IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE RABINDRANATH SAMANTA

M.A.T 913 OF 2021
with
IA NO: CAN 1 of 2021
Gandhi Memorial Girls' High School & Ors.
Vs.
The State of West Bengal & Ors.

And

M.A.T 895 OF 2021
with
IA NO: CAN 1 of 2021
The State of West Bengal & Ors.
Vs.
Gandhi Memorial Girls' High School & Ors.

Appearance:

For the Appellants	:	**Mr. Anjan Bhattacharya, Adv.**
(In MAT 913 of 2021)		**Ms. Anita Shaw, Adv.**
For the Respondent	:	**Mr. Ujjal Ray, Adv.**
For the Respondent no.1	:	**Mr. Anjan Bhattacharya, Adv.**
(In MAT 895 of 2021)		**Mr. Anita Shaw, Adv.**
For the State/ Appellants	:	**Mr. Biswabrata Basu Mallick, Adv.**
(In MAT 913 & 895 of 2021)		**Mr. Sanjib Das, Adv.**
For the Amicus Curiae	:	**Mr. Saptansu Basu, Adv.**
		Ms. Mrinalini Majumder, Adv.

Judgment On : **20.05.2022**

Harish Tandon, J.:

MAT 913 OF 2021

A piquant situation has arisen in the instant appeal as to whether the High Court in exercise of power under Article 226 of the Constitution of India can usurp the power conferred upon the statutory authority in inflicting the penalty on a perceived misconduct.

The impugned order is not challenged in its entirety at the behest of the appellant but is restricted to a portion of the order by which the headmaster of the school has been found wholly unfit to act, discharge his duties in such capacities and has been robbed off all such powers in exercise of the plenary jurisdiction assumed to have reserved in the Writ Court.

Even after sermonising the act and the conduct of the headmistress, the Writ Court has demoted her to the post of the assistant teacher and prevented her to act in the capacity of the headmistress in the said school. The aforesaid observation of the Single Bench raises a serious concern over the jurisdiction, powers, plenary or otherwise, as well as the competence to issue the mandamus in such form and manner.

Mr. Anjan Kumar Bhattacharya, the Learned Advocate appearing for the appellant is very much critical on the aforesaid directions passed by the Single Bench in pursuit of securing justice by contending that the Writ Court cannot usurp the power of the statutory authority and impose the

punishment which is neither contemplated in the statutory Rules nor otherwise. Mr. Bhattacharya further submits that the post of the headmaster/headmistress in an institution has a separate source of selection and the post of the Assistant Teacher is never regarded as a feeder post and, therefore, demotion to the post of the Assistant Teacher in exercise of so-called plenary jurisdiction is beyond the conceivable limits of the writ jurisdiction or the self-restrain imposed from time to time.

The aforesaid contentions have raised a vital and important point over the plenary powers/jurisdictions of the Writ Court in imposing the penalty not contemplated in the Statutory Rules or adopting a procedure unknown in the field of law. It is no doubt true that the High Court is invested with the powers to issue the writs of various natures not only in a case where the fundamental rights of a citizen is invaded but also against the denial or the infringement of the other legal rights. The distinction between the powers of the Supreme Court conferred under Article 32 of the Constitution of India is distinct with the powers of the High Court provided under Article 226 of the Constitution of India. In the later case, the power is void enough to engulf not only the case relating to the infringement of the fundamental rights but also the legal right but in former case it is only when the fundamental right is infringed and the Supreme Court assumed the jurisdiction and interfered with the action of the Government, semi Government and the authorities. The Supreme Court and the High Courts are the Courts of record and reserved power even to correct its record whenever the mistakes or the discrepancies are there and in this regard the court exercises the plenary jurisdiction.

The question is still begging an answer whether in exercise of plenary jurisdiction, the court can pass an order which is otherwise conferred upon the statutory authority and inflicted the punishment without observing and/or following the statutory procedures and the norms provided therefor. The edifice of the Constitution stand upon the equality, fraternity, respect for each other and the adherence of the principles of natural justice. Nobody shall be punished or condemned without affording an adequate opportunity to defend or a right of hearing.

Time and again, the Supreme Court as well as the High Court has imposed the self-restraint in exercise of the plenary jurisdiction under Article 226 of the Constitution of India in not entertaining the writ petitions nor the order to be passed transgressing and/or abrogating the statutory provisions which is applied in the given facts of the case. The concept of justice and its protection is a major role of the court but it should be remembered that while embarking a journey of imparting justice, the injustice should not be caused to the other. All the courts in the country and the judicial system stands for rendering the justice and, therefore, it invites more robust mechanism eroding the misuse and abuse in pursuit thereof which brings more responsibilities in adjudicating the right of the litigating parties in an adversible system. The primary duty of the High Court under Article 226 of the Constitution of India is to correct the error committed by the authority and in such regard it can be safely said that the High Court does so in exercise of the plenary powers. The aforesaid observations can be fortified with the enlightening observation of the

Supreme Court in case of **M. M Thomas –vs- State of Kerala & Anr., reported in (2000) 1 SCC 666** runs thus:

> ***"14." The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court , as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In Naresh Shridhar Mirajkar v. State of Maharashtra [AIR 1967 SC 1: (1966) 3 SCR 744] a nine-Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record."***

It is beyond cavil of doubt that every court of the country owe its existence to prevent the miscarriage of justice and the power to correct its own order which inheres in every court as held by the Supreme Court in case of **Rajendra Singh –Vs- Lt. Governor, Andaman & Nicobar Islands & Ors. reported in (2005) 13 SCC 289.**

"15. -----Law is well settled that the power of judicial review of its own order by the High Court inheres in every court of plenary jurisdiction to prevent miscarriage of justice."

Even in case of **Pravin Kumar –vs- Union of India & Ors., reported in (2020) 9 SCC 471** the Apex Court succinctly laid down that the power of judicial review does not cloath the jurisdiction upon the High Court to assume the role of the appellate authority but such jurisdiction is circumscribed by limiting to correct the errors of law, the procedural errors leading to manifest injustice or the violation of principles of natural justice.

In case of **State of West Bengal & Anr. –vs- West Bengal Registration Copywriters Association & Anr., reported in (2009) 14 SCC 132,** the Apex Court has emphasized even in a case where the initial relief claimed in the writ petition becomes inappropriate because of the subsequent events yet, in exercise of the plenary jurisdiction while moulding the relief, in absence of any specific pleadings, it is not proper on the part of the High Court to grant such relief on a perceived notion or the notion acquired otherwise. The Apex Court has held that the importance of pleading can play a very vital role while moulding the reliefs or the reliefs claimed in the petition as the court is not cloathed with the power to make out the case for a party and pass an order without any foundation having laid in the pleading. It would be apposite and profitable to quote the relevant excerpts from the said report which runs thus:

"83. There could be no doubt about the High Court's power to mould the relief. However, even in its plenary jurisdiction, while

moulding the relief, there must be a plea to support such a relief. The relief granted by the High Court in this case is extraordinarily beyond the jurisdiction of the High Court and has no nucleus in the writ petitions or in the original applications. The basic case that was pleaded was that since the extra-muharrirs were absorbed by the Government, the writ petitioners, who were doing the task of extra-muharrirs, also had a wright to be absorbed in the Government. This plea was obviously baseless, as while extra-muharrirs were on the regular establishment of the Government, the writ petitioners were not and, therefore, they could not have claimed the parity. It is only after the reply of the Government came, denying the master-servant relationship, that the writ petitioners started singing the tune of the de facto Government service in their favour."

In recent times, the Apex Court in case of **Census Commissioner & Ors. –vs- R. Krishnamurthi reported in (2015) 2 SCC 796** held that the Judge cannot conceive an idea that the sky is the limit or the matter has no barrier because of an individual's perception and, therefore, the judicial vision should not be imprisoned or to act potentiality to cover the celestial zone even taking the historical events of the Israel where the king Solemon was entrusted to extend justice to its citizenry having two lions on both sides of the arms of his throne but such lion was under the throne and, therefore, the adjudicator or the court cannot assume unbrindled and/or unfettered power in exercise of plenary jurisdiction.

Benjamin N. Cardozo in his publication styled as the “nature of judicial process” have succinctly expressed that the Judges even if they are free are not fully free. They are not to innovate at pleasure nor a night errand roaming at will in pursuit of his own ideal of beauty or of goodness. He is to exercise his discretion informed by tradition, methodised by analogy, disciplined by system as subordinated to the principle pre-modelled necessity of order in the social life.

What can be discerned from the aforesaid observations from the aforesaid reports that the court does not embark upon the journey on a unchartered ocean of powers in an uninformed perception, what would be right and wrong for the society. The Judges must act on a well informed traditions, the procedure of law and impart justice with the rider that in proceeding on such terrain it should not cause injustice to the other.

The plenary power inheres in every court to correct the mistakes and prevent the miscarriage of justice. The aforesaid power can also be traced from Article 142 of the Constitution of India where Supreme court can pass such decree or make such order necessary for doing complete justice in any cause or matter pending before it. However, the Clause 2 of Article 142 creates a brindle and subject to the provision of any law made by the Parliament, the plenary power conferred under Article 142 of the Constitution of India being inherent but contemporary to those powers which are specifically conferred on the court by various statutes though not limited to those statutes. Such power is supplementary and never intended to supplant the law.

In **Supreme Court Bar Association –vs- Union of India & Anr., reported in (1998) 4 SCC 409,** The Apex Court was dealing a case where an order was passed suspending/revoking the license of an advocate to practice while exercising the contempt jurisdiction. An argument was advanced that the power conferred upon the Supreme Court under Article 142 is wide enough to imbibe such orders to be passed to do complete justice but the Apex Court held that though the plenary jurisdiction is a residual source of power which the Supreme Court may draw upon as necessary whenever it is just and equitable to do so yet it is circumscribed with the limitations and not to be exercised to ignore the substantive right of the litigant in dealing with the cause and, therefore, the statutory Rules or the Act which are operating in the field cannot be subverted in exercise of plenary jurisdiction. The Apex Court held that:

> **"48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice 'between the parties in any cause or matter pending before it'. The very nature of the power must lead the court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by 'ironing out the creases' in a cause or matter before it. Indeed this court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this court has always been a law-maker and its role travels beyond merely dispute-settling. It**

is a 'problem solver in the nebulous areas' but the substantive statutory provisions dealing with the subject matter of a given case cannot be altogether ignored by this court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject.

55. Thus, a careful reading of the judgments in Union Carbide Corporation –vs- Union of India; the Delhi Judicial Service Association Case and Mohd. Anis case relied upon in V. C. Mishra case show that the court did not actually doubt the correctness of the observations in Prem Chand Garg case. As a matter of fact, it was observed that in the established facts of those cases, the observations in Prem Chand Garg case had 'no relevance'. This court did not say in any of those cases that substantive statutory provisions dealing expressly with the subject can be ignored by this court while exercising powers under Article 142.

57. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing 'professional misconduct, depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by

suspending his license or by removal of his name from the roll of the State Bar Council for proven professional misconduct vests exclusively in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts."

In view of the law enunciated from the above report there is no ambiguity to hold that the plenary power reserved upon the court is somewhat brindled with and is not to travel in an unchartered ocean having no limitations but within the circumference of the statutory provisions of law applicable in regard to a particular subject. Such power is eminent and apparent from the relevant provisions of Article 226 of the Constitution but must embark its journey on the statutory terrain to prevent any misuse or abuse of such powers.

Power to impose penalty to a headmaster of an educational institution is governed by the Rule of 2018 containing an exhaustive and complete procedures, provisions and the penalty and, therefore, usurpation of the powers in the guise of a plenary jurisdiction overriding the provision of the substantive statute was unwarranted and amounts to exaggeration of the aforesaid powers and transgression of the well defined limits. The courts have imposed self-restraint in exercise of plenary powers and the judicial review in not overstepping the statutory provisions and passing an order in disregard to the statutory Rules or the Act applicable in this regard. The imposition of penalty in a disciplinary proceeding can only be achieved upon adhering the procedures and the norms set forth in the aforesaid Rules and, therefore, assuming the jurisdiction of the disciplinary authority and

perceiving the misconduct in ignorance of the aforesaid procedural provisions cannot with stand of the anvil of the legal jurisprudence.

We, therefore, have no hesitation that the portion of the impugned order by which the Headmistress was denuded of the powers to discharge the duties and functions in such capacity and relegating to a lower post that of the assistant teacher is contrary to the law enunciated in the aforesaid reports and, therefore, cannot be sustained.

The direction passed in Paragraph 23 of the impugned order is, thus, set aside. Since we have set aside the direction passed in Paragraph 23 of the impugned order the imposition of cost under Paragraph 24 of the said order cannot be allowed to stand and are also quashed and set aside.

The appeal succeeds to the extent as indicated above.

There shall be no order as to costs.

The connected applications, if there be any, are accordingly disposed of.

MAT 895 OF 2021

This is an Appeal at the behest of the State of West Bengal challenging the portion of the impugned order to the extent where the Single Bench has directed the issuance of the 'No Objection Certificate' within four weeks from the date of receiving an application by the school unless barred by law. Mr. Basu Mallick submits that the court cannot issue a Writ of Mandamus in this regard as it is within the prerogative of the State Government.

In course of the hearing, our attention is drawn by the State that they have already issued the individual orders/memorandum indicating the time limit within which the no objection shall be issued by the school authorities.

In view of the aforesaid stand having taken, this court finds that the appeal has been rendered infructuous and, therefore, is accordingly dismissed.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree. **(Harish Tandon, J.)**

(Rabindranath Samanta, J.)