

04-01-2021
ct no. 13
Sl.3
sp

WPA 3962 of 2020

Sk. Sharif

-Versus-

State of West Bengal & Ors.

Mr. Bhagbat Chaudhuri

....for the petitioner

**Mr. Prosenjit Mukherjee,
Mr. Nirmalya Kumar Das,
Ms. Madhurima Sarkar**

...for the Madrasah Service Commission

**Mr. Tapan Kumar Mukherjee, Sr. Adv.
Mr. Somnath Naskar**

...for the State

The petitioner is aggrieved by an order dated February 16, 2019 passed by the District Inspector of Schools (S.E.), Purba Burdwan pursuant to order dated January 12, 2017 passed by a Co-Ordinate Bench of this Court in WP 33300 (W) of 2013.

The issue is the vacancy in the non-teaching post of clerk in the Dighirparh High Madrasah, Burdwan in 2006. A request was made to the D.I. of Schools in August 2006 asking for permission to fill up the said post.

The Commission, which came into force pursuant to the order in 2008, recommended one Asit Kr. Roy in the year 2013 which the Madrasah

refused to appoint. The reasons for such refusal is neither available nor explained.

The post is still vacant.

The learned counsel for the Commission and the State challenge the authority of the petitioner who is the member of the Managing Committee to represent the Madrasah and seek appointment in the first place.

Having considered the rival submissions of the parties, this Court is of the view that the maintainability of the writ petition is indeed questionable. However, considering the fact that there is a vacancy in the said Madrasah for the post of clerk and the said post being vital for the functioning of the Madrasah, this Court had enquired of the commission as to whether any recommendation can be made for appointment to the said post.

Learned counsel for the Commission, Mr. Mukherjee submits that the recommendation can be made only upon completion of process of recruitment which has not yet been undertaken by the Commission. However, Mr. Mukherjee submits that if there is a willing candidate who wishes to join the said Madrasah as clerk on transfer, the Commission would make efforts to accommodate the said Madrasah.

Learned counsel for the Madrasah submits that one Sk. Wasim Kader is functioning as a

cleark in the said Madrasah since 2006. The appointment shall be treated purely ad hoc and temporary and shall not confer any rights on the said Sk. Wasim Kader.

Upon a candidate being recommended by the Commission, the engagement of the said Sk. Wasim Kader shall automatically cease. The Commission made suitable efforts to recommend any such candidate as recorded herein above as early as possible.

However, till such time, a candidate is recommended by the Commission, the said Sk. Wasim Kader may continue without on the same remuneration as an ad hoc employee.

It is made clear that the appointment of the said Sk. Wasim Kader is contrary to rules since no prior permission either the State or the Commission was taken for such engagement. This Court has allowed the said Sk. Wasim Kader to function as an exceptional case in the interest of administration of the said Madrasah.

With the aforesaid observation, the instant writ petition is disposed of. There shall be no order as to costs.

All parties are directed to act on a server copy of this order on usual undertakings.

(Rajasekhar Mantha, J.)

