

Court No. 17

WPA 22597 of 2019

27.07.2021

(Unlisted)

(S. Banerjee)

Md. Tahsin Ali alias Mahahtasin Ali & Ors.

Vs.

The State of West Bengal & Ors.

with

WPA 23506 of 2019

Dulal Chandra Ghosh

Vs.

State of West Bengal & Ors.

(Via Video Conference)

Mr. Arijit Bakshi

... for the petitioners (in WPA 22597 of 2019)

Mr. Uday Sankar Chattopadhyay

Mr. Santanu Maji

Ms. Snigdha Saha

Mr. Subhayu Das

... for the petitioner (in WPA 23506 of 2019)

Md. Sarwar Jahan

Sk. Nayeemul Haque

... for the respondent no. 4 & 5
(in WPA 22597 of 2019)

... for the respondent no. 6 & 7
(in WPA 23506 of 2019)

Though today the matter being WPA 23506 of 2019 has come up in the list, I think it is erroneous because on the last occasion I directed for hearing of WPA 22597 of 2019. This morning when that writ petition was not placed before me, I directed the department to place the said application (WPA 22597 of 2019) before me for hearing of the matter at 3:15 p.m. Accordingly this matter is being heard treating the same as on day's list.

This matter involves grave urgency because, I am told, that the respondent no. 11 is suffering from a terminal disease. The question relates to his joining the post of head teacher of the primary school from which he was suspended. In this matter (WPA 22597 of 2019) an order was passed by a learned single judge of this court on 5th December, 2019 directing inter alia to file affidavit in opposition and reply, if any, thereto by six weeks thereafter. No affidavit in opposition has been filed by eight petitioners of WPA 22597 of 2019 and, except petitioner no. 1, there is no particulars as to how the other petitioners are related to the primary school, except saying that they are guardians. This is devoid of any particulars.

Learned advocate for the petitioner has drawn my attention to paragraph 3 to show that only petitioner no. 1 is the father of a student studying in Class-I. In respect of others it has been stated that they are all guardians of the students of the said school.

I find a question of locus was raised in respect of the petitioner in this writ application which was answered in the affirmative by the learned judge which is as follows:

“III) The question of locus of the petitioners stands answered in the affirmative since they have a direct interest in serving a legal atmosphere for their children and wards to receive their education. Additionally, as minors, the children/wards/students being vitally affected by the trickle-down effect of a make-believe DP can be said to have ventilated their grievances only through their guardians/parents, being the present petitioners.”

In the meantime the disciplinary proceeding against the private respondent no. 11 has been withdrawn by the District Primary School Council (DPSC) which appears from page 43 (43A) of the writ

application. There the Chairman-in-Charge of Murshidabad District Primary School Council has observed as follows:

“Under the circumstances it is ordered that the departmental proceeding that has been draw against the Sri Ghosh in hereby dropped and order of compensation upon him is also hereby withdraw. (sic.) He is showed to do his duty, at his school Krishnath College School (Primary Section). But he will not get any financial benefit or allow salary for the compensation and same will be subject to the result of the criminal case and the same will be compelled thereunder. His regular salary will drawn from the date of joining without allowing the Physically Handicapped benefit enjoyed as before.”

From the said observation of the Chairman, DPSC, it is found that he was allowed to do his duty at the school but would not get any financial benefit or would not be allowed salary for the compensation and it would be subject to the result of the criminal case.

When the petitioner has not been able to show the locus of other petitioners except petitioner no. 1 by stating in which classes their sons/daughters/wards read, I am constrained to hold that the allegation against the petitioner is only by one person, i.e., the petitioner no. 1 whose son, as has been stated in the writ application, was reading in Class-I in the year 2019. The petitioner no. 1 is also the Vice President of one unregistered welfare society namely, KNCS (Primary School) Welfare Committee. No documents or papers of the said society have been annexed to the writ application. When the petitioner no. 1 has introduced himself as a Vice President of the KNCS (Primary School) Welfare Committee, which has a close resemblance to the name of the school being Krishnath College School (Primary Section), I am constrained to hold that there is nothing but a personal vendetta of the writ petitioner no. 1 in respect of the respondent no. 11,

the head teacher who was initially suspended and whose suspension order has been withdrawn by the appropriate authority. However, now he does not have any cause of action also against the respondent No. 11 after the disciplinary proceeding has been dropped by the Chairman-in-Charge of the concerned DPSC as quoted above and also for the reason stated herein below.

Today one supplementary affidavit has been filed by the said respondent (the teacher, Dulal Chandra Ghosh) wherefrom it appears that the Superintendent, Lalbagh Sub-Division Hospital, by his reply dated 4th January, 2020 intimated to one Sadhana Mondal that the disability certificate of Dulal Chandra Ghosh, i.e., the respondent no. 11 herein, was issued from the special camp at Nabagram BPHC, Nabagram, Murshidabad on 04.01.2008 in terms of Rules existing at that point of time, which certificate expired on 4th January, 2018. This supplementary affidavit has been filed in connection with the connected writ application being WPA 23506 of 2019 which is kept on record of this writ application being WPA 22597 of 2019, as in this writ application the same Superintendent intimated the Secretary of the Murshidabad Primary School Council that the certificate of Dulal Chandra Ghosh, i.e., the respondent no. 11 was a fake certificate, not a genuine one and no handicapped board was arranged on that date, i.e., 4th January, 2018 which appears from page 34 of this writ application (WPA 22597 of 2019). Now it is found that the same authority, being the Superintendent of the Lalbagh Sub-Division Hospital, has rectified the mistake by stating that on 4th January, 2018 one special camp was there at Nabagram. From the disability certificate which appears from page 34 of the present writ application it appears that the petitioner was declared on 4th January, 2008 as

disabled, whose disability was 50 per cent. This certificate was issued from the special camp as mentioned at the top of the certificate.

Because of the second letter of the Superintendent of the Lalbagh Sub-Divisional Hospital dated 04.01.2020 I hold that the disability certificate is genuine. As it has lost its force, as has been stated by the said Superintendent of the Lalbagh Sub-Division Hospital, the respondent no. 11, (i.e., Dulal Chandra Ghosh) will not get any advantage of it from the date of its expiry.

In the facts and circumstances of the matter I hold that the dispute shows a personal liking and disliking between the petitioner no. 1 and the respondent no. 11 (Dulal Chandra Ghosh) and it has no connection with general welfare and atmosphere of the school as regards the head teacher. His disability certificate has been declared as genuine. The charges against him have been dropped by the District Primary School Council. Now the respondent no. 11 cannot be held as a person who cannot join as head teacher of the school.

The respondent no. 11 had filed one writ application being WPA 23506 of 2019 with the prayer for allowing him to join the school and carry out his duties as head teacher of Krishnath College School (Primary Section) and he has also prayed for disbursing the remaining salary. This writ application (WPA 23506 of 2019) has also been taken up along with the writ application (WPA 22597 of 2019) filed by the so-called guardians whose locus I always have doubted. I find that there is no necessary particulars as to their guardianship.

I the facts and circumstance I direct the school authority to allow the petitioner of WPA 23506 of 2019,

who is the respondent no. 11 of WPA 22597 of 2019 to allow him to work as the head teacher after lifting of the suspension and after withdrawing the disciplinary proceeding, as has been done, within a period of seven days from date of communication of this order. The concerned school and the concerned District Inspector of Schools (Primary Education) of Murshidabad, being the respondent no. 5 of WPA 23506 of 2019 is directed to take immediate steps for clearing the dues of the writ petitioner of WPA 23506 of 2019, who is the respondent no. 11 in WPA 22597 of 2019.

Learned advocate for the District Primary School Council submits that the decision as to payment of arrear salary is to be taken by the District Primary School Council.

Therefore, I direct the said District Inspector of Schools (Primary Education) to take the matter with the District Primary School Council, being the respondent no. 6 in WPA 23506 of 2019 and respondent no. 5 in WPA 22597 of 2019 to take appropriate steps for payment of the due salary of the petitioner within a period of three months from date.

With the above observations, the writ petition being WPA 22597 of 2019 is dismissed and the writ application being WPA 23506 of 2019 is allowed.

There shall be no order as to costs.

(Abhijit Gangopadhyay, J.)