence.
- (b) The Tribunal has based the finding on materials not admissible and has excluded relevant materials.
- (c) The Tribunal has not applied its mind to all the relevant materials and has not considered the same in coming to the conclusion by considering material party relevant or partly irrelevant.
- (e) The Tribunal has disabled itself in reaching a fair decision by some considerations extraneous to the evidence and the merits of the case.
- (f) The Tribunal has based its finding upon conjectures, surmises and suspicion.
- (g) The Tribunal has based the finding upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found.
- (h) If the Tribunal in conducting the enquiry has acted in flagrant disregard of the rules of procedure or has violated the principles of natural justice, where no particular procedure is prescribed; and
- (i) These principles in particular - those appearing in (c) and (d) are applicable in the facts of the case.

47. On a careful scrutiny of the entire case, I am constrained to hold that the Appeal Committee on the basis of the materials on record ought to have considered that the petitioner having acquired the status of the approved teacher by reason of his continuous service for more than six years, could not be thrown out of employment by a letter dated August 29, 1974 directing the petitioner to hand over the charge. This aspect was consciously overlooked by the Appeal Committee. The Appeal Committee without any basis death upon the exercise of review which, in my view, ought not to have resorted to. The concept of locus standi has gone radical changes in the recent years. The judgment of the Appeal

Committee in FMAT NO. 149 of 1974 is distinguished in the light of the judgment of the Supreme Court in Lachmi Ram's (supra). The petitioner is competent to challenge the action of the respondents in throwing him out from service by a letter directing him to hand over charges. Before issue of the said letter, the concerned authority ought to have acted in terms of the provision of the Rules for the Management of Recognize non Government Institutions (Aided and Unaided) 1969 (for short the said Rules hereafter). BY a mere letter directing the petitioner to hand over the charge, the school authority took away the valuable rights accrued to the petitioner under the said Rules. The Appeal Committee became totally oblivious of the fact that Mr. Anil K. Sen, J. in Civil Order No. 1808(W) of 1974 permitted the petitioner to seek appropriate remedy before the Board itself. Once the appeal was presented, the petitioner was competent to urge all the grounds which are: valid and legal. The decision of the Appeal Committee, in my view, apart from being vitiated by consideration of the irrelevant matters to the exclusion of relevant matters cannot but be quashed. The Appeal Committee consciously overlooked the grievance of the petitioner on the question of natural justice.

48. Apart from the violation of natural justice the decisions of the Appeal Committee being infected with absence of fairness is to be examined in the light of the pronouncement of the House of Lords as also the decision of the Hon'ble Supreme Court of India.

1. Council of Civil Service Union & Ors. v. Minister for the Civil Service (supra).
2. Siemens Engineering & Manufacturing Co. Vs. Union of India (supra).
3. Maneka Gandhi vs. Union of India (supra)

49. Where the rules of natural justice do not apply nevertheless obligation on any one who decide any thing must do so through a procedure that is fair. The fairness has been founded on the elementary requirements of quasi judicial process. Mr. P.N. Bhagawati J. in Siemens Eng. & Mfgs. Co.'s case (supra) and Maneka Gandhi's case (supra) explained away the role of fairness and suggested the soul of natural justice is fair play in action and that is why it has received the widest recognition throughout the democratic world. It is to be tested now whether the decision of the Appeal Committee is free from illegality, irrationality and procedural impropriety in the light of the judgment of the House of Lord in Council of Civil Services Union & Ors. vs. Minister for the Civil Services; (supra).

50. The appellate order, in my view, is liable for being quashed on the ground of illegality.

51. Applying the doctrine of "Wednesbury unreasonableness" Associated Provincial Picture House Ltd. vs. Wednesbury Corporation (supra) I am of the view that the order of the Appeal Committee is out-regius in its defiance of logic or of accepted legal standards that no enisle person who had applied his mind to the question to be decided could have arrived at it. The recourse is no longer

needed to Viscount Radcliffe's ingenious explanation in *Edwards vs. Bairstow* (1956) AC 14 of irrationality as a ground for a Court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision maker. The decision of the Appeal Committee suffered incurable vice of irrationality. Failure to observe basic rules of natural justice or failure to act with procedural fairness can better be termed as procedural impropriety which is manifestly present in the decision of the Appeal Committee inasmuch as the petitioner was without reason any thrown out of his employment by a mere direction that the petitioner should hand over charge without the observance of the procedural rules.

52. As regards the contention of Mr. Samanta that the doctrine of *resjudicata* fully applies in the facts and circumstances of the case I am of the view that this Court in Civil Order No. 1808(W) of 1971 had no occasion to consider the orders as are discussed above. That being the position, the doctrine of *resjudicata* does not apply to the case on hand. The main thrust of Mr. Samanta is that all the points raised by the writ petitioner are barred by the doctrine of *resjudicata*. The decision cited by Mr. Moitra is *Ahmedabad Manufacturing & Calico Printing Company Ltd. vs. Workmen* (supra) in my view, is squarely applicable in the facts and circumstances of this case. The other two decisions cited by Mr. Moitra also deal with the question of *resjudicata*. The aforesaid decisions of the Supreme Court also support the contention of Mr. Moitra While parting with the issue of *resjudicata* it is appropriate: for this Court to hold that this Court permitted the petitioner to prefer an appeal although the appeal was filed before the passing of the order by Anil K. Sen, J. All the fundamental questions raised in the appeal instead of being effectively considered were deliberately brushed aside on utterable grounds. The contention of Mr. Samanta as regards the doctrine of *resjudicata* cannot therefore be accepted.

53. Now we are required to consider as to whether the order of the Appeal Committee could be sustained and whether there has been a violation of rules of natural justice. Mr. Samanta submitted that in view of the judgment of this Court, there was no warrant for securing the compliance of Rule 28(8) of the said Rules. The contention of Mr. Moitra that the decision of the Appeal Committee could not be sustained by reason of the principles laid down by this Court in case of *Collector of Customs vs. Biswanath Mukherjee* has much force in it. I am of the view that the Appeal Committee has not applied its mind to all the materials on record and has not considered the same in coming to the conclusion and that the conclusion reached that the Appeal Committee is founded upon consideration of materials partly relevant and partly irrelevant. The Appeal Committee failed to consider the true, import, scope and effect of Rule 28(8) of the said Rules. The said Rule is as follows : -

54. Rule 28(8): Both in aided and unaided Institutions the Committee shall have the power, subject to the prior approval of the Board, to remove or dismiss permanent or temporary teachers and other employees. For this purpose, the

Committee shall first draw up formal proceedings and issue chargesheet to the employees concerned and offer him reasonable facilities for defending himself. The teacher of the employee proposed to be proceeded against shall submit his explanation ordinarily, within a fortnight of the receipt of the charge-sheet. The Committee shall send to the Board all relevant papers including the charge-sheet explanations submitted by the teachers of the employees concerned and the reasons for which the Committee decides in favour of taking disciplinary action. If the Board considers that there are sufficient ground for taking disciplinary action the Committee shall issue formal notice calling upon the teacher of the employee concerned to show cause ordinarily within a fortnight. The Committee, shall, the then, send again to the Board all relevant papers including the explanation submitted by the teacher or the employee concerned and the recommendations of the Committee is concerned, the decision of the Board shall be final;

55. Provided that the Board may delegate to any Committee constituted u/s 24 of the Act powers and functions conferred on the Board by this sub-rule".

56. The Appeal Committee without any least application of mind overlooked the continuous service of the writ petitioner from 1968 to 1974, the effect of Rule 28(8) of the said Rules. The Appeal Committee while discharging its quasi judicial procedure was required to deal with the basic question as to whether the appointment of the petitioner was subject to any decision of the Appeal Committee and as to whether the reinstatement of Bhutnath Patra, former Headmaster, in the facts and circumstances of this would confer power upon the Managing Committee of the Institution to dispense with the provision of the Rule 28(8) of the said Rules. Without adhering to the Rule 28(8) of the said Rules, the petitioner's service was terminated. Since the appeal was preferred and this Court permitted the petitioner to raise the grievances before the Board; The Appeal Committee was required to decide the issue as to whether the termination of the service of the petitioner being without compliance of the said rule could be sustained or not. The main important issue as raised in the paragraph 4 of the Appeal was completely overlooked by the Appeal Committee. Paragraph 4 of the appeal is quoted below : -

The Managing Committee of the School exercised its discretionary power as per paragraph 2 of the Board's Circular No. 43/56 dated 28/ 8/36 by waiving further period of my probation and made me confirmed Headmaster since 1/1/56. This the Committee did in its resolution no. 2 adopted in the meeting dated 15/2/68. It has been held by the Calcutta High Court in C.R. No. 8325(W) of 1972, Manju Devi vs. D.P.I. & Ors., that a confirmed teacher should be deemed to be approved case.

57. Paragraph 4 which raised very important question as regards the continuous service of the petitioner and his appointment as the Headmaster of the School was not considered by the Appeal Committee which did not also consider the effect of Rule 28(1) of the said Rules. The Rule 28(1) of the said Rules reads

thus : -

Rule 28(1): In an aided Institution the Committee shall subject to the approval of the Director have the power;

(i) to appoint in accordance with the directions given by the Director in this behalf, teachers and other employees on permanent basis against permanent vacancies, if available, within the sanctioned strength of teachers and other employees approval of such appointment being thereafter sought for from authorized by him ordinarily within a fortnight from the date of decision of the Committee;

(ii) to appoint in accordance with the directions given by the Director in this behalf, teachers and other employees or temporary basis against permanent or temporary vacancies, other employees, approval for such appointment being thereafter sought for from the Director or any officer authorized by him ordinarily within a week from the date of decision of the Committee.

58. The Appeal Committee proceeded on an erroneous footing that it could not review its earlier decision. The review of earlier decision without consideration of the grievances of the petitioner was rejected on the ground of review.

59. Reliance on Memorandum dated November 13, 1967 by the Appeal Committee was challenged. No such Memorandum dated November 13, 1967 was placed before the Appeal Committee to the knowledge of the writ petitioner and in any event, the petitioner was not given any opportunity to look into the same and to make his submissions thereon before the Appeal Committee. The Appeal Committee, thus, acted on irrelevant and/or the disclosed materials and extraneous considerations.

60. Assuming that the Memo dated August 29, 1974 directing the petitioner to hand over charge was a letter of termination even then, the action of the school Authority in view of the judgment of the Supreme Court in case of Monmohan Singh Jaitla vs. Commissioner Union Territory of Chandigarh & Ors., reported in 1985 SCC (L&S) 269 is not beyond the pale of judicial review. The right of the petitioner stands adversely effected by Memo dated August 29, 1974. The Court is, therefore, required to examine the order dated August 29, 1974. The petitioner admittedly acted for more than six years. The Appeal Committee did not consider what could be the fate of the petitioner after reinstatement of the former Headmaster. The School Authority while not acting in any quasi-judicial capacity are bound to act fairly. The doctrine of fairness, as disclosed above is merited to be applied to all decisions making bodies without having the characteristic of their functions as quasi-judicial. It is not necessary to label the proceedings judicial quasi-judicial, administrative, investigatory. It is the characteristics of the proceedings that matter not the precise compartments into which they fail.

61. The decisions cited by Mr. Moitra, in my view, are fully applicable in the facts

of this case and particularly, the judgment of the Supreme Court in case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . The relevant portion of Maneka Gandhi's case is quoted below :-

Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of audi alterem partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice.

62. Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always, be : does fairness in action demand that an opportunity to be heard should be given to the person affected

63. The law must now be taken to be well-settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable.

64. Madam J. while speaking for the Court in Inland Water Transport Corporation vs. Brojo Nath Ganguly observed that The cycle of change and experiment, rise and fall, growth and decay and or progress and retrogression recurs endlessly in the history of man and the history of civilization. The law exists to serve the needs of the society which is governed by it. If the law is to play its allotted role of serving the needs of the society, it must reflect the ideas and ideologies of that society. It must keep time with the heartbeats of the Society and with the needs and aspirations of the people. As the society changes, the law cannot remain immutable.....The law must therefore, in a changing society march in tune with the changed ideas and ideologies..... This task must, therefore of necessity fall upon the courts because the Courts can by the process of judicial interpretation adopt the law to suit the needs of the society."

65. This Court cannot shut his eyes to the administrative power of the School Authority arbitrarily exercised on 29th August, 1974. Such action, in my view, was without any application of mind and in total disregard of concept of fairness. That being the position, the decision of the Supreme Court in case of Central Inland Transport Corporation Ltd. vs. Brojo Nath Ganguly which deprecate the resort to Henry VIII Clause conferring lethal weapons in the ends of the employer.

66. I am therefore, in complete agreement with the submission of Mr. Moitra that the petitioner in the instant case ought to have been told that the grounds and circumstances warranting the termination of service. After all the petitioner admittedly is an aggrieved person. The appointment of the petit Loner was duly effected and the petitioner continued to function as Headmaster for more than six years.

67. The terms fairness or fairplay and natural justice are used inter changeable.

The question raised now is whether in the specific administrative proceeding affecting an individual, there ought to be an opportunity of hearing given to the affected individual and not whether the proceeding in question is "administrative or quasi-judicial."

68. On a careful analysis of the principle as are detailed above, I am of the view that the petitioner's contentions are bound to succeed.

69. The judgment of the Supreme Court in Laxmi Ram's case (supra) on the question of the locus standi of the petitioner applies in the facts of the present case. The Appeal Committee ought to have considered the pros and cons of such grievances in its true perspective. The order of the Appeal Committee is vitiated by a non-consideration of the fact that the illegal termination of the service of the petitioner is vitiated by procedural impropriety. The Appeal Committee also acted in flagrant violation of the rules of natural justice by relying on the undisclosed materials without giving the petitioner an opportunity of rebutting the same. The conclusion drawn by the Appeal Committee is also founded upon the earlier decision of the Appeal Committee in the appeal of Bhutnath Patra, where the petitioner as Headmaster of the Institution had no opportunity of representing his own case. Madan J. in case of Central Inland Water Transport Corporation vs. Brojo Nath Ganguly's case observed that:-

Does this, therefore, make any difference? There is a basic fallacy vitiating the above submission. That fallacy lies in the assumption which that submission makes that merely because a point has not fallen for decision by the Court, it should, therefore, not be decided at any time. Were this assumption true, the law would have remained static and would have never advanced. The whole process of judicial interpretation lies in extending or applying by analogy the ratio decidendi of an earlier case to a subsequent case which differs from it in certain essentials, so as to make the principle laid down in the earlier case fit in with the new set of circumstances. The sequitur of the above assumption would be that the Court should tell the suit or that there is no precedent governing his case and, therefore, it cannot give him any relief. This would be to do gross injustice. Had this not been done, the law would have never advanced. For instance, had By lands vs. Fletcher not been decided in the way in which it was, an owner or occupier of land could with impunity have brought and kept on" his land anything likely to do mischief if it escaped and would have himself escaped all liability for the damage caused by such escape if he had not been negligent. Similarly, but for Domoghue vs. Stevenson manufacturers would have been immune from liability to the ultimately consumers and users of their products.

70. In view of the judgment of the Supreme Court in Laxmi Ran's case (supra) I am of the view that the petitioner had and has locus standi to raise the grievances which call for interference by this Court inasmuch as Article 141 of the Constitution stares at the Court. I am unable to accept the contention of Mr. Samanta that the locus standi of the petitioner to raise fundamental challenge could not be gone into by this Court. Since the Appeal Committee deliberately

acted on materials partly relevant and partly irrelevant materials and did not apply its mind to the facts and circumstances of this case of materials on record. The order of the Appeal Committee as is detailed, in my view, cannot but be quashed. Since the petitioner was not given opportunity of being heard by the School Authority and the violation was committed on Rule 28(8) of the Rules. The order dated 29th August, 1974 is hereby set aside. The School Authority cannot do away service of the writ petitioner in the garb of a direction on the petitioner to hand over charge. The Appeal Committee deliberately overlooked this aspect of the matter inasmuch "as the Appeal Committee while disposing of the appeal no. 77 of 1969 did not consider the case of the petitioner. The decision of the Supreme Court in case of Monmohan Singh Jaita vs. Commissioner of Union Territory of Chandigarh & Ors., applies to the case on hand. The petitioner's service could not be terminated without disclosure of reasons namely, that the service of the petitioner could not be continued on the grounds as were otherwise available to the School Authority. Had the petitioner been given notice indicating grounds and/or facts and circumstances the petitioner could have raised all grievances which he raised before the Appeal Committee in Appeal No. 77 of 1974 against the Memo dated 29th August, 1974. The termination of the service of the writ petitioner could not be said to be legal on the ground as are discussed. Even in the case of temporary Teacher, the rules of natural justice cannot be excluded.

71. Inescapable conclusion is, therefore, that the petitioner was precluded from raising his grievances before the School Authority. The School Authority by simply directing the petitioner to hand over charge resorted to an arbitrary method which being wholly dehors the Rule 28(8) of the Rules is ultra vires Article 14 of the Constitution of India. The action, thus, giving rise to the passing of the order dated August 29, 1974 which was ultimately confirmed by the Appeal Committee by the order impeached in the writ application is wholly arbitrary and demonstrate and fire action. The cardinal principle that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invited with Authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our Constitutional set up for every citizen is protected against exercise of arbitrary authority by the State or its officer or Agency having the power to decide any matter detrimental to the interest of a citizen. The action of the School Authority in issuing the notice dated 29th August, 1974 is, therefore, declared illegal and ultra-vires the rules. The appellate order also suffers from incurable defect as indicated above. Accordingly, I set aside the orders as contained in Annexure J.L. and C. The respondents are directed to allow the petitioner to join the post of Headmaster within two weeks from date of communication. The petitioner shall be paid his salary from the date of joining the post of Headmaster.