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Calcutta High Court

Case No: C.R. No. 4753 of 1979

Tuhin Kumar Samanta	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision: April 25, 1980

Acts Referred:

- Constitution of India, 1950 - Article 226
- West Bengal Board Of Secondary Education Act, 1963 - Section 18, 3(2), 9

Citation: 84 CWN 779

Hon'ble Judges: Sabyasachi Mukharji, J

Bench: Single Bench

Advocate: B.N. Sen, B.P. Banerjee and T.K. Pal, for the Appellant;Arun Prakash Chatterji and Suprokash Banerjee for Respodent No 4, Indrajit Mondal for Respodent No 5, P Roy for Respodent No 6 and A.P. Sarkar and P.R. Mondal for Respodent Nos. 1, 2 and 3, for the Respondent

Judgement

Sabyasachi Mukharji, J.
In this application under Article 226 of the Constitution, though seemingly it relates to the question as to who should continue to be the Headmaster of Sri Ramkrishna Sarada Pith High School, Burdwan, Namely, whether the petitioner or the respondent No. 6, but behind it reflects a sad state of affairs in which our secondary education in West Bengal to-day is. In this application the petitioner challenges the order of the Appeal Committee of the West Bengal Board of Secondary Education dated 31st of March, 1979. But behind the challenge there is a long history and a sad story. It is alleged that on the 14th of March, 1973 there was a notice for holding the meeting of the Managing Committee of Sri Ramkrisha Sarada Pith High School, hereinafter referred to as the said school, to be held on 22nd of March, 1973 for certain agenda to be discussed. Prior thereto there was a long correspondence between the respondent No. 6 who was then acting as the Headmaster of the said school and the then Secretary of the School. On the 21st of

March, 1973 Title Suit No. 65 of 1973 was filed before the 2nd Munsif at Burdwan by the respondent No. 6 and an injunction order was passed restraining the members of the Managing Committee from holding the meeting on the basis of the notice dated 14th of March, 1973. Whether the members of the Managing Committee got notice of the said injuction or whether the said injunction was subsequently vacated is not very clear. Nothing, however, very much depends upon it as no party made any point of that before me. The meeting, however, was alleged to have been held on 22nd of March, 1973 and there was a resolution passed suspending the respondent No. 6 with effect from 23rd of March, 1973. On the 15th of May, 1973 respondent No. 6 preferred an appeal before the Appeal Committee of the West Bengal Board of Secondary Education. On the 16th of May, 1973 there was another resolution passed by the Managing Committee recommending the dismissal of the respondent No. 6 with effect from 17th of December, 1973. It is alleged that on the 16th of August, 1974 the respondent No 6 wrote a letter tendering his resignation. But on the 20th of August, 1974 the respondent No. 6 wrote a letter to the West Bengal Board of Secondary Education disputing the legality and the genuineness of the alleged letter of resignation. On 20th of August, 1974, that is to say, on the same date by a resolution of the Managing Committee the alleged resignation of the respondent No. 6 was accepted. On the 11th of December, 1974 the present petitioner claims that he was selected as the Headmaster of the said School and on 22nd of December, 1974 a letter of appointment was issued in his favour. Prior to the appointment it is not disputed that there was advertisement and interviews. On the 14th of May, 1975 the appointment of the petitioner was approved by the District Inspector of Schools. On the 9th of January, 1976 resolution was passed by the Managing Committee confirming the petitioner. On the 12th of August, 1978 an order was passed by the Appeal Committee reinstating respondent No. 6 as the Headmaster. But before that order is referred to it would be necessary to refer to certain facts. Now, in the grounds of appeal which is Annexure "X" to the affidavit of Gopal Krishna Bhattacharjee affirmed on 26th of June, 1979 and filed in opposition to the rule nisi in this case on behalf of the respondents Nos. 4, 7, 10 & 11 being the Administrator, Board of Secondary Education, Appeal Committee, West Bengal Board of Secondary Education and Sm. Anila Debi, Member, Appeal Committee, West Bengal Board of Secondary Education, under the heading "nature of the decision or order complained of" it was stated by the respondent No. 6 that no copy was; received, salary was withheld from march 1973. Against the question whether the appeal was against the grievance of any decision of the Managing Committee it was stated that there was no decision of any Managing Committee. In answer to question whether it Was a case of dismissal or discharge it was stated that the said question did not arise. It was, further, stated that there should be removal of threats and check on assaults. It was alleged that he was once assaulted on 22nd of march, 1973. A copy of the letter containing the alleged grievances was annexed where the respondent No. 6 alleged that the Secretary of the School had been violating all the rules. He had wanted to hold a meeting of the Managing Committee without caring to consult the respondent No. 6. He, further, alleged that the respondent No. 6 brought this to the notice of the District Inspector of School, Burdwan on 14th of March, 1973 a notice for the

alleged meeting was issued. He, further, stated that at 5.45 P.M. on 22nd of March, 1973 the Secretary with a member of unauthorised persons had assaulted the respondent No. 6 and dragged him on the road. He had, further, alleged that after sometime the school office was locked up putting new locks over the locks already there and the Secretary declared that the school would remain closed indefinitely. The school, however, according to the respondent No. 6, reopened in April 1973 and he alleged that he went to school. He, further, alleged that he found that the Headmaster''s almirah was removed. He came to understand from one Surja Mistry that the almirah had been broken open. He has, further, alleged that false audit accounts were placed meanwhile by the Secretary before D P 1 panelled auditor M/s. S. Dhar & Co. He has, further, said that he had been threatened by the Secretary from entering the school. He, therefore, prayed that he should be allowed to rejoin the school. Now upon that appeal being preferred the appeal progressed before the Appeal Committee and was heard in part on different dates. One of the meetings of the Appeal Committee was held on 29th of November, 1976. In the minutes of the said meeting of the Appeal Committee the respective versions of the parties were stated which included the version of the Managing Committee that the respondent No. 6 had tendered resignation on the plea that the charges against him might be withdrawn by the Managing Committee by a letter dated 16th of August, 1974. The respondent No. 6, however had denied that the letter in question was his and had stated that his signature had been "forged". The said denials and versions of the parties about the alleged termination of the service of the respondent No. 6 and the resignation letter of the respondent No. 6 dated 16th of August, 1974 were placed before the Appeal Committee. The Appeal Committee recorded in the minutes of the said meeting, inter alia, as follows :-

The most important point for decision, is, whether the purported resignation letter dated 16th of August, 1974 is genuine or not.

In the premises, the Appeal Committee sent the said letter to a handwriting expert recognised by the Government for his opinion. The Appeal Committee, thereafter it appears, met on the 16th of July, 1977. On that date the appeal was heard in part again. The minutes of the Appeal Committee recorded the rival contentions and submissions on behalf of the respective parties and the following order was passed :-

Ordered :-- that the appeal is part heard. The respondent be directed to submit a statement showing payment of subsistence allowance to the appellant from the date of suspension to the date of acceptance of resignation. (Hereby respondent Nos. (Sic) it was meant the Managing Committee and by appellant the respondent No. 6 to the present petition is indicated). The appellant be also asked to furnish a statement showing the amount of subsistence allowance received by him during the period of suspension and the amount still due from the school during the period. The respondent be also directed to furnish the Appeal Committee with the present position of the court cases immediately. A short date be fixed for the final disposal of the appeal with due notice to the parties concerned. But the parties shall submit statement and the information of the

court cases within 7 days.

Subsequently, the Appeal Committee again met on the 20th of August, 1977. The appellant was present and on behalf of the School Secretary along with the petitioner, the Headmaster of the School was present. The parties were heard and the Appeal Committee noted in the minutes as follows :-

It appears that on the previous occasion the appellant submitted before the Appeal Committee that he received subsistence allowance during suspension. In view of this mutually contradictory statements from the appellant the Appeal Committee decided to refer the matter to the Director of Secondary Education under Regulation 7 of the West Bengal Board of Secondary Education (Manner of Hearing and Deciding Appeal by Committee) Regulations, 1974 with a view to submitting a report to the Appeal Committee as to whether the appellant received any subsistence allowance during the period of suspension, and if so, the total amount received by him and the amount, if any, due to him.

Ordered that the Director of Secondary Education, West Bengal be requested to enquire as to whether the appellant received any subsistence allowance during the period of suspension, and if so, the total amount received by him and the amount if any due to him and submit a report to the Appeal Committee at an early date.

2. Statements were, thereafter submitted about the subsistence allowance paid or received on behalf of both the parties. The Appeal Committee, thereupon, on the 12th of August 1978 passed an order which became the subject matter of challenge in Civil Rule No. 5981 (w) of 1978 and I disposed of that matter by a judgment delivered on 9th of December, 1978. It will be necessary to refer to the said decision of mine in little detail later on. In the meantime, there was General Election of the West Bengal Assembly and change of Government and two Government orders one dated 17th of August, 1977 and another dated 19th of July 1977 were issued and it may be appropriate to refer to the said two Government orders which have been annexed to the present petition as Annexure "D". By 17th of August 1977 circular the Joint Secretary, Government of West Bengal informed the Director of Secondary Education, West Bengal regarding the subject of reinstatement of teachers and non-teaching employees of recognised non-Govt. Secondary School who were detained under M.I.S.A. or D.I.R. that Government had considered their cases and had directed that teachers and other employees who were dismissed from service or placed under suspension due to their detention under M.I.S.A. or D.I.R., should be reinstated forthwith. It was, further, directed that status quo be maintained in respect of teachers appointed in their places pending final decision. The period of absence should be treated as period spent on leave without pay and the period of absence mentioned above should also be reckoned as qualifying for increment as a special case in relaxation of the normal rules. The District Inspectors of Schools concerned were directed to communicate the decision immediately to all Heads of Secondary Schools and if and school failed or neglected to implement this decision the

case was directed to be reported to the department as early as possible. On the 19th of August, 1977 in continuation of the last mentioned circular the Government, further, directed that the teachers and employees who were prevented from attending their schools or performing their normal duties should immediately be allowed to join their duties and they should join their respective institutions within one month from the date of that order or might continue to remain in any alternative employment in any other educational institutions within the State. It was further, directed that the period of their absence should be reckoned as qualifying for increment as a special case, in relaxation of normal rules and teachers and other employees concerned should draw pay and allowances as admissible from the date of resumption of duties. In this case also all the District Inspectors of Schools were directed to be forthwith communicated and if there was any difficulty the matter was directed to be referred to the department. The appeal filed by the respondent no. 6 was, then, part heard and after passing the previous order which I have set out before, another order on 12th of August, 1978 was passed. In the said order the Appeal Committee stated as follows :--

The alleged letter of resignation is dated 16.8.74. The appellant says that his letter of resignation was not written by him though the signature appearing on this appear was put by him. His plea is that on many occasions the Head-master was required to sign on blank papers. In support of his case he produced a blank paper which bears the signature of the appellant and it is dated 10.4.73. The Administrator could not say anything on the ground that no relevant paper was made available to him. But he is inclined to accept the version of the appellant and has produced certain papers to this effect. The Administrator has produced papers which shows that the Managing Committee adopted a resolution on 16.12.73 terminating the services of the appellant with effect from 17.12.73. But the Managing Committee passed a resolution accepting the letter of resignation from 20.8.74. It is curious that when the services of the appellant were terminated, how could the question of resignation arose and how could the question of acceptance of his resignation arose. The present Administrator said before the Appeal Committee that the very fact that the resignation was accepted after dismissing the appellant gives rise to suspicion and he is inclined to believe that there was something wrong. He stated this categorically before the Appeal Committee. The Administrator could not show any paper nor he could produce Resolution Book. He pleaded his inability to do this as no papers were supplied to him. In the circumstances, the prayer of the appellant for reinstatement may be allowed. The appellant shall get his arrears of pay and allowance from the school.

Hence ORDERED that the appeal be allowed. The appellant be reinstated in his post with effect from the date of his dismissal i.e. from 17.12.73. He shall get arrears of pay and allowance from the school from the date of his dismissal till the date of his joining the school. The appellant should be allowed to join the school immediately.

It may incidentally be mentioned that on the 22nd of December, 1974 the present petitioner was appointed as headmaster of the School by the Managing Committee, and the District Inspector of Schools" Secondary Education, Burdwan, had approved the said

appointment in the following terms.

The undersigned has to state that the appointment of Sri Tuhin Kumar Samanta, M.A.B.T. as a Headmaster of his school is approved on a salary as admissible under the Rule X. E. F. 23.12.1974 vice Sri Hari Prasad Sengupta, resigned.

3. A copy of the letter informing of the said order was sent to the petitioner and the petitioner thereafter moved an application which I have indicated before which resulted in my decision dated 9th of December 1978. The Managing Committee of the School when it was communicated the two Government circulars had taken the view that there was no machinery provided to determine whether a particular teacher had been prevented forcibly from entering the school and in so far as the respondent no. 6 was concerned he was never detained under either MISA or DIR and there was no reason, according to the Managing Committee and as such the Managing Committee could not implement the order. Upon that the Managing Committee was superseded and an Administrator was appointed. The Petitioner had stated that the Managing Committee had applied in time for extension of its term and that application or prayer had been recommended by the District Inspector of School. But this version is denied by the Board of Secondary Education and others and according to them the term of the managing Committee had expired and for other valid reasons the Managing Committee was superseded and an Administrator validly appointed. Be that as it may, I am not concerned with that controversy. During the hearing of the appeal in the final stage which resulted in the order dated 12th of August, 1978 the Appeal Committee did not think it prudent or advisable to inform either the petitioner who was vitally concerned or the old Managing Committee but the school was supposed to have been represented by an Administrator appointed by the Board of Secondary Education who was appointed, according to the petitioner, on the alleged ground of non-implementation of the above two circulars which were the subject matters of appeal before the Appeal Committee.

4. Before me in the said application three points were canvassed. It was alleged that the order passed on the 12th of August 1978 was beyond the competence of the Appeal Committee as to the order being beyond the scope of the appeal, I, however, had negatived the said contention. I held that it would be improper to take a narrow view of the scope of appeal because I was of the opinion that the Memorandum of Appeal should be read in the context of the enclosures to the Memorandum of Appeal and if it was so read it would be apparent that the respondent no. 6 was complaining about his difficulties in functioning as the Headmaster of the School. It was urged, secondly that as the decision was contrary to the previous decision it was not competent for the Appeal Committee to arrive at that decision and the decision was a perverse one. It was, lastly, submitted that the decision was in violation of the principles of natural justice as the petitioner had not been given any opportunity to make his representation. Regarding the finding of the Appeal Commute on 12th August, 1978 being inconsistent with the finding recorded in the order dated 16th July, 1977, after setting out the facts I had observed, interalia, as follows :

I am not prepared to say at this stage that the appeal Committee was not competent to come to a subsequent finding on a re-consideration when the appeal was pending before them.

5. But I came to the conclusion that if such a re-consideration had to be made it was consistent with natural justice and fair play that the petitioner should be given opportunity. Therefore, I quashed the said order dated 12th of August, 1978 and restrained the respondents therein from giving effect to the same. I further observed interalia, as follows :--

This will not prevent the Appeal Committee from re-considering the matter in accordance with law and in accordance with the principles indicated before.

6. Thereafter, notice was given to the petitioner. The petitioner submitted written memorandum taking various points against the competency of the said appeal and the petitioner further submitted that in view of the fact that the petitioner had been appointed in the meantime there should not be any re-consideration of the matter in such a manner so as to alter the petitioner''s position. Thereafter, it is alleged that the Appeal Committee after re-consideration of the matter passed an order to the following effect on 31st of March, 1979 :--

The appellant and the Administrator of the school are present Shri Tuhin Samanta along with Sri Tapan Pal Advocate, is also present.

Heard the appellant, the respondent and Sri Tuhin Samanta.

It is not necessary to refer the matter to the Director of Secondary Education West Bengal again for further enquiry.

The case of the appellant is that he did not submit any letter of resignation but he put his signature on a blank paper on which subsquently a letter of resignation purported to have been written by him was typed. After hearing the appellant and the respondent the Appeal Committee on 12.8.78 allowed the appeal and reinstated the appellant.

Sri Tuhin Samanta moved the Hon''ble High Court. The Hon''ble High Court has been pleased to quash the order of the Appeal Committee dated 12th August 197.8 and directed the Appeal Committee to hear Sri Tuhin Samanta who is adversely affected by the said decision of the Appeal Committee. In obedience to the order of the Hon''ble High Court the Appeal Committee is re-hearing this case.

The appellant alleged that he did not submit any letter of resignation but on a blank paper he put his signature on which a resignation letter was typed. The respondent who is the present Administrator of the school was inclined to accept the version of the appellant and produced papers to this effect. The managing Committee by a resolution dated 16.12.73 terminated the services of the appellant with effect from 20.8.74. The present

respondent expressed doubt about the letter of resignation and was inclined to accept the version of the appellant.

7. This alleged letter of resignation was sent to the Handwriting Expert. The report of the Handwriting Expert says that the signature on the letter of resignation is the signature of the appellant but during scrutiny of the resignation letter he found somewhat unusual phenomenon which he recorded this--"the writter is habitually to execute his signature close to the words yours faithfully" as found in mark X/1. But in "X" the signature was executed far away from typed words "Yours faithfully". This type of unusual phenomenon occurred if the typing work was done while the signature was existing on the sheet. The report of the Handwriting Expert only shows that the typing of the matter was done after the signature had been put. This supports the case of the appellant that the letter purported in his resignation was done on a subsequent date. It is also to be pointed out that the Managing Committee adopted a resolution terminating the services of the appellant with effect from 17.12.73 but again accepted the alleged letter of resignation on 20.8.74. The case of the appellant is that after the letter of resignation was typed and he came to know of it he informed the District Inspector of Schools, and Secretary, West Bengal Board of Secondary Education about this. This he has produced receipt to show that he sent telegram to this effect. It may be mentioned here that the report of the Director of Secondary Education West Bengal about payment of subsistence allowance covers the period from 23.3.73 to 17.12.73, that is to say, that actually the letter of resignation was submitted which was accepted by the Managing Committee. As directed by the Hon"ble High Court the Appeal Committee re-considered the matter and has come to the conclusion that no letter of resignation was submitted and is of the opinion that the appeal be allowed.

8. Hence Ordered that the appeal be allowed. The appellant be reinstated in his post with effect from the date of his dismissal i.e. from 17.12.1973. He shall get arrears of pay and allowance from the school from the date of his dismissal till the date of his joining the school. The appellant shall be allowed to join the school immediately."

9. It is alleged by the respondent no. 6 that in pursuance of the Appeal Committee"s decision on the 17th of May, 1979, the school reinstated respondent no. 6 and he assumed charge. On the other hand, it is alleged by the petitioner that no order was communicated and no charge was assumed but some people came to create trobule and the petitioner moved the present application under Article 226 of the Constitution challenging the order of the Appeal Committee. It has been further alleged by the petitioner that on the 17th of May, 1979 which was the closing day for the Summer Vacation the said respondent no. 6 with some people had sought to interfere with the functioning of the school and the petitioner informed them that as the petitioner had not received any order of the Appeal Committee the petitioner was not willing to hand over the charge. This application being moved under Article 226 of the Constitution I issued a rule nisi on 4th of June, 1979 and granted an interim order restraining the respondent from giving effect to the order dated 31st of March, 1979 passed by the Appeal

Committee.

10. It was alleged that certain documents were received by the Appeal Committee behind the back of the petitioner in respect of which the petitioner had no knowledge and the petitioner had no opportunity to contradict or confront or to offer any explanation. That certain documents were produced by the respondent no. 6 would be apparent from the particulars of these documents which are mentioned in paragraph 25 of the affidavit of respondent no. 6 and filed in these proceedings. From the orders of the Appeal Committee of the different dates it does not appear that any opportunity was given to the petitioner in respect of those documents or any of the contentions of the petitioner were considered in respect of those documents. There were various allegations about the conduct of the respondent no. 6 while he had acted as the Headmaster of Nulhati H. P. School. It was alleged by the petitioner that the respondent no. 6 had been dismissed and he had concealed that fact before his appointment in the instant school. It was further alleged by the petitioner that the respondent no. 6 behaved while acting as the Headmaster of the present school in question in a very peculiar manner and used to handle the documents and cash of the school improperly. That some of these were the allegations against the petitioner would be apparent from reference to the charge sheet submitted against the petitioner prior to his alleged suspension and/or dismissal leading to his submitting his alleged letter of resignation. Though these allegations are denied in the affidavit in opposition it is not necessary for the purpose of adjudication of this application to refer to these allegations. These allegations are denied by the respondent Mo. 6 in his affidavit-in-opposition to these proceedings. But these are not denied by the Board of Secondary Education or the officers on its behalf. The petitioner, however, has reiterated these allegations in its affidavit-in-reply. The petitioner in his allegation in the petition has also alleged that the respondent No. 6 had been re-instated because of the political pressure in support in his favour and out of the political consideration. These allegations, however, are denied by the respondent No. 6. The respondent No. 6 in his affidavit had made allegation about the competency of the petitioner to be appointed as the Headmaster of a school and has also disputed the regularity or the legality of the procedure alleged to have been adopted for his appointment.

11. The petitioner as I have mentioned before had alleged specifically that various documents had been taken into consideration behind the back of the petitioner. This allegation had not been specifically denied in the affidavit-in-opposition filed on behalf of the Board of Secondary Education or the Appeal Committee of the said Board. The orders passed also indicate that certain documents as regards the comparision of the signature of the respondent No. 6 and regarding the fact of keeping blank sheet of papers signed by the respondent No. 6 were taken into consideration by the Appeal Committee in disposing of the instant appeal. But there is nothing to indicate that the petitioner had been given an opportunity to deal with the said allegations of fact. The appropriate parties who could have properly dealt with these allegations were the Secretary of the school at the relevant time and other members of the then Managing Committee. No opportunity

was given to the petitioner to call these persons nor any notice issued to these persons. This was certainly an irregular procedure to have been adopted by the Appeal Committee. One of the grievances of the petitioner was that the petitioner had submitted a written argument or a written statement in support of his contentions. But in the order sheet or in the order of the Appeal Committee no consideration had been shown to the said submissions or the points taken in the said submission. On behalf of the respondent No. 6 it was argued very strenuously before me that there was no scope under the rules for a party to submit any written statement or any written argument nor was there any direction to that effect given by me while I disposed of the previous writ application. It is true that there is no such direction and it is perhaps also correct to state that there is no specific rule dealing with the requirement of submission of any written statement or written argument. But when I had remanded the matter back on the specific ground of the submission of the petitioner had to be taken into consideration, in my opinion, in view of the nature of the order passed the Appeal Committee in fairly acting in disposing of the appeal in the background of the facts and circumstances of the case it should have recorded that fact and should have considered these submissions and dealt with these submissions.

12. Mainly three grounds have been urged before me in support of this application. It was urged that there was no reason and no reasons have been considered or indicated by the Appeal Committee for disagreeing with the previous decision; indeed it was emphasised that the Appeal Committee had no power to review its previous decision arrived at on 16th of July, 1977 whereby the factum of resignation of the respondent No. 6 had been accepted. In my judgment dated 9th December, 1978 I had specifically indicated that fact. Secondly, it was urged that the respondent No. 6 had originally made the case that the letter of resignation was forgery. But the Appeal Committee had latter on purported to accept the version, when it was found out that the signature of the respondent No. 6 was not forged but genuine, that through the signature was there, the typing was not there and had been put in subsequently. In the background of the facts and circumstances of this case it was strongly urged that such a finding was absolutely perverse in law and could not be sustained. It was lastly urged that in any case in the facts and circumstances of the case the Appeal Committee had failed to consider whether reinstatement was the proper remedy in a case of this nature or whether the parties would not have been better served by ordering payment of certain compensation. Before I deal with the other contentions it may by relevant to refer to Rule 9 of the West Bengal Board of Secondary Education (Manner of Appearing and Deciding Appeals by Appeal Committee) Regulations, 1964 which reads as follows :-

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

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

(i) allow the appeal and grant such relief as it considers appropriate, if it is of the opinion that the order appealed against is based on insufficient or unsatisfactory grounds, or

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

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

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

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

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

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

13. In support of the contention that in case reinstatement was directed the Appeal Committee was obliged in view of sub-rule (b)(i) of the Regulation 9(1) if only the Appeal Committee was of the opinion that such reinstatement was appropriate and proper. Now, in this case there was no consideration by the order of the Appeal Committee that such reinstatement was proper in view of the lapse of time and other factors. Furthermore it was urged that the Appeal Committee has clearly directed reinstatement in aid of their submissions. On behalf of the petitioner reliance was placed on a Bench decision of this Court in the case of Motial Kala v. Hari Govind Rai 1978 (2) C.LJ. page 259 where discussing the provisions of Regulation 9 Chief Justice Mitra had held that the Appeal Committee could not order reinstatement unless it thought that reinstatement was proper and appropriate and had to give reasons for doing so. The learned Judge further observed that the Appeal Committee, once it decided to allow the appeal could not pass an automatic order of reinstatement. The Division Bench reiterated that the principles of smooth and harmonious working of an industrial establishment which the Supreme Court had invoked in several reported decisions applied with equal, if not greater, force to an educational institution. The Court was of the view that in the manner in which Regulations 9(1)(b) had been drafted fully supported that view. In directing reinstatement of a teacher, therefore, the interest of the educational institution could not be ignored which was essentially a relevant factor. It was, however, emphasised by the respondents that in the instant case before me this principle would not be atrracted because it was not a case of dismissal or discharge but a case of prevention on a Headmaster, from acting or functioning. Reliance was also placed on the decision in the case of Leena Nandi v. West

Bengal B. S. E. 74 C. W. N, page 325 where the learned Judge was concerned with the West Bengal Board of Secondary Education Act 1963, Section 3(2) and Section 18. There the learned Judge observed that under the statute the jurisdiction of the Appeal Committee to hear appeals was not confined to appeals against order of termination of services. The appeal could be preferred by teachers against any decision of a Managing Committee adversely affecting them. Whether a particular order constituted the termination of service or not a question of fact but one of law and that accordingly if the petitioner had appeared in person before the Appeal Committee and made certain admission it was held that admission was not binding on the petitioner because it was on a point of law, Reliance was also placed on the decision of the Supreme Court in the case of Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, in aid of the proposition that power to review was not an inherent power but had to be given by a statute specificaljy or by implication and in this case the Appeal Committee on the construction of its powers do not and could not have any power to review. In aid of the same proposition reliance was placed in the case of Mehar Sinha v. N. T. Dass AIR 1972 S.C. page 2533. Reliance was also placed on behalf of the respondents for the proposition that in this case the factual aspect could not be agitated by petitioner because this Court has no jurisdiction to redecidef the facts and determine whether there was resignation or not, and reliance was placed on the decision of the Supreme Court in the case of Syed Yakoob v. Radhakrishnan AIR 1964 S. C. page 477. My attention was also drawn on behalf of the respondents to a decision of the Division Bench decision of this Court in the case of Anup Kumar Ghosh v. West Bengal Board of Secondary Educacation. (Appeal from Order No. 1012 of 1975), unreported judgment delivered by Mr. Justice Anil Kumar Sen where the question was the power of the Appeal Committee to consider other points not technically taken in the Memorandum of Appeal as such was considered.

14. One of the main points as I have mentioned before was that from the order of the Appeal Committee of the Board of Secondary Education it is not apparent whether it had considered the question of reinstatement in the sense whether they have considered whether the reinstatement in the facts and circumstances of the case would be appropriate. To this as I have indicated before the contention of the respondents has been that sub-section (2) of Section 9 would only be attracted where the appeal was directed against dismissal or discharge. But in the instant case, it was submitted, that the appeal was not directed against dismissal or discharge. Therefore, there was no question of application of the principle enunciated in the case of Motilal Kala v. Hari Govind Raj (supra). According to the respondents it was not a case of dismissal or discharge but a case of prevention of the Headmaster unlawfully from performing his duties. Therefore, the question arose whether respondent No. 6 had resigned or not and mainly, therefore, the question was whether the letter of resignation was genuine or not. Now, in the previous proceedings which I have referred to hereinbefore and in my previous decision I held repelling, the submissions of the petitioner that appeal order was beyond the jurisdiction of the Appeal Committee, that the Memorandum of Appeal should not be

narrowly construed and it should be read in conjunction with the complaint annexed with the Memorandum of Appeal. If that is the position, then strictly speaking, there was no proper appeal. Because the respondent No. 6 had not in his appeal to the Appeal Committee either in the memorandum or in the complaint alleged about signing blank documents. He had, however, alleged that he had been prevented from performing his duties. Now, if in consideration of that, the question arises whether he has been properly discharged or dismissed or whether he had resigned then that must be considered fully from all aspects. The case of the petitioner and the case of the then Managing Committee was resisting the claim of the respondent No. 6 in the initial stage on the ground that the respondent No. 6 had been dismissed for various alleged negligence and misconduct but because of his letter of resignation his dismissal was not given effect to and he was allowed to be treated as if he had resigned. It was, further, stated that in any event he had resigned. Therefore, it was urged that he could not claim to function as the Headmaster. It is in that background that the question of the genuineness or otherwise of the letter of resignation fell for consideration before the Appeal Committee of the Board of Secondary Education. The petitioner contended that such a consideration was not open before the Appeal Committee. I had hold that such a consideration was open. But if the ratio of that decision is properly applied to the facts of the case then the entirety of the grievance on both sides must be considered and in essence the question was whether the respondent No. 6 was validly removed from the position of the Headmaster or he had voluntarily resigned or he had been prevented unlawfully. Now, in that background the use of the expression "reinstatement" becomes significant. It is true if merely the expression "reinstatement" had been used without the background of the facts of this case as I have indicated before, it would have been possible to contend that such an expression should not be construed strictly as if in a judgment or a statute. But in the background of the controversy of this case the use of the expression "reinstatement" without consideration of the facts that have happened intervening, that is to say the appointment or the validity of the appointment of the petitioner and the gap of the functioning of the respondent No. 6 that there was no evidence taken or adduced by either side as to whether the respondent No. 6 had been unlawfully prevented or not, that there was no evidence adduced or called for from the then Secretary or the members of the Managing Committee whether the respondent No. 6 was removed from the position of the Headmaster or whether there was an actual prevention of the respondent No. 6 or whether any blank paper was really procured from the respondent No. 6 would be had. No notice either that these contentions would be considered and the finding contrary to the finding previously made would be gone into was given to the petitioner. In that view of the matter, in my opinion, the principles enunciated by the last two mentioned decisions would be applicable and the decision of the Appeal Committee would be liable to be struck down on the ground of non-application of mind to a vital issue, whether reinstatement was open for consideration or appropriate in the facts and circumstances of this case.

15. The next aspect of the question which was canvassed before me was that in view of the previous order of the Appeal Committee as I have set out herein before the last order

passed was inconsistent and amounted to a review of the earlier order. In my judgment dated the 9th of December, 1978 in Civil Revision Case No. 5981 (w) of 1978 I had, inter alia, observed that I was not prepared at that stage to hold that the Appeal Committee was not competent to revise its order. In this case also before me on behalf of the petitioner reliance was placed on the two decisions of the Supreme Court mentioned before in aid of the submission that unless specifically or by implication empowered by the rules, which is not the case here, the Appeal Committee had no power to review its previous order. If the previous order was considered to be a final order, then, this principle would be attracted and the last order of the Appeal Committee under challenge would really amount to review of its previous order. Then, the next question, is, if the previous order is not a final order can it be said to be in interlocutory order. Though I am of the opinion that the order dated 16th July, 1977 which recorded the factum of resignation of the respondent No. 6 is not interlocutory order as such, it is also not a final order disposing of the appeal, but it was an order pending disposal of the appeal in the process of final order. If in that process on a review of subsequent facts and on a reconsideration of materials on record the Appeal Committee was of the opinion that the previous order need not be followed up or need to be revised, in my opinion, the rules guiding the disposal of the appeal before the Appeal Committee do not preclude the Appeal Committee from passing any order which may be in conflict with the previous order. But before that is done there must be either fresh materials or fresh view of the old facts--and that must be apparent from the order subsequently passed--and reasons must be specifically stated to that effect and parties, being parties who were parties during the previous order must be given opportunity, and not a mere pretence of opportunity, to make any submissions against the proposed order. From the order under challenge--can it be said that the same has been done ?

16. Learned Advocate for the respondent No. 6 strongly urged that in a writ matter of this nature this Court was not sitting in appeal and as such should not review the findings of fact. That is correct. The findings of fact should not be reviewed and the ratio of the principle of the decision in the case of Syed Yakoob v. Radhakrishnan (Supra) would be applicable. But application of the said principle is subject to the following conditions, namely, (a) that the body disposing of the matter of or adjudicating a matter has acted fairly, (b) has not violated any principles of natural justice, (c) it has adverted its mind to all the relevant and material facts and (d) the view taken by the adjudicating authority is a probable view though it might not be the only possible view. Mow, in this case as I have said in the background of the facts of the case the main question of the grievance the respondent No 6, was whether the respondent No. 6 was prevented from performing his duties as a Headmaster. Now, in considering that question there are two points whether he had resigned or he had beer dismissed. I will not embark into the examination of the question whether he had resigned or not. Assuming for a moment that the Appeal Committee was justified as a fact finding body to come to the conclusion that the resignation letter was not genuine, then the other question, that is to say, whether he had actually been dismissed and if so improperly or not has to be considered but the Appeal

Committee has straightway ordered the reinstatement of the respondent No, 6 without any further consideration. Learned Standing Counsel had urged that if the respondent No. 6 had not resigned, then he would continue to be in service. Therefore, the question of considering whether any alternative relief in the facts and circumstances of the case can be given to him or not, did not arise. But that is not the position here. Even if the respondent No. 6 had not resigned the other vital and main question remains, whether he had been dismissed and if so properly or improperly. Now, there is no consideration of that fact. Secondly, even if there is no dismissal whether he had been prevented wrongfully from entering the school and as a result of the Government circulars which were issued and which I have mentioned hereinbefore he was entitled to be restored to his position remains. There was no investigation upon notice to the proper parties as to whether respondent No. 6 had been so prevented and if so under what circumstances. It is in this background that the last finding that is impugned in this application, is completely without any basis and documents inconsistent with the previous findings of the Appeal Committee if that is the position then such a decision cannot be considered to be a possible decision and must in the eye of law be considered to be a perverse one. Such decision does not enjoy immunity of scrutiny from judicial review under Article 226 of the Constitution.

17. Furthermore, so far as the finding of the Appeal Committee about the alleged letter of resignation is concerned there are several inconsistencies in that finding. The Appeal Committee has not taken into consideration that the original case of the respondent No. 6 was that the alleged letter of resignation was a forged one had later on his version that he used to sign blank papers. Now, this version was taken into consideration at a time when the then Secretary of the School was not a party to the Appeal proceedings.

18. As I had already given more than one opportunity to the Appeal Committee to proceed in accordance with law which I find they are incapable of doing so, and if the grievance of the respondent No. 6 is that he had been wrongly prevented from performing his duties as there is no machinery provided in the Government circular for determination of the dispute by the Appeal Committee, in my opinion, the proper order would be to quash the impugned order of the Appeal Committee being the order dated 31st of March, 1979 and restrain the respondents from proceeding any further in respect of the said appeal and from giving any effect to the impugned order. Both the petitioner and the respondent No. 6 want to cling to the position of the Headmaster of the school. It is difficult to determine which one is less deserving. Each has challenged the credibility or the suitability of the other for the position of the Headmaster. It is quite apparent that forces other than those who are interested in the cause of the education and in the cause of the education of the students concerned are behind their fight and the school is only their battle ground and the students their sacrifices. In a situation of this nature one would naturally feel very pessimistic about the future of the secondary education in West Bengal. If this fight represents the position in the rest of the State, the question is, what can courts of Law do in such circumstances ? Very little, I suppose, with that feeling the

Rule is made absolute to the extent indicated above.