

S/L 26
18.03.2021
Court No.26
SD

WPA 4576 of 2020
(Via Video Conference)

Saidul Islam
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. Syed Mansur Ali

...for the Petitioner.

Mr. Supriyo Chattopadhyay
Ms. Iti Dutta

...for the State.

Mr. Sarwar Jahan
Ms. Ankita Dey

...for the Respondent No.5.

This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by an order dated May 2, 2019 passed by the District Inspector of Schools (S.E.), Barrackpore cancelling the approval of the petitioner as an Assistant Headmaster on the ground that petitioner had not obtained his Post-Graduate degree during his tenure in service.

The District Inspector of Schools relies upon the order passed by the Director of School Education, West Bengal dated September 6, 2010 to carry out such a cancellation.

It is to be noted that after the order of the Director of School Education was passed, the petitioner was granted approval as Assistant Headmaster in the year 2010 and has continued to act as an Assistant Headmaster till date.

Mr. Ekramul Bari, counsel appearing on behalf of the petitioner, contends that the order of the Director of School Education, West Bengal is actually contrary to law and in

spite of the said order, he was granted approval as an Assistant Headmaster. He submits that after a long gap of ten years, the actions of the District Inspector of Schools in cancelling such approval is without any basis in law.

He relies upon a judgment in the case of ***Dev Prasad Sarker vs. State of West Bengal*** reported in **(2012) 2 CHN 644** to buttress his argument that for the selection of post of Assistant Headmaster, it is immaterial whether the candidate obtains the Post-Graduate degree prior to his service or during service.

He also relies upon a Memo No.124/(22)-LS dated February 26, 2015 to indicate that the Government has clarified this position and stated that *“if an Assistant Teacher, appointed in Pass Graduate or Honours Graduate Scale of Pay, has Honours degree or Masters’ Degree qualification, as applicable, obtained from a recognized institution before or after joining in service, and has applied for post of Assistant Headmaster/Headmistress, then marks will be awarded to him/her for the aforesaid degree for preparation of panel for the post of Assistant Headmaster/Headmistress irrespective of the fact that he/she has any kind of approval obtained from the District Inspector of Schools (SE) concerned for the said degree or not.”*

Mr. Supriyo Chattopadhyay, counsel appearing on behalf of the State, submits that the Memo No.124/(22)-LS dated February 26, 2015 has only prospective effect and does

not have any retrospective effect. He further submits that even though the Memo does not have any retrospective effect, in the present case, the petitioner had been appointed in the year 2010 and this sudden taking back of approval in the year 2019 is without any basis.

I have heard counsel appearing on behalf of the parties and perused the materials placed on record.

In my view, the impugned order is not in accordance with law and is required to be set aside. The factum of the petitioner having obtained his Post Graduate degree prior to joining service cannot disqualify him for selection to the post of Assistant Headmaster.

Accordingly, the impugned order is quashed and set aside with a direction upon the District Inspector of Schools to release the petitioner's arrear salaries, if any.

I further make it clear that the resolution passed by the Managing Committee dated May 9, 2019 is also quashed and set aside insofar as it relates to the recasting for the panel for selection of Assistant Headmaster.

With these above observations and directions, this writ petition stands disposed of.

Since, no affidavit-in-opposition has been called for the allegations made in the writ petition are deemed to have not been admitted by the respondents.

There will be no order as to costs.

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

(Shekhar B. Saraf, J.)