

3.03.2022

**ASR
15.**

FMA 231 of 2012

The State of West Bengal & Ors.

Vs.

Asgar Ali & Ors.

With

FMA 902 of 2007

Uttam Kumar Saha & Ors.

Vs.

Asgar Ali

Ms. Chaitali Bhattacharyya

Mr. Mrinal Kanti Ghosh (FMA 231 of 2012)

Mr. Partha Sarkar

Mr. Abhijit Basu (FMA 902 of 2007)

.....for the appellants

Ms. Debjani Sengupta

Mr. Sobhan Majumder

Ms. Shahina Haque

Ms. Kalpita Paul

.....for the respondents.

We are disposing of both these appeals by this common judgement and order.

The school-in-question is Makhna Kuilpara, K.S. High School at Malda District. The respondents'/writ petitioners' claim approval of their appointment and payment of their salaries and allowances.

The writ petitioner Asgar Ali was appointed as an Assistant Teacher by a letter of appointment dated 29th June, 1995 issued by the Secretary of the Managing

Committee of the said school. He was required to join service on or before 5th July, 1995. On that basis he joined the school as an Assistant Teacher on 3rd July, 1995. Similarly the other respondents 2 to 7/writ petitioners were appointed in June, 1995 and joined service on 3rd July, 1995. They were issued similar letters of appointment.

It was also stated in these letters of appointment that the scale of pay would be in accordance with the rules existing on the date of upgradation of the school.

The school was upgraded on 1st May, 2000.

We note that when such appointment made given the West Bengal School Services Commission Act, 1997 had not been enacted.

Rule 28(4) 28(7) of the Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969, provide :

“Rule 28(4) In an unaided Institution the Committee shall, subject to the approval of the Board, have the power ---

i) to appoint in accordance with the directions given by the Director or in his behalf teachers and other employees on permanent or temporary basis, approval of such appointment being thereafter sought for from the Board through the Director ordinarily within a fortnight from the date of decision of the Committee;

ii) to extend as per conditions laid down by the Director the services to teachers and other employees beyond the date of superannuation approval for such extension being thereafter sought for from the date of decision of the Committee.

“ Rule 28(7) In all cases of appointment, both permanent and temporary, the Committee shall issue letters of appointment specifying the terms and conditions of such appointment. In the case of a permanent appointment, a teacher or an employee appointed on probation shall be confirmed on the expiry of the period of probation unless an order to the contrary is issued at least six weeks before the date on which confirmation normally falls due. In the case of an appointment on temporary basis against a permanent post the teacher or the employee so appointed shall be confirmed completion of two years’ continuous satisfactory service in the Institution.”

Now it was argued on behalf of the appellants/State and the Managing Committee of the school, that the Secretary had no power of making the appointments.

The respondent/ writ petitioner’s claim to have worked in the said school till December, 2007.

Thereafter the management did not allow them to teach in the institution.

The writ application was filed in 2001.

These appeals are pending in this Court from 2007.

20 years is a long period of time.

We are of the opinion that in a just and equitable manner this controversy has to be resolved now.

The Managing Committee of the school had the power under the said rules to appoint teachers on a temporary or a permanent basis, at that point of time.

Provided an appointee receives a letter of appointment from a proper source, sealed and signed, in our opinion he need not go behind it to enquire whether it has been validly issued.

The learned judge, in his impugned judgement and order, held that the respondent nos. 2 to 7/writ petitioners were appointed in 1995 and have been serving as teaching and non-teaching staff. There is no real challenge to the fact that the respondent nos. 2 to 7/writ petitioners were actually appointed and taught in the school.

Today we are not going into the question of regularisation or fixation of pay or notional pay, payment of pension etc.

The school has availed of their service up to December, 2007. Hence they should be reasonably remunerated.

In those circumstances, we refer this matter to the Principal Secretary, School Education department, Government of West Bengal.

The Principal Secretary will decide the matter after hearing the respondent nos. 2 to 7/writ petitioners. They shall be entitled to be paid salary and allowance according to the existing rules of that time from the date of upgradation of school from 1st May, 2000 till the date when the service was last rendered by the writ petitioners/respondents to the school ie. December, 2007.

The respondent nos. 2 to 7/writ petitioners shall also be entitled to interest on the said sum at the rate of 6 percent simple interest per annum up to the date of actual payment.

The Principal Secretary shall pronounce his reasoned decision on the basis of the above findings of this Court within three months of communication of this order.

The amount if and as determined, shall be paid within two month of such determination.

After this passage of time, it is expected that the Principal Secretary will take a reasonable view and will

take a decision to put an end to the long pending dispute between the parties.

The above appeals are accordingly disposed of.

(I. P. Mukerji,J.)

(Aniruddha Roy,J)