

IN THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) No. 484 of 2011

Md. Idrish Miah,
son of late Mafizuddin,
resident of village Birampur,
P.O. & P.S. Jatrapur, PIN-977132

..... **Petitioner**

- V e r s u s -

1. The State of Tripura,
represented by the Chief Secretary to the
Govt. of Tripura, Capital Complex,
Agartala, PIN-799006
2. The Principal Secretary/Commissioner,
Department of Education,
Govt. of Tripura, Capital Complex,
Agartala, PIN-799006
3. Director of School Education,
Education Directorate,
Govt. of Tripura, Agartala, PIN-799001
4. Inspector of Schools,
Sonamura, P.O. Sonamura-799131,
District : West Tripura
5. The President,
Bashpukur Islamia Sr. Madrasa,
P.O. & P.S. Jatrapur, PIN-799132
6. The Secretary,
Bashpukur Islamia Sr. Madrasa,
P.O. & P.S. Jatrapur, PIN-799132
7. Md. Billal Hossain,
son of Muslim Mia,
resident of village : Barmma, P.O. & P.S. Jatrapur,
PIN-799132, District : West Tripura

- 8. Md. Ohid Miah,
son of Fazal Haque,
village : Birampur, P.O. & P.S. Jatrapur,
District : West Tripura, Sonamura, PIN-799132
- 9. Md. Ali Miah,
son of late Ali Akbar,
village : Birampur,
P.O. & P.S. Jatrapur,
District : West Tripura, Sonamura, PIN-799132
- 10. Md. Aminul Islam,
son of Sarafat Ali,
village : Bashpukur,
P.O. & P.S. Jatrapur,
District : West Tripura, Sonamura, PIN-799132

..... Respondents

**BEFORE
THE HON’BLE MR.JUSTICE S. TALAPATRA**

For the petitioner : Mr. K.N Bhattacharji, Sr. Advocate
Mr. S. Acharji, Advocate

For the respondents : Mr. S. Chakraborty, Addl. G.A.

Date of hearing, delivery
Of judgment & order : 24.06.2015

Whether it is fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. K.N. Bhattacharji, learned senior counsel, assisted by Mr. S. Acharji, learned counsel appearing for the petitioner as well as Mr. S. Chakraborty, learned Addl. Govt. Advocate appearing for the respondents No. 1, 2, 3 & 4.

None appears for the respondents No. 5, 6, 7, 8, 9 & 10 despite due notice from this court.

[2] Mr. Chakraborty, learned counsel, has again produced the records including the acquittance register in terms of the order dated 22.06.2015. From the acquittance register it appears that the petitioner was serving the Bashpukur Islamia Sr. Madrassa when the said Madrassa was brought under the Grant-in-Aid Scheme.

[3] The petitioner's grievance in short in this writ petition is that the petitioner passed the Assam Madrassa Intermediate Examination (AMIE) in the year 1992, which is equivalent to the Higher Secondary examination, from the Assam Madrassa Education Board. The petitioner has also completed his graduation thereafter. Bashpukur Islamia Sr. Madrassa was established in the year 1997 at the initiative of the local people. Some graduate and under graduate teachers took the initiative with the other villagers for establishment of the said Madrassa and they were the founder teachers of the said Madrassa. The petitioner was one of those founding teachers and was serving there as an undergraduate teacher.

[4] The Managing Committee appointed one Billal Hossain as an undergraduate teacher, when the Madrassa was brought under the grant-in-aid scheme, even though said Billal Hossain, the respondent No.7 in this writ petition, did obtain his qualification in the year 2010. But the petitioner was not approved as the undergraduate teacher under the grant-in-aid scheme. There had been no test or interview for bringing the teachers under the grant-in-aid scheme. It is solely on the basis of the recommendation made by the Managing Committee. The undergraduate teachers were brought under the grant-in-aid scheme as the approved teachers. The Managing Committee, in exercise of their power mala fide, did not recommend the petitioner under the grant-in-aid scheme. The petitioner being aggrieved by that action served the notice dated 19.09.2011, Annexure-1 to the writ petition.

[5] In reply made to the said notice dated 19.09.2011, it has been asserted that *"being un-satisfied as an ill-paid teacher Md. Idris Mia had left for job and left for Saudi Arabia for better employment in May, 2005 and stayed there up to 2008. For his long absence in India, his Voter Identity Card has cancelled by the Electoral Registration*

Officer as non-resident of the area(sic). Md. Idris Mia had again joined in the Madrassa in January, 2009 and served upto February, 2011 and after that he is absent till date”.

[6] From the notification dated 08.03.2011 (Annexure-2 to the writ petition), it would be apparent, according to the petitioner that the Director of School Education, approved nine Madrassa teachers in fixed pay. It also appears that, 5(five) of Madrassa teachers including Billal Hossain who were even not in the roll when the said school were brought under the grant-in-aid scheme.

[7] Mr. Bhattacharji, learned senior counsel appearing for the petitioner has quite strenuously submitted that the Managing Committee had acted on suppression of the record of the school. As this court has brought the acquittance register, it is apparent therefrom that when the said Madrassa was brought under the grant-in-aid scheme, the petitioner was serving there and as such the petitioner’s name ought to have been forwarded by the Managing Committee for approval as the undergraduate teacher to the Director of School Education. But, without doing the same, the Managing Committee has acted arbitrarily.

[8] From the counter affidavit filed by the state-respondents, it appears that in the list furnished by the Madrassa Managing Committee, the petitioner's name did not figure, but the name of Billal Hossain has been figured in that list, even though he was not even a teacher at the relevant point of time. In para 12 of the counter affidavit, the respondents have asserted as under :

"That in regard to the statement made in paragraph 4 of the writ petition it is stated that Baspukur Islamia Senior Madrasa came under Grant-in-Aid scheme w.e.f. 01.01.2010. As per Grant-in-Aid Rules on the date of coming over under Grant-in-Aid scheme the existing teacher of Madrasa will be treated as "existing teachers". The Director School Education does not know whether Aminul Islam was a teacher in the Madrasa and had left Madrasa in 1996 and went to Oman for work and again returned to Sonamura in July, 2009. All this are personal matter of Aminul Islam. The Director of School Education is not at all interested regarding the facts stated by the petitioner that Md. Ali Miah had left Madrasa in 2004 and dealt in cloth business or he had again joined Madrasa in January, 2009 or Md. Ohid Miah used to send people to Arab Country for which he used to go to Bombay."

It has been further asserted in the para 17 of the counter-affidavit that :

"any privately managed Madrassa brought under State Grant-in-Aid Scheme as per approval of the Council of Ministers, existing service teachers are also brought under Grant-in-Aid. List of existing teachers is submitted by

the Secretary of Managing committee to the Director of School Education. No advertisement is made in newspaper for interview of willing candidates so that existing teachers are not deprived." [Emphasis supplied]

In the para 22 of the counter affidavit, it has been again asserted that :

"The Managing Committee made selection and sent the list to Respondent no.3 for approval. The Director of School Education had just issued approval of engagement. Engagement already done by the Managing Committee before issuing formal approval of the Respondent No.3."

[9] It is clear from the counter affidavit submitted by the state-respondents that they had acted on the list furnished by the Managing committee. The Managing Committee which has been impleaded as the respondents No. 5 & 6 through their President and Secretary respectively, preferred not to file any counter affidavit traversing the allegations made by the petitioner.

[10] Having confronted with such situation, this court had directed for production of the acquittance register/roll to ascertain who the existing teachers were at the time of bringing the said Madrassa under the Grant-in-Aid Scheme.

[11] Mr. S. Chakraborty, learned Addl. Govt. Advocate, after perusing the acquittance register/teachers' payment

book, has fairly submitted that the petitioner was the existing teacher when the said Madrassa was brought under the Grant-in-Aid school and he was being paid regularly during the relevant years.

[12] Since it is a very serious matter, this court cannot merely on the basis of the acquittance register or the teachers' payment book, direct either the Managing Committee or to the Director of School Education, to appoint the petitioner. But, what has emerged has to be addressed by the court in its shocking perspective. On the basis of the teachers' payment book (the acquittance register), it has clearly appeared that the petitioner had been serving as the undergraduate teacher in the said Madrassa when the said Madrassa was brought under the Grant-in-Aid Scheme with approval of the council of Ministers, Tripura. The acquittance register or the teachers' payment book has not been disputed by none of the parties.

[13] Having regard to the records, particularly the acquittance register or the teachers' payment book, this court is prima facie satisfied that the petitioner deserved to be treated as "existing teacher". In absence of the required recommendation, this court cannot direct either the Managing

Committee or the Director of School Education in question to appoint the petitioner straightaway. There is no amount of doubt that the Managing Committee has suppressed certain material facts from the Director of School Education when they had sent the list of existing undergraduate teachers for approval by the Director of School Education as the competent authority under the Grant-in-Aid Scheme.

[14] Persuaded by observations as made above, the Director of School Education is directed to conduct an inquiry in this matter and to ascertain whether the petitioner was an "existing teacher" when the Baspukur Islamia Sr. Madrassa was brought under the Grant-in-Aid Scheme. If on culmination of the inquiry it is found and established that the petitioner was the "existing teacher", even though the Managing Committee did not recommend his name acting mala fide, as they have shown no courage to dispute such allegations levelled against them by the petitioner, in this petition, the petitioner shall be treated as an "approved teacher" from the day when the other teachers were treated as the approved teacher under the Grant-in-Aid Scheme or from its very inspection. However, since the petitioner did not work till now as the approved teacher, his pay shall be fixed

notionally till such day, if he is appointed substantially as the approved teacher on consideration of the outcome of the said inquiry.

[15] Mr. Chakraborty, learned Addl. Govt. Advocate has also submitted that the petitioner has already been selected and appointed as the Arabic teacher under the Centrally sponsored Scheme, namely "Scheme for Providing Quality Education in Madrassa" (SPQEM) by the memorandum dated 14.12.2011. He has fairly submitted that the said appointment is subject to the continuation of the scheme. If the petitioner opts for continuing under the SPQEM, no inquiry would be required to be carried out.

[16] The Director of School Education is further directed to complete such inquiry within a period of 6(six) months from the day when the petitioner would submit his option whether he would or would not continue under the SPQEM, if he is absorbed as the approved teacher. If required, the petitioner may be asked by the Director of School Education to furnish all necessary documents in support of his claim as the "existing teacher" of Baspukur Islamia Sr. Madrasa at the time of its transition to the Grant-in-aid school. The petitioner shall exercise the options in

terms of above within 15(fifteen) days from the day of receipt of the certified copy.

[17] With these direction and observations, this writ petition stands allowed to the extent as indicated above.

The acquittance register or the teachers' payment book of the Baspukur Islamia Sr. Madrassa, as produced by Mr. S. Chakraborty, learned Addl. Govt. Advocate, is returned with a condition that the acquittance register or the teachers' payment book shall not be returned to the Managing Committee of the Baspukur Islamia Sr. Madrassa till the inquiry is complete. If those records are required for any purpose, the authorized person of the Managing Committee shall be allowed to inspect and take copies from the relevant pages.

There shall be no order as to costs.

JUDGE