

1 **06.05.2021**
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WPA 8841 of 2021

Ct.9.

**Duff Primary School For Girls & Anr. Vs. State of West
Bengal & Ors.**

Mr. Sandip Kr. De
Mr. Abhijit Sarkar
Mr. A.C. Kundu

..For the petitioner.

Let affidavit of service filed be kept with the record which shows that service has been effected upon the respondents but none has entered appearance on behalf of the respondents.

The petitioner no. 1 is a Christian minority educational institution established, run, managed and administered by the Diocese of Calcutta under Church of North India ('the school' for short) and has been recognized as a minority educational institution by the state government in the Notification No. 641-Edn.(S)8B-3-69 Pt. VII dated 23rd May, 1974 ('the Special Rules' for short) as the name of the school is listed in the schedule appended to the said Special Rules in Serial No. 7. The petitioner No. 1 school is being represented through the Secretary of the Managing Committee having office at the address given in the cause title.

The respondents No. 1,2,3 and 4 are the State of West Bengal represented through the Principal Secretary of the concerned department, i.e., School Education Department, the Commissioner of School Education, the Deputy Director of School Education (Rural Primary) and the

District Inspector of Schools (Primary Education) Kolkata, the principal and the respective officers and instrumentalities of the Government according to the hierarchy having their respective offices at the addresses given in the cause title. Thus, the respondents No.1 to 3 are 'State' within the meaning of Article 12 of the Constitution of India.

The school is having 549 students at present in the present academic session. The school is having 14 sanctioned teaching posts and the school managing committed by a resolution dated 13th May 2019 decided to fill up the vacant sanctioned post of 13 teaching posts out of 14 teaching posts in view of the decision of the Founder Body dated 8th April 2019 as communicated to the Secretary of the School dated 22nd April 2019. Accordingly, the Secretary of the School Managing Committee, as per Notification No. 198-SE/EE/10R-1/2015 dated 3rd March 2016, the recruitment rules applicable for Christian minority educational institutions issued by the state government through the respondent no. 1, send intimation to the Commissioner of School Education, West Bengal and the D.I. of Schools (SE), Kolkata by letter dated 30th May 2019 with all the requisite documents in compliance with the recruitment rules. Although the letter was submitted by mistake in the office of the D.I. of Schools, the same was sent to the respondent no. 4 and after realizing the mistake, submitted the same again to the respondent no. 4 on 3rd June 2019 and the same was received by the office of respondent no. 4 on 4th June 2019.

The school held selection process and prepared panel of selected candidates which was approved by selection committee and thereby school managing committee. Accordingly, the appointment letters were issued.

By a letter dated 3rd June 2020 after a prolonged persuasion the Founder Body having approved the panel of selected candidates had issued appointment letters and sent the panel of selected assistant teachers for approval of their appointment as assistant teachers of the primary school by letter dated 16.10.2019 addressed to the D.I. of Schools, Primary Education, Kolkata seeking approval of appointment of 13 teachers and by letter dated 3rd June 2020, the D.I. of Schools addressed to the Secretary of the primary school requested to visit the office of the D.I of Schools (PE), Kolkata in connection with approval of appointment of 13 teachers. The proforma as per annexure 8 to the writ application was filled up by the petitioner and submitted to the Sub-Inspector of Schools vide Memo No. 369/1(2)/PG dated 14.9.2020 who intimated the school that there is no mention in the Managing Committee resolution regarding creation of vacancy against sanctioned posts and no sanctioning Memo is available. The authority concerned expressed its inability to take decision with regard to approval of appointment of teachers and further instructed the petitioner/school authority to approach the competent authority and submit supporting documents for issuance of sanctioning memo. Thereafter the school authority made a detailed

representation on 20.9.2020 to the respondent no. 1 and the entire matter was brought to the notice for appropriate sanction in terms of Rule 16 of the Recruitment Rules to resolve the dispute. It is submitted that in case of any representation is required it has to be done by Principal Secretary. Accordingly, the petitioner approached the Principal Secretary vide letter dated 20.9.2020 for appointment of 13 teachers in the primary school. Thereafter the school authority was asked by the Deputy Director of School Education (Rural Primary), West Bengal by letter dated 10.2.2021 to submit the documents for the purpose of approval of 13 teachers. But the matter was kept pending for a considerable period of time without taking any action despite the fact that the school/petitioner has submitted all relevant documents for the purpose of approval of 13 teachers. Then the petitioner approached the Principal Secretary by its letter dated 2.3.2021 for an enquiry in respect of conduct of Shri Mahadev Soren, Deputy Director of School Education (Rural Primary), West Bengal & Ors and the District Inspector of School in respect of violation of Memo No. 198-SE/EE-10R-1/2015 dated 3.3. 2016 and the matter of non-approval of appointment made by the school thereby causing violation of fundamental rights guaranteed under Article 30(1) of the Constitution of India. Thereafter, the school authority received a letter from Deputy Director of School Education vide Memo No. 130-Sc/P/ES/EE/10M-48/2020 dated 3.3.2021 thereby requesting the school to

verify the documents and after verification to submit the same to the office of the Deputy Director of School Education. Thereafter the petitioner made a representation to the Principal Secretary to the Government of West Bengal, School Education Department on 12.3.2021 and further representation was made on 24.3.2021 to the Principal Secretary to the Government of West Bengal, School Education Department with request for approval of appointment of 13 Assistant Teachers for the petitioner school, but of no effect. Thereafter, finding no other alternative, the petitioner has approached this Court to invoke the prerogative power of this Hon'ble Court for direction upon the respondent no. 1 to consider and take a decision on the representations of the petitioner school dated 20th September, 2020 being Annexure "P-13" dated 2.3.2021 being Annexure "P-16", dated 12.3.2021, being Annexure "P-19" and dated 24.3.2021 being Annexure "P-21".

On hearing learned counsel for the petitioner and factual aspects of the writ petition discussed above, this Court direct the respondent no. 1 to consider and take a decision in respect of the representations upon giving an opportunity of hearing to the petitioner and to pass a reasoned order within a period of four weeks from the date of communication of this order. The reasoned order shall be communicated to the petitioner within a week from the date of taking decision. Such exercise be completed within a period of six weeks hence.

The petitioner is at liberty to communicate this order to the respondent no.1 for reasoned decisions on the representations made on behalf of the petitioner.

With the above direction, the writ application being WPA 8841 of 2021 is disposed of.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of the usual formalities.

(Shivakant Prasad, J.)