

16-09-2021
ct no. 05
Sl. 03
Sayandeep

W.P.A. 13433 of 2021

Ruma Kolya & Ors.

-Versus-

The State of West Bengal & Ors.

(Via Video Conference)

Mr. Sabyasachi Chatterjee

Mr. Pimtu Karar

...for the petitioners

Mr. Prosenjit Mukherjee

Mr. Nirmalya Kr. Das

Ms. Madhurima Sarkar

..... for Madrasah Service Commission

There are nine writ petitioners who have jointly assailed the orders of transfer of some teachers working in other Government aided recognized Madrasahs issued by the West Bengal Madrasah Service Commission on the ground that these nine writ petitioners alleged to have been working in the posts of assistant teacher in Abdul Motalib High Madrasah(H.S.), Howrah (hereinafter referred to as the “said Madrasah”).

Mr. Sabyasachi Chatterjee, learned advocate appears on behalf of the writ petitioners and submits that the writ petitioners were appointed in terms of the notification dated

3rd March, 2016 in the said Madrasah but till date the approval of appointment has not been accorded by the District Inspector of Schools(SE), Howrah as a result thereof they are not getting salary. It is also contended on behalf of the writ petitioners that the transfer orders which have been assailed in the writ petition for transferring some of the teachers who are working in different Madrasahs if given effect to before consideration of their right of approval of appointment in that event subsequently the concerned authority while deciding the case of approval of appointments of the writ petitioners will not get any opportunity to take decision due to accrual of third party rights in connection with the posts where the writ petitioners alleged to have been working. In support of the case made out in the writ petition, the advertisement issued by the said Madrasah Authority on 12th July, 2019 in a Bengali News Paper has been brought to the notice of the Court. In addition to this factual aspect, Mr. Chatterjee, learned advocate also draws attention of this Court to the order passed by the Apex Court on 17th May, 2018 in Civil Appeal No(s). 5808 of 2017 **(SK. Md. Rafique vs. Managing Committee, Contai Rahamania High Madrasah and Another)** in order to substantiate the point that since the

recruitment process was initiated in terms of the notification dated 3rd March, 2016 by the said Madrasah Authority therefore such recruitment process should have been logically concluded by this time in view of the observations made by the Apex Court in the said order.

Per contra, Mr. Prosenjit Mukherjee, learned advocate appears on behalf of the West Bengal Madrasah Service Commission and submits that admittedly there is no approval accorded by the District Inspector of Schools(SE), Howrah in favour of appointments of the writ petitioners in the said Madrasah which is necessary in terms of the Clause 15 of the notification dated 3rd March, 2016 and in addition thereto, it is also pointed out that even writ petitioners would have been appointed, that appointment was on temporary basis therefore the writ petitioners cannot continue in their respective posts for indefinite period. It has also been submitted before this Court on behalf of the Commission that in absence of valid approval of appointment in favour of the writ petitioners and the appointment of the writ petitioners was on temporary basis; therefore at the present moment, the writ petitioners cannot have any enforceable right which can be given effect to by issuance of mandamus.

This Court has considered the rival contentions of the learned advocates representing the parties to this writ petition and perused the relevant materials on record as well as the order of the Apex Court dated 17th May, 2018, during the course of hearing.

It appears from the advertisement dated 12th July, 2019, at page- 21 of the writ petition, that the said Madrasah Authority initiated the selection process for appointment on short term basis and such initiation was made in terms of the relevant notification which was in vogue at the material point of time, dated 3rd March, 2016 being No. 486-MD/O/2M-11/2016. On perusal of the said notification dated 3rd March, 2016, it appears that in terms of Clause 15, there is a requirement of approval by the concerned State respondents in support of the appointments as alleged to have been made by the said Madrasah Authority in favour of the writ petitioners. It appears that till date no approval has been accorded by the District Inspector of Schools(SE), Howrah in support of such appointments. Therefore the issue relating to grant of approval of appointment needs to be decided by the concerned respondent authorities in the Education Department prior to giving effect to the transfer orders which have been

issued by the Commission for filling up the posts in the said Madrasah. Accordingly, the Director of Madrasah Education being respondent No. 2 is directed to take a decision on the claim of the writ petitioners upon due consideration of the relevant provisions of the notification dated 3rd March, 2016 as well as the observations made by the Apex Court in the order dated 17th May, 2018 passed in **Sk. Md. Rafique**(supra) within a period of twelve weeks from the date of communication of this order. Before taking such decision, the Director of Madrasah Education is directed to grant opportunity of hearing to the one representative of the writ petitioners as well as the said Madrasah authority and the representative of West Bengal Madrasah Service Commission. For completing such exercise the respondent No. 2 if necessary, may call for necessary documents from the concerned District Inspector of Schools(SE), Howrah and the said Madrasah authority.

It is however made clear that if the issue is decided in favour of the writ petitioners in that event necessary consequential order to be passed for their appointments but in the event, the claim of the writ petitioners is refused within fortnight thereafter the transfer orders issued by the West Bengal Madrasah Service Commission

for filling up the posts in the said Madrasah to be given effect to.

The respondent No. 2 is further directed to communicate his decision to the writ petitioners within 7 days thereafter.

With above observations, the writ petition stands disposed of.

There shall be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

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

(Saugata Bhattacharyya, J.)