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Ct. No. 2

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

W.P.A. 572 of 2021
Md. Julfikar Ali Miah & Ors.
-Versus-
The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. Debajit Kundu
Ms. Tanuja Basak **...For the Petitioners**

Mr. Hirak Barman
Mr. Momenur Rahman **...For State Respondents**

Deficit Court fees has been deposited in respect of all the petitioners by filing No. A80 dated February 23, 2021.

This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by an order dated March 13, 2020 passed by the Director of Mass Education, West Bengal.

Mr. Ekramul Bari, learned Counsel appearing on behalf of the petitioners submits that the impugned order has specifically recommended the petitioners to be absorbed in their respective posts with a Caveat that the same requires fresh approval of the Cabinet. The Authority concerned has relied on a Memorandum, being No. 7806-F(P)/FA/O/2M/115/17(N.B.) dated December 19, 2017, wherein it is stated as follows :-

“After careful consideration of the matter, the Governor is pleased to direct that fresh approval of the Cabinet will now be necessary only if the posts are not filled up within two years from the date of creation instead of one year.”

Mr. Bari submits that in the present case the petitioners were appointed in the year 2009 itself when the

posts were created. He relies on paragraph 1 of the Government Order, bearing No. 1080-MEE/Sectt./EM/P/3'S'-11/09 dated October 15, 2009, to support his argument, which reads as follows :-

“The existing teaching and non teaching regular staff of the institution will be absorbed against the respective posts, as sanctioned herein and will be placed in the respective scales of pay. The scale of pay will be allowed to the teachers in terms notification number 552-Edn(MEE) dated 20.4.95. The organizing staff having requisite qualification and training will be absorbed in the teaching posts.”

He further relies on a letter dated June 17, 2010 written by the District Mass Education Extension Officer, Cooch Behar to the Director of Mass Education Extension, West Bengal, indicating that the petitioners have been selected and the posts were filled up in the year 2009 itself.

Based on the above documents Mr. Bari submits that the condition that has been imposed in the impugned order with regard to the Cabinet approval is misplaced as the memorandum dated December 19, 2017 does not apply to the petitioners as the above posts were filled up within two years from dated of creation of the same.

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

In the light of the above, it is clear that the Memorandum does not apply to the petitioners, and accordingly, the portion of the impugned order relating to fresh approval of the Cabinet is quashed and set aside.

The respondent No. 2 is directed to grant approval as per the recommendation made by the Director of Mass Education Extension, West Bengal, in favour of the petitioners in accordance with law within a period of four weeks from date.

With the aforesaid observation the writ petition is 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, on priority basis.

(*Shekhar B. Saraf, J.*)