

Title Suit No. 154 of 2010

Sri Samik Kumar Kahali  
Vs.  
Howard Memorial English School & Ors.

**WBNP18-001763-2010**

W. B. F. No. - 3701

**HEADING OF JUDGMENT IN ORIGINAL SUIT**

DISTRICT : NORTH 24 PARGANAS  
IN THE COURT OF : CIVIL JUDGE (JR.DIVN.),  
BIDHANNAGAR  
PRESENT : SRI DEBABRATA BISWAS  
JO Code -WB01155

**Ref. : Title Suit No. 154 of 2010  
CIS No. 154 of 2010  
Judgement Delivered on This Day of 9<sup>th</sup> March, 2026**

Sri Samik Kumar Kahali

.....  
Plaintiff(s)  
Petitioner(s)

-VS-

Howard Memorial English School & Ors.

.....  
Defendant(s)  
Opposite party(s)

This suit coming on for final hearing on 11/05/2015, 26/07/2018, 14/01/2020, 11/02/2020, 22/03/2021, 18/02/2022, 08/04/2022, 24/06/2022, 24/11/2023, 06/12/2023 and 14/05/2024.

Sri Ranjit Kumar Dey & Ors. .... For Plaintiff(s)

Smt Pranati Bhattacharyay & Ors. .... For Defendant(s)

and having stood for consideration to this day, the court delivered the following judgment.

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1. This is a suit for declaration and injunction total valued Rs. 200/-.

**Plaint case on factual matrix :**

2. The plaint case on factual matrix is that plaintiff was appointed in defendant school on 10/07/2006 as an Assistant Teacher and since then the plaintiff is doing his job with great care and caution.

3. The society which managed the defendant's school was registered under West Bengal Societies Registration Act with 13 members. Most of the governing body members of the defendant school are taking salary and allowance in lieu of their service as teaching staffs.

4. There was no dispute in regard to their

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service till July, 2009. Some disputes were cropped up between the plaintiff and the governing body of the school in relation to some illegal activities in the administration of the school. For such illegal activities, the plaintiff filed a suit being Title Suit No. 322 of 2009 against the school represented by its President and Secretary and Principal, which is still pending.

5. All on a sudden, the plaintiff came to know from the notice board on 09/04/2010 that a suspension order of the plaintiff was issued wherein it has been stated that the plaintiff has been suspended from his service as a Hindi Teacher from the defendant school on and from 10/04/2010. The said suspension order dated 23/03/2010 has not been served upon the plaintiff personally. Said impugned suspension

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order was signed by the defendant nos. 3 and 4 without having any date. In the said impugned order the plaintiff has been directed to file show cause within a period of 15 days from the date of receive of the said notice without taking any assistance of any legal practitioner. Moreover, the charges of the said impugned suspension order are very evasive and not specific.

6. After taking copy of the said impugned order of suspension on 13/04/2010, the plaintiff thereafter wrote a letter to the defendant nos. 3 and 4 requesting them to supply a copy of service rule of the defendant school within 03 (three) days for submitting a proper show cause within stipulated time. A copy of the said letter was also served to the office of the defendant school as well as defendant nos. 3 and 4 through currier service and the said letter was duly

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served upon them but till date school authority has not yet been served any service rule.

7. Now the defendants are trying adamantly to terminate the plaintiff from his service by placing reliance upon the said impugned order of suspension. The defendants out of their grudge upon the plaintiff for filing the previous suit against them for doing all such illegal activities, may terminate the plaintiff from his service. The plaintiff even bodily assaulted by the defendants through their men and agents when the plaintiff went to the school for taking his stipulated class on 13/04/2010.

8. The defendants by suppressing the alleged letter are intending not to give an opportunity to be heard to the plaintiff and are trying to damage the reputation of the plaintiff.

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9. The impugned order of suspension was passed by the defendants by violating the service rule and memorandum of association of the defendant school. On 12/10/2010 the school authority illegally terminated the service of the plaintiff by violating the natural justice. Hence this suit.

**Defense case in brief :**

10. On entered appearance the defendants filed their joint written statement and contested the suit wherein they have disputed and denied all material allegations of the plaint and prayed for dismissal of the instant suit as being not maintainable, baseless, having no cause of action and barred by law of limitation.

11. The gist of the defense case is that Miss Ruth Eveline Gess established Howard

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Memorial English School in the year of 1963. Its management is being run by the society registered in 1999 under the Society Registration Act with a governing body of 13 members. The management of the school has gathered experience that the plaintiff has been committing several irregularities, such as not taking classes, refusal to sign or acknowledge the notices, misbehavior with the principals, misconduct and etc. The plaintiff was called on to show cause regarding the same on 16/11/2009, 20/11/2009 and 07/12/2009 sent under currier service but he refused all these three show causes.

**12.** The decision to place the plaintiff on suspension was taken with the approval of governing body of the society and managing committee of the school. The impugned

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suspension order/notice was sent to the plaintiff under registered post with A/D on 23/03/2010. But the same was returned unserved with an postal endorsement, 'not claimed'.

**13.** The defendant no. 4 personally tendered the copy of said suspension notice to the plaintiff on 08/04/2010 in presence of several members of the governing body cum teachers of the school. But the plaintiff refused to receive the same and the defendant no. 4 in the peon book endorsed the said refusal and the other teacher also signed the same.

**14.** The management of the school has placed the plaintiff on suspension in contemplation of the disciplinary proceeding. The articles of charges has been issued against the plaintiff to conduct the disciplinary proceeding.

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**15.** The plaintiff did not receive the suspension notice to avoid the disciplinary proceeding. The employer can place his employees under suspension in contemplation of disciplinary proceeding. The plaintiff was given ample and enough opportunities for filing reply of show cause.

**16.** The management of the school cannot be restrained from conducting disciplinary proceedings against its employees. The school is being run according to the guideline of the governing body of the society, there is no provision in the article of association for the participation of the general members of the school or formation of such body of general members beside the said 13 members. The plaintiff as not being a member of the governing

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body has no *locus standi* to question regarding legality and illegality and validity of the function of the society. There is no constitution of the defendant school itself for calling of election or any general electoral or electorate of the society excepting the said 13 members governing body. Therefore the instant suit is liable to be dismissed.

**Issues framed :**

**17.** In view of the pleadings of the parties and rival contention of both sides issues are framed and recast as follows:-

1. Is the suit maintainable in it's present form and prayer as well as in law?
2. Does the plaintiff has any cause of action to file the instant suit ?
3. Is the suit barred by law of limitation ?
4. Is the suit barred by law of waiver, estoppel

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and acquiescence ?

5. Is the suit bad for non joinder or misjoinder of parties ?
6. Is the plaintiff entitled to get the decree as prayed for?
7. To what relief/reliefs plaintiff is entitled to ?

**Evidence adduced by parties :**

**Plaintiff side :**

**18.** To substantiate the plaint case, the plaintiff namely Sri Samik Kumar Kahali himself has adduced evidence as sole P.W. During trial the documents were produced by the plaintiff are marked as **Exhibit- 1 to 9.**

**List of documents of Plaintiff's side:**

Sl. No	Exhibit Nos.	Documents
1.	Exbt. - 1	Letter of appointment dated 23/07/2009.

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2.	Exbt. - 2	Salary certificate.
3.	Exbt. - 3	Certificate dated 05/02/2010.
4.	Exbt. - 4 (series)	Letter dated 13/04/2010 and postal receipt.
5.	Exbt. - 5 (series)	Letter dated 10/05/2010, A/D card and postal receipt.
6.	Exbt. - 6 (series)	Letter addressed to principal, postal receipt and A/D card.
7.	Exbt. - 7 (series)	Letter of complaint and G.D entry slip vide GD entry no. 1783 dated 25/10/2010.
8.	Exbt. - 8 (collective ly)	Reply of RTI dated 07/06/2012 and its annexures.
9.	Exbt. - 9	Reply of RTI dated 28/08/2015.

**Defendants' side :**

**19.** On the other hand, the defendant no. 1 namely Smt Anita Chowdhury has adduced evidence on behalf of herself and other defendants as D.W. 1 and Smt. Mamata Saha is examined as D.W. 2. Documents which were produced during examination by D.Ws, are

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marked as **Exhibit A to F**.

**List of documents of defendants' side:**

Sl. No.	Exhibit Nos.	Documents
1.	Exbt. - A (series) (w.o.)	Letter dated 16/11/2009, 20/11/2009 and 07/12/2009.
2.	Exbt. - B(w.o.)	Copy of resolution.
3.	Exbt. - C(w.o.)	Peon Book dated 25/10/2010.
4.	Exbt.-D(w.o.)	Letter dated 12/10/2010 and bearing cheque dated 12/10/2010 with envelop.
5.	Exbt.-E(w.o.)	G.D entry slip being no. 1789 dated 26/10/2010.
6.	Exbt.-F	Certificated copy of judgment in Misc. Appeal No. 29 of 2017.

**20.** The evidentiary value of all exhibited documents will be considered at the time of determination of issues.

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**Decision with reasons**

**Issue nos. 1 to 5-**

**21.** This is a suit for declaration and permanent injunction against the impugned suspension notice and termination letter issued by the defendants to the plaintiff, alleging that the show cause notice neither served upon the plaintiff nor given him sufficient time to file reply of show cause notice. It is also alleged that the termination order was issued without observing the rules and bylaws and articles of the memorandum of association of the defendant school. The instant suit is filed within the period of limitation against the president and secretary of governing body, principal of both primary and secondary section of the defendant school.

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**22.** Accordingly so far as plaint case is concerned, the instant suit is found to be maintainable in its present form, prayer and law and the same is not bad for non joinder or mis joinder of the parties, rather the plaintiff has a definite cause of action against these defendants.

**Thus, the answers of these issues are affirmative, accordingly decided in favour of plaintiff.**

**Issue nos. 6 and 7-**

**23.** Both issues are taken up together. The relief claimed by the plaintiff is based on the allegation that the impugned order of suspension was not served upon him and therefore he could not file his reply of show

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cause within time. On the ground of non filing of reply of show cause, the termination order was passed against him. The whole process from issuance of suspension notice to his termination was illegal, invalid and not binding upon plaintiff. He was terminated out of grudge against him.

**24.** On the contrary, the defendant school has categorically contended that the decision of suspension was taken by managing committee of the school comprising by 13 number of members. After taking such decision, the suspension notice was tried to serve upon the plaintiff several times but he always avoided to receive the same for avoiding disciplinary proceedings yet to be started against him. The decision of termination was also the decision of managing committee.

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**25.** Regarding service of impugned order of suspension, the peon book is most vital piece of document which is marked as **Exhibit-C**. On perusal of the same it appears that the Group D Staff of the defendant school who tried to serve the suspension notice, make an endorsement to the effect that on 25/10/2010, the plaintiff snatched the letter and refused to sign it.

**26.** The termination letter dated 12/10/2010 along with bearer cheque, return envelop are marked as **Exhibit-D** which reflects that the same was issued to the plaintiff by speed post and the same was returned with postal remark '*not claimed*'. In cross examination plaintiff has admitted that the school authority show caused him to explain of his activity which contains the grievances and he tried to answer the said show

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cause notice but the school authority refused to accept it. Further more he has admitted that the defendant school is not a public body and not run by government aid and the decision of managing committee is final.

27. In view of the above discussion, it is clear that the defendant school tried to serve the suspension order as well as termination order upon the plaintiff but he intentionally avoided the same. No illegality is found in the impugned suspension notice. Therefore, the termination order is also not found illegal or invalid.

**Accordingly, the answer of these two issues are negative and decided against the plaintiff.**

28. Court fees paid is found to be correct.

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**29.** Hence,

**O R D E R E D**

That the suit be and the same is  
DISMISSED on CONTEST against all the  
defendants without any order as to cost.

**30.** The suit is disposed of accordingly.

**31.** Decree shall be drawn in terms of this  
judgment.

**32.** Note in Trial Register.

**33.** Let the Judgement be uploaded in the CIS.

Dictated & Corrected by me,

Civil Judge, Junior Division,  
Bidhannagar, North 24 Parganas.

(DEBABRATA BISWAS)  
Civil Judge, Junior Division,  
Bidhannagar, North 24 Parganas.