

S/L 19
05.09.2023
Court. No. 29
Suvayan

WPA 25121 of 2016

**Sk. Obaidulla & Ors.
Vs.
The State of West Bengal & Ors.**

*Mr. Ekramul Bari
Mr. Md. Mojnu Sk.*

...for the petitioners.

*Mr. Tapan Kumar Mukherjee
Mr. Somnath Naskar*

...for the State/respondents.

*Mr. Mohammad Mahmud
Mr. M. S. Mollah*

...for the respondent nos. 9 & 10.

1. Learned Advocate for the petitioners, learned Advocate for the respondent Nos. 1, 3, 5 and 7 and learned Advocate for the respondent Nos. 9 and 10, i.e., the Secretary and the Headmaster, Mustafapur High Madrasah are present.

2. I have heard the learned Advocates for the contending parties at length.

3. The present writ petition is now taken up for passing appropriate order.

4. By filing the instant writ petition under Article 226 of the Constitution of India the writ petitioners have prayed for issuance of writ of mandamus for setting aside the impugned order being memo No. 1869-ME dated 03.12.2015 passed by the Director of Madrasah Education with a further prayer for grant of approval to the appointment of the writ petitioners as organising teaching

and non-teaching staff of Mustafapur Junior High Madrasah in the District of Hooghly.

5. Mr. Bari, learned Advocate for the writ petitioners in course of his submission at the very outset draws attention of this Court to the order dated 30.09.2015 as passed in WP 13470(W) of 2007 by a co-ordinate Bench in between the same parties. From the said order dated 30.09.2015 as passed in the aforesaid writ petition the co-ordinate Bench has been pleased to set aside the impugned undertaking by affidavit dated 09.01.2007 with a direction to the added respondents of the said writ petition to consider the claims of the present writ petitioners to be made by way of representation. Mr. Bari, learned Advocate for the writ petitioners submits before this Court that in compliance with the direction of the co-ordinate Bench of this Court as passed on 30.09.2015 a representation was submitted with the respondent Nos. 6 and 7 dated 05.11.2015 which has been annexed with the instant writ petition being Annexure P-15. It is submitted that thereafter by the impugned reasoned order dated 03.12.2015 the respondent No. 7 authority has again rejected the prayer of the present writ petitioners to approve their service as organising teaching and non-teaching staff teachers on the basis of some cryptic reason which has been assailed before this court by filing the instant writ petition. Drawing further attention to the impugned reasoned order dated 03.12.2015 it is argued on behalf of the writ petitioners

that the respondent No. 7 while passing the impugned order did not visualize the true spirit of the order dated 30.09.2015 as passed in WP 13470(W) of 2007 and, thus, proceeded in a wrong perspective by holding that the names of the petitioners have not been recorded in the inspection report of DLIT.

6. Mr. Bari, learned Advocate for the writ petitioners in his submission was very vehement with regard to such inspection report of the DLIT since such report was based upon an affidavit of undertaking affirmed by the then President and Secretary as well as Teacher-in-Charge of the said Madrasah wherein it has been mentioned by them on affirmation that for the proposed upgradation of the said Madrasah no staff (teaching and non-teaching) has been engaged/appointment by the authorities of the High Madrasah and the said Madrasah did not maintain about any teaching/non-teaching staff beyond the sanctioned strength in the Class VIII to X High Madrasah.

7. Mr. Bari, learned Advocate for the writ petitioners submits before this Court that the respondent No. 7/authority while passing the impugned order failed to consider that such affidavit-cum-undertaking was set aside by the co-ordinate Bench of this Court in its earlier order dated 30.09.2015 and, therefore, the respondent No 7/authority while passing the impugned reasoned order ought not have place his reliance upon the report of DLIT which is based on the affidavit as aforementioned and which has been subsequently set aside by this Hon'ble

Court. In course of his submission, Mr. Bari also draws attention of this Court to the Annexure P10 being the proforma inspection report for recognition for upgradation of Junior Madrasah to High Madrasah wherefrom it would reveal that the names of the present petitioners have been mentioned in internal Page 4 of such proforma and such proforma has been signed by the then Secretary and Teacher-in-Charge of the said Madrasah though in the last page of the said proforma the signatures and seal of the Inspection team (DLIT) is not available since such document is supposed to be placed from the side of the contesting respondent Nos. 3, 5, 6 and 7.

8. Mr. Bari, learned Advocate for the writ petitioners further contended that sufficient materials have been placed before the respondent Nos. 3, 5, 6 and 7 to substantiate that the present writ petitioners had been working as organizing teaching and non-teaching staff of the said Madrasah and in spite of the same the respondent No. 7 had deliberately overlooked to consider such materials and on the contrary he has placed his reliance upon the inspection report of DLIT which is practically found to be faulty in view of the earlier order dated 30.09.2015 as passed by the co-ordinate Bench of this Court.

9. Mr. Bari, learned Advocate for the writ petitioners further submits that in absence of any affidavit-in-opposition either on the part of the respondent Nos. 9 and

10 as well as respondent Nos. 3, 5, 6 and 7 there cannot be any doubt in holding that the contention of the writ petitioners that they are the organising the teaching and non-teaching staff of the said Madrasah and for the aforesaid reason an appropriate order may be passed in favour of the writ petitioners by setting aside the impugned order dated 03.12.2015 and by granting approval to the appointment of the petitioners as organising teaching and non-teaching staff of the Mustafapur Junior High Madrasah in the District of Hooghly.

10. In support of his contention Mr. Bari placed his reliance upon a server copy of the order dated 06.05.2022 as passed in SLP(C) No. 27804 of 2019 whereby and whereunder the Hon'ble Apex Court in a similar such circumstances regularized the appointment of the appellants by setting aside the order of the Division Bench dated 06.03.2019 as passed in FMA 1497 of 2015 and by affirming the Hon'ble Single Bench order dated 05.06.2014 as passed in WP 10966(W) of 2005 of High Court at Calcutta.

11. Mr. Bari, learned Advocate for the petitioners also places his reliance upon another reported decision namely *State of West Bengal vs. Md. Hassan* reported in 2013(1) CHN (CAL) 641. Mr. Bari, learned Advocate for the writ petitioners, thus, submits that appropriate relief(s) may be granted in favour of the writ petitioners in view of the prayer made in the writ petition.

12. In course of his submission Mr. Mahmud, learned Advocate for the respondent Nos. 9 and 10, i.e., Secretary and Headmaster of the aforesaid Madrasah submits before this Court that the contention of the writ petitioners that they are the organising teaching and non-teaching staff of the Mustafapur Junior High Madrasah in the District of Hooghly is not at all disputed by them and he further affirms the correctness of the proforma inspection report which has been annexed with instant writ petition being Annexure P9.

13. While opposing the prayer of the writ petitioners, Mr. Naskar, learned Advocate for the State/respondents at the very outset draws attention of this Court to the impugned reasoned order dated 03.12.2015. It is contended by Mr. Naskar that the reasoned order as passed by the respondent No. 7 is in accordance with law and, therefore, there cannot be any justification to interfere with such reasoned order especially when it has been found by the authorities that the present petitioners name do not appear in DLIT report in view of School Education Department memo dated 29.03.2000. Mr. Naskar further submits that the affidavit which has been set aside by the co-ordinate Bench on 30.09.2015 has got no nexus with the DLIT report as relied upon by the respondent No. 5. It is, thus, contended by Mr. Naskar that since in the inspection report of DLIT the names of the present five writ petitioners did not appear the present writ petitioners cannot claim any parity with the

appellants in SLP(C) No. 27804 of 2019. Mr. Naskar, thus, submits that it is a fit case for dismissal of the instant writ petition.

14. This Court has meticulously perused the entire materials as placed before it. This Court has given its anxious consideration over the submissions of the learned advocates for the contending parties.

15. From the earlier order dated 30.09.2015 as passed in WP 13470 (W) of 2007 by the co-ordinate Bench of this Court, it reveals that in the said writ petition, the present writ petitioners have prayed for setting aside an undertaking given by way of affirmation on affidavit dated 09.01.2007 by the then President, Secretary and Teacher-in-Charge of the aforesaid Madrasah which was allowed and such undertaking dated 09.01.2007 has been set aside and challenging that order no appeal has been preferred and thus, the previous order dated 30.09.2015 as passed by the co-ordinate Bench has reached its finality.

16. Admittedly, in compliance of the said order dated 30.09.2015, the respondent no. 7 has considered the representation of the present writ petitioners as submitted before him on 05.11.2015 and passed the impugned reasoned order dated 03.12.2015.

17. On careful perusal of the impugned reasoned order dated 03.12.2015 as passed by respondent No. 7, it reveals that while passing such order, the respondent No. 7 though considered and perceived the grievance of the writ

petitioners in letter and spirit but in the operative portion of such order, the respondent No. 7 has banked upon the inspection report of the DLIT and came to a finding that in such report the names of the present writ petitioners were not appearing as organizing teaching and non-teaching staff.

18. Admittedly, such inspection report has not been filed on behalf of the State either singularly or as an annexure to an affidavit-in-opposition and this Court had no occasion to peruse the said report of DLIT. It appears to this Court that in the event, such inspection report is based on the aforementioned affidavit which has been set aside by the earlier order dated 30.09.2015, the effect would be that such inspection report is faulty. From the Annexure P-10 being the proforma inspection report as submitted by Madrasah authority, it reveals that the names of the writ petitioners are appearing in the page No. 4 and the genuineness of the same has been accepted by the learned advocate for the respondent Nos. 9 and 10. Such being the position, no justification has been given on the part of the State/respondents, as to what prevented them to act on such proforma inspection report where the names of the present petitioners are apparent on the face of the record as unapproved organizing teaching and non-teaching staff.

19. This Court is really astonished and shocked on perusal of the impugned order dated 03.12.2015 as to what prevented the respondent No. 7 to conduct a fresh

inspection especially when in the earlier order dated 30.09.2015, the co-ordinate Bench recorded the submission of the learned advocate for the writ petitioners that the Director of Madrasah Education, being respondent no. 7 should make an inspection to ascertain the position on the ground though the same has been disputed on behalf of the State.

20. In view of the discussion made hereinabove, this Court is convinced that the present writ petitioners before this Court is successful in establishing that they are unapproved organizing teaching and non-teaching staff of the aforesaid Madrasah and in absence of any denial on the part of the State/respondents and on account of affirmation on the part of the respondent Nos. 9 and 10, this Court has got no hesitation to hold that the present writ petitioners are the organizing teaching and non-teaching staffs of Mustafapur Junior High Madrasah, Dist- Hooghly.

21. In view of such, this Court holds that the finding of the respondent no. 7 in this respect in its reasoned order dated 03.12.2015 is faulty and is set aside.

22. The next question arises for consideration of this Court is as to whether at this juncture, the writ petitioners are entitled to get approval for appointment as organizing teaching or non-teaching staff of the said Madrasah. On perusal of the server copy of the order dated 05.06.2014 as passed in WP 10966 (W) of 2005, (*Sri Dinesh Chandra Karjee & Ors. Vs. The State of West Bengal & Ors.*), it

reveals that in a similar situation the District Inspector of School (S.E.) was directed to approve the appointment of the writ petitioners from the date of recognition of the school. When the said order of the Single Bench dated 05.06.2014 has been assailed in appeal being FMA 1497 of 2015, the Hon'ble Division Bench of this Court while setting aside the said order dated 05.06.2014 came to a finding that in view of the proposition of law as enunciated in the case of *Manindra Nath Sinha Vs. State of West Bengal & Ors.* reported in 2006(2) CLJ, (Cal) 489 and *D.I of School (SE), Burdwan & Ors. Vs. Abdul Barik Shaikh & Ors. (MAT 1626 of 2017)* came to a finding that with the promulgation of West Bengal Board of Secondary Education Act, 1963 there is no scope and provision for appointment of any organizing teacher from the date of recognition of the school. However, the said judgment of the Division Bench as passed in FMA 1497 of 2015 was set aside in SLP (C) 27804 of 2019 by the Hon'ble Supreme Court of India holding the following:

“It was observed by the Division Bench that if the initial appointment itself was illegal, the appointments could not be regularized and that the decision rendered by the Single Judge was otherwise unsustainable.

As the record indicates that the school was set up by the villagers. The facility of the school in the neighborhood was not made available by the official agencies. In a situation such as that the engagement of the writ petitioners cannot

strictly be called to be illegal. They were definitely imparting education in keeping with the letter and spirit of the legislation enacted by the Parliament being Right to Education Act.

In the circumstances, the Division Bench was not justified in setting the order passed by the Single Judge. Consequently, we allow the appeal, set aside the order passed by the Division Bench and restore the order passed by the Single Judge of the High Court.

The appeal is accordingly, allowed.”

23. The similar view was taken by the Division Bench of the High Court at Calcutta in FMA 2089 of 2015 by its judgment dated 02.09.2022 and expressed the following view:

“A school staffed with teaching and non-teaching staff recognized by the government after the commencement of the said Act of 1997 cannot be said to have any vacancy to be filled up following the selection procedure under Section 8 of the said Act. Nonetheless, Section 9 makes it plain that after commencement of the Act no teacher or non-teaching staff could be appointed in contravention of the Act.

The appellants/petitioners found to be bonafide working in the Mamadpur Gobinda Smriti Siksha Niketan School at the time of its said inspection by the District Level Inspection team shall be presumed to be the organizing staff and should be recommended by the Commission to the board for appointment

under Section 7 of the Act. The Board would have the obligation to regularize such appointments from the date of recognition of the school.”

24. In view of the aforesaid dictum of the Hon’ble Apex Court in SLP (C) 27804 of 2019 and the Division Bench of our High Court in FMA 2089 of 2015 this Court has got no hesitation to hold the case of the present writ petitioners are similar to the facts and circumstances as involved in the aforementioned two judgments of the Hon’ble Apex Court as well as Hon’ble Division Bench of the High Court at Calcutta and thus in order to maintain judicial decorum and parity and keeping in mind the facts and circumstances as involved in this case as discussed supra, this Court holds that the writ petitioners are entitled to get approval to their appointment as organizing teaching and non-teaching staff of the aforesaid Madrasah with effect from the date of upgradation as Class-VIII, Mustafapur Junior High Madrasah that is with effect from 30.01.2000.

25. In view of such, the respondent Nos. 3, 5, 6 and 7 are hereby directed to approve the appointment of the writ petitioners as organising teaching and non-teaching staff of the aforesaid Junior High Madrasah within a month from the date of communication of this order and the aforementioned respondents are further directed to pay the current salary of the petitioner Nos. 2 to 5 from the month of September, 2023 and thereafter onwards regularly and the arrears salary of the present writ

petitioner Nos. 2 to 5 shall have to be paid in four installments within two years hence.

26. Since, it is reported that the petitioner No. 1, Sk. Obaidullah has retired from service, his entire salary shall have to be disbursed also in four installments within a period of two years from the date of communication of this order with a rider that his pensionary benefit shall have to be disbursed within three months from the date of communication of this order and the petitioner No. 1 shall be paid his regular pension with effect from the month of his superannuation within a period of three months from the date of communication of this order.

27. With the aforementioned observation, the writ petition being WPA 25121 of 2016 is allowed on context and, is accordingly, disposed of.

28. Parties are directed to act upon the server copy of this order duly downloaded from the official website of this Court.

29. Department is directed to forward the copies of this order to the respondent Nos. 3, 5, 6 and 7 for their immediate compliance.

30. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)