

THE HIGH COURT OF TRIPURA
AGARTALA

W. P. (C) No.388 of 2011

Md. Enamul Haque,
son of Md. Faruk Ali,
resident of Yeazakhowra, P.O.Babur Bazar,
P.S. Kailashahar, Dist. North Tripura

.....Petitioner

- V E R S U S -

1. The State of Tripura,
represented by the Principal Secretary,
Education Department,
Government of Tripura, Capital Complex,
P.O. Lichubagan, P.S. West Agartala, Dist. West Tripura
2. The Director of Education,
Government of Tripura, Education Department,
P.O. Agartala, Dist. West Tripura
3. The Inspector of Schools, Kailashahar Inspectorate,
Education Department, Govt. of Tripura,
P.O. Kailashahar, Dist. North Tripura
4. District Education Officer (I/O),
P.O. Kailashahar, Dist. North Tripura
5. The President, Yeazakhowra Jr. Madrassa,
P.O. Baburbazar, Kailashahar, North Tripura
6. The Teacher-in-Charge,
Yeazakhowra Jr. Madrassa
P.O. Baburbazar, Kailashahar, North Tripura
7. Md. Nazim Uddin,
son of Md. Basir Ali,
resident of Noorpur, P.O. Noorpur,
Kailashahar, Dist. North Tripura

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. R. Dutta, Advocate,
For the respondents : Ms. A .S. Lodh, Addl. G.A.
Date of hearing and delivery : **09.06.2015**
of judgment and order
Whether fit for reporting : **No**

Judgment and Order (Oral)

Heard Mr. R. Dutta, learned counsel appearing for the petitioner as well as Ms. A.S. Lodh, learned Additional G.A. appearing for the respondents No. 1 to 4. None appears for the respondent No. 5 and 6 or the respondent No. 7.

[2] By means of this writ petition, the decision contained in the Memorandum No. F.20 (27)-SE/GIA/MEC/2010 dated 02.08.11 has been questioned. By that Memorandum dated 02.08.11, the Director of School Education has regretted payment in respect of the salary and other allowances against the purported appointment of the petitioner as a Modernization Madrassa Teacher.

[3] The petitioner has stated that a vacancy fell for sudden demise of one Abdul Sukur Talukdar, a Modernization teacher of Yeazakhowra Jr. Madrassa and the Managing Committee by their decision dated 20.07.10 selected the petitioner as the Modernization Teacher in the

Madrassa. Thereafter, he has been appointed with a direction to resume his duties within 01.08.10.

[4] From the resolution of the Managing Committee, Annexure-C to the writ petition, it would be apparent that both selection and appointment has been made by the same resolution. Thereafter, by the Memorandum dated 26.07.10, Annexure-D to the writ petition, the petitioner has been engaged as the Madrassa Teacher under the Centrally sponsored Scheme of Modernization of Madrassa Education during the year 2010-2011. According to the petitioner, he has resumed his duties on 02.08.10 and since then he has been serving in the said Madrassa without interruption.

[5] The petitioner has further asserted that for approval of his appointment, the teacher In-charge of the said madrassa, approached the Director of School Education by the communication No. F.I/YJM/2009 dated 06.09.10 (Annexure-F to the writ petition). The said communication dated 06.09.10 was also forwarded by the Inspector of School, Kailashahar, North Tripura, by his communication dated 13.09.10 (Annexure-G to the writ petition).

[6] No response whatsoever was received from the Director of School Education. Thereafter, on 20.11.10, the petitioner has made a representation to the President of the Managing Committee of Yeazakhowra Jr. Madrassa, stating

that though he had joined in the post of Modernization Teacher in the said madrassa on 02.08.10 but till then he did not receive any salary from the authority. As that representation did not bring any positive yeild he made another representation on 16.03.11 to the Director of School Education, Government of Tripura (Madrassa Education Cell). The similar representation followed on 16.08.11

[7] The President of the Yeazakhowra Jr. Madrassa wrote a letter to the Director of School Education urging him for early approval of the appointment of the petitioner, so that the petitioner could be paid his salary. In response to the said communication as it appears the said Memorandum dated 02.08.11 has been issued by the Director of School Education and that Memorandum dated 02.08.11 has been questioned in this writ petition.

[8] Mr. R. Dutta, learned counsel appearing for the petitioner has submitted that there is no grievance against the appointment of the petitioner, even the villagers of the concerned village made a representation to the competent authority expressing their satisfaction regarding competence of the petitioner. Even the village Pradhan wrote a letter to the Director of School Education so that the petitioner may get his due salary.

[9] Mr. Dutta, learned counsel has further submitted that for no fault of his, the petitioner is not getting his due salary or approval of his appointment. From the other side, Ms. A.S. Lodh, learned Additional G.A. appearing for the respondents No. 1 to 4 has submitted that the Managing Committee of the said madrassa does not have any authority to select or appoint anybody as the Modernization Teacher. The appointment of Modernization Teacher is entirely guided by a special scheme called the Scheme for Providing Quality Education in Madrassa, in short SPQEM. Under the said scheme the State Government aided by the State Level Grant-in-Aid Committee, is only authorized to appoint the Modernization Teacher under the said scheme.

[10] Ms. A. S. Lodh, learned Additional G.A. has produced the copies of those scheme as revised time to time. It has been provided under the scheme that:

“.....for appointment of teachers for teaching Science, Mathematics, Social Studies, Languages, Computer Application and Science subject to availability of a minimum of ten students in each subject each full time Graduate teacher will be paid salary for 12 months @ of Rs. 6,000/- p.m. and post Graduate / B.Ed. Rs.12,000/- p.m. State Governments/Madrassa Boards would ensure that larger Mardrassa with higher student enrolment recruit better qualified teachers....”.

[11] She has further submitted that the State Level Grant-in-Aid Committee under the SPQEM has already selected 270 teachers under the financial grant which was for the year 2010-2011 and those teachers will be appointed in the various schools. From the minutes of the meeting held on 01.03.11 as available from the records the teachers are usually withdrawn and deputed in other schools according to the requirement of the schools. Those deputations are usually rotated amongst the SPQEM Madrassas situated in the region or division.

[12] Ms. A. S. Lodh, learned Additional G.A. has referred to Paragraph 14 of the counter affidavit filed by the respondents No. 1 to 4 where it has been asserted that the respondent No. 2, the Director of School Education did not instruct the Madrasa Managing Committee to fill up the post fell vacant due to sudden demise of Abdul Sukur Talukdar, who was a deputed Madrasa Teacher.

[13] It has been further asserted that the policy had been adopted by the State Government to withdraw all the deputed Modernized Madrasa Teachers from Gant-in-Aid Madrasa and placed their service in the SPQEM Madrassas. It has been further asserted that:

"...This policy is applicable in case of Yeazekhowra Jr. Madrasa. But, as because modernized teacher of Yeazekhowra Jr. Madrasa

was demised, so this vacancy automatically goes to the SPQRM Madrassa. Therefore, Madrassa so question does not arise to appoint another modernize teacher in that vacancy in Yeazekhowra Jr. Madrassa. But the act of president of Yeazekhowra Madrassa was beyond the State Policy. So, salary was not released to the petitioner...".

[14] Based on the said statement Ms. A.S. Lodh, learned Additional G.A. while summing his submission has stated that the State Government does not have any duty to approve the appointment of the petitioner or to make the payment of his salary etc.

[15] In rejoinder, Mr. Dutta, learned counsel appearing for the petitioner has submitted that the petitioner has become the victim of the circumstances for no fault, attributable to him. He has urged this Court to consider the petitioner's case, as a special case, as the petitioner cannot be attributed with any fault for the process of selection. Thus, the Rule called the Tripura Special Institutions (Madrassa) Recognition and Grant-in-Aid Rules, 1996 (hereinafter referred to as 1996 Rules) as referred by Mr. Dutta, learned counsel has no manner of application in the appointment of the Modernization Teacher under the Scheme for Providing Quality Education in Madrassa (SPQEM) and that Scheme is a special Scheme and comprehensive guidelines are provided for its implementation.

[16] The Managing Committee does not have any authority to select or appoint any Modernization Teacher in the Madrassa. Selection and appointment shall exclusively be governed by the provisions of that Scheme and hence the petitioner has no indefeasible right to hold the post or to be appointed as the Modernization Teacher against the vacancy that fell vacant for death of one Abdul Sukur Talukdar, inasmuch as the Managing Committee of the said Madrassa does not have any competence to appoint him as the Modernization Madrassa Teacher under the centrally sponsored Scheme of Modernization of Madrassa Education during the year 2010-2011. Hence, the selection and appointment by the Management Committee cannot be sustained usurpation of power cannot be ratified under any pretext.

[17] As such this Court does not find any infirmity in the decision embedded in the Memorandum dated 02.08.11, Annexure-L to the writ petition. The reliefs as claimed against the respondents No. 1 to 4 are therefore rejected. However, if the petitioner has served as the teacher in the said Madrassa, the Managing Committee which has appointed him shall be under obligation to pay the salary as no service can be derived from any one without paying him the minimum wage as determined.

[18] As such, the Managing Committee of the Yeazakhowra Jr. Madrassa, the respondent No. 5 in particular, shall be under obligation to make payment of the salary of the petitioner from their own fund for the period that the petitioner has served in that institution, if the petitioner is entitled to any salary that shall be paid within a period of 4 months from today.

[19] Before parting, the respondent No. 2 is directed that if the petitioner submits a fresh application for his appointment as the Modernization Teacher, that application may be placed to the appointing authority under the SPQEM for their consideration as to whether the petitioner can be appointed as the Modernization Teacher on the basis of the qualifications as provided under the SPQEM. They would decide as per the scheme. This observation will have no impact in such consideration.

[20] With this direction and observation this petition stands disposed of. There shall be no order as to costs.

JUDGE

A. Ghosh