

Tuhin Kumar Samanta Vs State of West Bengal and Others

Court: Calcutta High Court

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 Suproakash Banerjee for Respondent No 4, Indrajit Mondal for Respondent No 5, P Roy for Respondent No 6 and A.P. Sarkar and P.R. Mondal for Respondent 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 Ramkrishna 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

injunction 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 Committee 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 inter alia, 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 subsequently 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 1978 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 writer 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 trouble 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 comparison 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 be 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 or the withholding of salary or a portion thereof or the withholding of the increment in pay, or

against any like order affecting the appellant,--

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

unsatisfactory grounds, or

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

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

(i) allow the appeal and make an order directing reinstatement of the appellant with or without such relief as may be found consequential to such

reinstatement, if it is of the opinion that such 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.L.J. 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

attracted 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 specifically 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 redecide 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 Education. (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 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. Now, 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 been 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.