

**MAT 2009 of 2023**

[Dr. Sunanda Goenka (nee Bhattacharyya)  
Vs.  
Md. Danish Farooqui & Ors.]

**Mr. Subir Sanyal**  
**Mr. Sourav Kumar Mukherjee**  
**Ms. Falguni Jana**  
**Ms. Sahana Pal**

**..... For the appellant**

**Mr. Sirsanya Bandopadhyay**  
**Mr. Arka Kumar Nag**  
**Mr. A. Chatterjee**

**..... For the State**

**Mr. Arka Kumar Nag**

**..... Special Officer**

**Mr. Biswaroop Bhattacharyya**  
**Mr. Vivekananda Bose**  
**Mr. Sankha Biswas**  
**Mr. Tapajit Das**  
**Mr. Ankan Das**  
**Mr. Abrajit Roy Chowdhury**

**..... For the writ petitioner/  
respondent**

**Mr. Jayanta Mitra, Ld. Sr. Adv.**  
**Mr. Srijib Chakraborty**  
**Mr. Subhrangsu Panda**  
**Ms. Ina Bhattacharyya**  
**Mr. Sumitava Chakraborty**

**..... For the Commission**

**Mr. Ashoke Kumar Banerjee, Ld. Sr. Adv.**  
**Mr. Probal Kumar Mukherjee, Ld. Sr. Adv.**  
**Mr. Soumya Majumder**  
**Mr. Indranil Nandi**  
**Mr. Souvik Nandy**  
**Mr. Sayak Koner**

**..... For the respondent no. 26**

**Ms. Debjani Ghosal**

**..... For the UGC**

The present appeal has been preferred challenging an order dated 5<sup>th</sup> October, 2023 passed in a writ petition being WPA 24026 of 2023.

Records reveal that the writ petition was preferred by a student pursuing the LL.B. Course at Jogesh Chandra Chowdhury Law College (in short, the said college) *inter alia*, praying for revocation of recommendation towards appointment issued in favour of Dr. Sunanda Goenka, the Principal of the said college. The writ petition was affirmed on 4<sup>th</sup> October, 2023 and by an order dated 5<sup>th</sup> October, 2023, the learned single Judge removed the appellant from the post of Principal of the said college as she was not having the requisite qualification for the post of teacher in a college recognized by University Grants Commission (in short, UGC). The appellant was also restrained from entering into the college premises on and from 6<sup>th</sup> October, 2023 until further orders. By the said order, Mr. Arka Kumar Nag, learned advocate was appointed as a Special Officer for a period of three months and was directed to visit the college on 5<sup>th</sup> October, 2013 itself and to put lock and key on the door of the Chamber of the Principal's office and to send an authorized person to affix the copy of the order on the notice board and also on the door of the Principal's chamber.

In the said order, the Court was also observed that Mr. Sourav Kumar Mukherjee, learned advocate appearing for the appellant herein and others had refused to assist the Court and referred the matter to be placed before the Bar Council of West Bengal for taking

steps for professional misconduct. Aggrieved by the said direction, an appeal was preferred by Mr. Sourav Kumar Mukherjee and the same was disposed of by a coordinate Bench of this Court on 6<sup>th</sup> October, 2023 setting aside the reference to the Bar Council of West Bengal for initiation of action against Mr. Mukherjee for professional misconduct upon observing *inter alia* that *'the law does not permit any Court to decide a matter on the basis of a telephonic conversation between the Court and any of the respondents'* and that *'we do not find any tearing hurry to proceed with the matter and the learned Advocate ought to have been given a day's accommodation to obtain necessary instruction'*.

Mr. Sanyal, learned advocate appearing for the appellant submits that on 5<sup>th</sup> October, 2023, the learned Single Judge adopted an unusual procedure. From the Court room the appellant received a phone call from an unknown mobile number. The caller identified himself as Vivekananda Bose, a learned advocate and that he was calling the appellant under the instruction of the learned Single Judge. Over the telephone the learned Single Judge enquired as to whether she had qualified in National Eligibility Test (in short, NET) and State Level Eligibility Test (in short, SLET). In reply, the appellant submitted that she did not. She also submitted that she was actually appointed in 1998 when the college was a private college and she was in a pay package scheme and

therefore, she continued with her appointment in the post of Principal. Only on the basis of such conversation, the learned Judge arrived at a finding that the appellant does not have the requisite qualification for the post of teacher of a college recognized by UGC and immediately passed an order removing the appellant from the post of the Principal.

He further submits that the appellant was served a copy of the writ petition on 4<sup>th</sup> October, 2023 at about 19.53 hours and was intimated that the matter would be heard on 5<sup>th</sup> October, 2023 at 2.00 p.m. Within such short span of time the appellant could not meet with the learned advocate and hand over all relevant documents. From such sequence it is explicit that the appellant did not get a reasonable opportunity to appear and contradict the allegations and as such, there had been a blatant violation of the principles of natural justice and on such ground, the directions towards removal and appointment of a Special Officer, being a consequential one, are required to be set aside.

He further argues that no legal right of the writ petitioner was infringed and as such, the writ petition itself was not maintainable. In support of his arguments reliance has been placed upon the judgments delivered in the cases of *Chairman-cum-Managing Director, Coal India Limited and others Vs. Ananta Saha and others*, reported

in 2011 (5) SCC 142 and *Badrinath Vs. Government of Tamil Nadu and others*, reported in 2000 (8) SCC 395.

Mr. Sanyal further argues that the writ petition was affirmed on 4<sup>th</sup> October, 2023. The same was mentioned before the learned Single Judge on 4<sup>th</sup> October, 2023 and the matter was taken up on 5<sup>th</sup> October, 2023 at 2.00 pm though there was no pressing urgency in the matter. By the order, the Principal was removed and the Special Officer was appointed and was directed to visit the college on the selfsame date and the matter was surprisingly treated to be '*heard in-part*'.

*Per contra*, Mr. Bhattacharyya, learned advocate appearing for the writ petitioner/respondent no. 1 submits that the appellant did not fulfil the requisite qualification towards her initial appointment as a lecturer in the said college. Subsequent enhancement of qualification does not cure the inherent lack of requisite qualification of the appellant. In spite of being aware about the orders passed in two appeals preferred by two teaching staff of the said college and about constitution of an enquiry committee, the appellant deliberately did not face the enquiry. As Principal, she was the Secretary of the Governing Body. She had knowledge that on the basis of the enquiry committee's resolution, necessary direction had been repeatedly issued by the Director of Public Instructions (in short, DPI) for initiation of appropriate proceedings against her. In spite of such

direction, she had illegally continued as the Principal of the said college.

Mr. Bhattacharyya further argues that the writ petitioner has a right to be taught by eligible teachers and that fraud had been practiced by the appellant. The inaction on the part of the Governing Body of the said college is nothing but purely politically motivated.

He also points out to this Court that the appellant did not even appear before the learned Single Judge when the matter was again taken up for hearing on 9<sup>th</sup> October, 2023 in spite of due notice.

Mr. Mitra, learned senior advocate appearing for the Commission submits that the appellant joined on 1<sup>st</sup> August, 1998 in the said college when it was a private one. On 8<sup>th</sup> February, 2000, University of Calcutta granted permanent affiliation and in the month of December, 2000 the college was recognized by UGC and pursuant to a Government order dated 11<sup>th</sup> January, 2001, the appellant was regularized. Placing reliance upon paragraph 19 of the report filed by the Commission before the learned Single Judge, subsequently, Mr. Mitra submits that neither the NET nor the SLET was the criteria for being selected in the post of Principal.

Mr. Bandyopadhyay, learned advocate appearing for the State has placed before this Court an affidavit filed as per the order of the learned Single Judge dated 6<sup>th</sup> October, 2023. Drawing our attention to the annexures

to the said affidavit, he submits that the Special Secretary to the Government of West Bengal, Higher Education Department referring to orders passed in the appeals preferred by one Dr. Bulbul Sirkar Ray and by one Dr. Sampa Bhanja and a report of the enquiry committee, directed the DPI to take appropriate action including disciplinary proceedings against the appellant. The DPI, in turn, issued a memo dated 15<sup>th</sup> June, 2020 to the Administrator of the said college to take appropriate steps. Reminders were issued by DPI to the President of the Government Body of the said college on 9<sup>th</sup> December, 2022, 27<sup>th</sup> December, 2022 and 11<sup>th</sup> January, 2023, but in vain. The Governing Body, of which the appellant was the Secretary, also did not take appropriate steps as directed by the DPI. In spite of notice the appellant also did not appear before the Enquiry Committee constituted by the Chief Secretary to the Government of West Bengal.

Mr. Nag, learned advocate submits that he has complied with the directions passed by the learned Judge on 5<sup>th</sup> October, 2023, 6<sup>th</sup> October, 2023 and 9<sup>th</sup> October, 2023. In terms of the said orders he is now acting as the Drawing and Disbursement Officer (in short, DDO) of the said college. One Maazul Haque has also been handed over the charge of Principal.

Mr. Nag further submits that acting as the DDO he had signed the necessary documents including the

requisition for salary of the month of October, 2023 and the same has been approved by the competent authority for disbursement of the salaries of the teaching and non-teaching staff of the said college excluding the salaries of the appellant and the respondent no. 26.

Mr. Banerjee, learned senior advocate appearing for the respondent no. 26 submits that no notice was served upon the said respondent prior to issuance of the order dated 5<sup>th</sup> October, 2023 and as such, she did not even get an opportunity to appear and contest the writ petition. In her absence and without hearing her, the learned Single Judge terminated her service. According to Mr. Banerjee, the writ petition is not maintainable as no legal right of the petitioner has been infringed. Allegations and counter-allegations have been levelled including an allegation of fraud which involves disputed questions of fact and cannot be decided in the writ petition. In support of arguments reliance has been placed upon a judgment delivered in the case of *Dr. M. S. Mudhol and another Vs. S. D. Halegkar and others*, reported in 1993 (3) SCC 591 and an unreported judgment delivered in the case of *Damodar Valley Corporation & Ors -vs- Smt. Ballari Sarkar*.

It is a cardinal rule both of substantive and procedural law that no person can be condemned unheard. The rules of natural justice are required to be observed to ensure not only that justice is done but is



manifestly seen to be done. The object is to see that a person is not treated unfairly.

Indisputably, notice upon the appellant was served on 4<sup>th</sup> October, 2023 in the evening at about 19.53 hours intimating that the matter will be taken up on 5<sup>th</sup> October, 2023 at 2.00 pm. A Coordinate Bench of this Court in an appeal preferred by Mr. Sourav Kumar Mukherjee, learned advocate, considered the observation of the learned Single Judge that the advocate of the appellant refused to assist the Court observing that *'we do not find any tearing hurry to proceed with the matter and the learned Advocate ought to have been given a day's accommodation to obtain necessary instruction'*. In the said conspectus and only on the basis of a telephonic conversation, the order of removal ought not to have been passed.

The appellant is working as the Principal of the said college on the basis of the recommendation of the Commission since the year 2015. The order impugned would also reveal that the learned Single Judge did not rule out the possibility that the appellant may be able to satisfy and answer the allegations levelled against her and that as such, the learned Single Judge called for a reply but prior thereto, she was removed.

The appellant has been removed, her office has been put under lock and key and there had also been a direction upon the Special Officer's authorized person to

affix a notice on the door of the Principal's chamber. On 5<sup>th</sup> October, 2023 itself, the Special Officer was appointed. He was asked to visit the college and to place the Principal's chamber under lock and key on the date the order was passed and in compliance with the order of the Court, the Special Officer had put lock in the Principal's office on the said date.

No reason has been disclosed in the order as to why the Court was constrained to take such steps in hot haste. Grant of an adjournment and an opportunity to the appellant to reply to the allegations would not have caused a greater loss and prejudice to the writ petitioner than the loss and prejudice, the absence thereof would cause to the appellant.

The allegations have been levelled against the appellant in the affidavit filed on behalf of the State in the writ petition after the order passed on 5<sup>th</sup> October, 2023. The appellant should be given an opportunity to deal with the allegations levelled against her.

In the said conspectus, we are of the opinion that the status prevailing prior to the issuance of the order dated 5<sup>th</sup> October, 2023 needs to be restored.

Accordingly, the direction towards removal of the appellant from the post of Principal of the said college and the direction restraining her from entering the college premises, are set aside. The appellant is reinstated to the post of Principal.

The above directions have been issued taking into consideration the fact that no reasonable opportunity of hearing was granted to the appellant prior to issuance of the order dated 5<sup>th</sup> October, 2023.

The learned Single Judge shall decide the writ petition finally after granting liberty to the parties including the appellant to file their respective affidavits.

We have been informed by Mr. Nag that on the basis of the order passed by the learned Single Judge he has assumed charge as the DDO and has signed necessary documents on the basis of which the requisition of salaries for the teaching and non-teaching staff excluding that of the appellant and the respondent no. 26 had already been approved for disbursement of the salaries for the month of October, 2023. In view thereof, there is no further requirement for the Special Officer to continue as DDO of the said college.

As we have set aside the directions towards removal of the Principal and reinstated her, she becomes entitled to her salary for the month of October, 2023. As such, necessary requisitions to that effect shall be sent by the authorized signatories as approved by the Governing Body of the said college to the competent authority so that the appellant gets her salary for the month of October, 2023.

The Special Officer is directed to visit the college tomorrow (12<sup>th</sup> October, 2023) at 9 am. Both the

appellant and the teacher in charge, who has been given the charge of Principal, shall be present in the college on the said date and time. In their presence, the Special Officer shall remove the locks fastened by him on the door of the Principal's chamber and grant free access to the appellant to her chamber. The teacher in charge shall also hand over the charge of the post of Principal to the appellant. The Officer-in-Charge, Charu Market Police Station shall also be present in the college tomorrow at 9 am. He shall ensure that no disturbance is created by any person and he shall extend all cooperation to the Special Officer towards compliance of the directions of this Court.

List the matter for further consideration in the daily supplementary list of this Court on **13<sup>th</sup> October, 2023** as fixed at **2.00 p.m.**

On the said returnable date, the Special Officer shall file a report in the form of an affidavit detailing the steps taken on the basis of the directions contained in this order.

Mr. Nag shall immediately intimate this order to all concerned including the Officer-in-Charge, Charu Market Police Station and the teacher in charge of the said college.

**(Rai Chattopadhyay, J.)**

**(Tapabrata Chakraborty, J.)**