

Item No.4

13.12.2021
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

WPA 20040 of 2021
Md. Jamil Akhter
v.
The State of West Bengal & Ors.

Md. Sarwar Jahan
Sk. Nayeemul Haque
... for the petitioner.

Mr. Wasim Ahmed
Sk. Md. Masud
... for the State respondents.

Mr. Prosenjit Mukherjee
Ms. Madhurima Sarkar
... for the Madrasah Service Commission.

The writ petitioner claims to be appointed as the Head Teacher of a Madrasah. He is fighting for the said post since 2002. The petitioner obtained an order from this Court on January 6, 2003 whereby the Court directed that in future if the petitioner applies for the post in question asking for a selection then the petitioner shall be given a chance irrespective of his age at least for once.

In terms of the order passed by the Court the petitioner was permitted to appear in the selection process but as no steps were taken for publication of the panel in respect of Islamia Junior High Madrasah,

Purulia the petitioner approached this Court again by filing writ petition being WP No. 24030(W) of 2005.

The Court by an order dated November 6, 2006 directed the Regional School Service Commission, Western Region to publish the result of the interview taken on February 8, 2005 in respect of appointment of Headmaster of Islamia Junior Madrasah if not already published.

The West Bengal Regional School Commission, Western Region by a communication dated December 12, 2006 intimated the petitioner that the Commission could not prepare the panel for the post of Headmaster of Islamia Junior High Madrasah in respect of RLST-H.M., 2004 because none of the candidates was found suitable for the post of Headmaster by the Personality Test Board of the Commission.

The petitioner challenged the said communication by way of filing a third writ petition being WP No. 15365(W) of 2007 wherein the submission of the Commission was that the post was being re-advertised and the selection process was gone through as the earlier candidates who applied along with the petitioner were found to be unsuitable. A candidate was being recommended for appointment as Headmaster.

The Court directed that if there is no recommendation for the post as yet, then further

recommendation for such post be made by the Commission. If no person has taken charge pursuant to the recommendation, if any, then such person may take charge but his appointment shall abide by the result of the writ petition.

The submission of the petitioner is that since he is fighting for the post, since 2002, accordingly, the post is liable to be reserved for him. It is the further case of the petitioner that he is acting as the Teacher-in-Charge of the said institution for a considerable period of time and accordingly he is the most suitable candidate to be appointed as Headmaster of the said Madrasah.

Presently, the petitioner is aggrieved by the action of the West Bengal Madrasah Service Commission by declaring vacancy in respect of the post of Headmaster in the said Madrasah.

The learned advocate appearing on behalf of the West Bengal Madrasah Commission submits, upon instruction, that the petitioner being the Teacher-in-Charge of the Madrasah forwarded the list of vacancies of the said Madrasah to the office of the District Inspector of Schools (S.E.), Purulia seeking the prior permission order.

It is the further submission of the Madrasah Service Commission that the orders which were passed in the earlier writ petitions were against the West Bengal

Regional School Service Commission. The Madrasah Service Commission Act came into effect after 2008. In terms of the Act that is prevailing at present there is no scope for claiming appointment as Headmaster in a particular institution.

The petitioner appeared in the 5th SLST in the year 2011 for being appointed as Headmaster and he was unsuccessful in the selection.

Submission has been made for dismissal of the writ petition.

From the submissions made on behalf of both the parties it appears that the petitioner claims his right to be appointed as Headmaster of the Madrasah particularly relying upon the order passed on January 22, 2008 in WP No. 15368(W) of 2007.

It has been pointed out to the Court that as the writ petition is still pending, no further steps ought to be taken for appointment of headmaster of the subject Madrasah.

The aforesaid contention of the petitioner appears to be misconceived.

The earlier writ petition was filed against the West Bengal Regional School Service Commission. The petitioner being well aware of the fact that after promulgation of the Madrasah Service Commission Act, 2008, the Madrasah Service Commission is the

appointing authority for teachers of Madrasahs. The petitioner ought to have taken steps for incorporating the Madrasah Service Commission as party respondent in the pending writ petition. It does not appear that the petitioner took any steps for getting the pending writ petition heard and disposed of by this Court.

In fact, what appears is that the petitioner well understood that the order passed in the writ petition of 2007 cannot be applied in the present facts after change in law and accordingly he participated in the recruitment examination for Headmaster in the year 2011. Being unsuccessful he did not proceed further.

Prior to appearing in the recruitment examination of Headmaster in the year 2011 the petitioner did not seek any leave from the Court. The action of the petitioner implies that he waived his right pursuant to the order which was passed in the pending writ petition of 2007.

The petitioner being the Teacher-in-Charge of the said institution ought to have been more pro-active to fight for his rights but instead of the same he kept quiet till the vacancy list was published by the Madrasah Service Commission for filling up the vacant post of Headmasters in the various Madrasahs of the State.

The petitioner himself has forwarded the vacancy statement of the Madrasah to the District Inspector of

Schools for filling up the same. Though, there is a mention of a pending writ petition in the vacancy statement forwarded by the petitioner, the same hardly affects the process of selection of Headmasters of Madrasahs.

The Court by an order dated January 6, 2003, in the very first writ petition filed by the petitioner, directed the appointing authority to give at least one chance to the petitioner for being selected irrespective of his age. The petitioner duly appeared in the recruitment examination held in the year 2011 and was unsuccessful in the same.

Presently, the petitioner is nearly fifty-seven years of age. According to the prevailing law he is over-aged and cannot participate in the recruitment process for appointment of Headmasters.

No relief can be granted to the petitioner in the instant writ petition.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)