

17.02.2022  
Item No. 02  
Court No.6.  
S. De

**Through Video Conference**

**F.M.A. 22 of 2013  
I.A. No. CAN 1 of 2012  
(Old No. CAN 10092 of 2012)**

**Abdar Rahaman Mondal & Anr.  
Vs  
State of West Bengal & Ors.**

Mr. Ekramul Bari,  
Mr. Subhro Prakash Lahiri,  
Ms. Tanuja Basak,  
...for the appellants.  
Mr. Gourav Das,  
...for the respondent no.7.  
Sk. Md. Galib,  
Ms. Sujata Ghosh,  
...for the State respondents.  
Mr. Nibaran Kr. Das  
...for the respondent nos.6 &8  
Mr. Manish Das  
...for the Zilla Parishad.

The appellant nos.1 and 2 were engaged as Sishu Siksha Sahayak and Sahayika in a Sishu Siksha Kendra, namely Asurhat Sishu Siksha Kendra in the district of 24-Parganas, North, in the year 2001 and 2007 respectively.

By an order dated March 1, 2012, passed by the Additional Executive Officer, 24-Parganas, North, the services of the appellants were terminated on the ground that they were underqualified at the time of their appointments. It was observed that the appellant

nos.1 and 2 subsequently passed Madhyamik examination in the year 2009.

The appellant nos.1 and 2 challenged the said decision dated March 1, 2012, issued by the Additional Executive Officer, 24-Parganas, North, by filing the present writ petition. On July 31, 2012, the learned Single Judge dismissed the petition on the ground that the resolution dated July 1, 2001, whereby the appellant no.1 was appointed, appeared to be a fabricated resolution since the handwriting on the first page of the resolution differed from that on the second page. Learned Single Judge also observed that there was a noticeable gap between the last line of the resolution and the signatures inscribed thereon. Learned Judge declined to decide the disputed facts and dismissed the writ petition.

In this appeal, preferred at the instance of the writ petitioners, an interim order was passed on December 17, 2012, to the following effect:

*“Let there be an interim order directing the respondents herein to maintain status quo as on date with regard to the functioning of the appellants/petitioners in the service of the Sishu Siksha Kendra until further orders.”*

Mr. Lahiri, learned advocate appearing for the appellants, submits that though the appellants were underqualified at the time of their appointments, but subsequently, they enhanced their qualification. Following the interim order passed by this Court on December 17, 2012, they are continuing in service till date. The relevant notification issued by the State provides for relaxation of the eligibility criteria of the candidate in case no suitable candidate was found. It cannot be said that the appointments of the appellants are illegal. They have been continuing in service till date following the interim order passed in the appeal, however, without any honorarium. They should be paid their arrear honorarium and the order of termination should be set aside.

Mr. Das, learned advocate appearing for the Sishu Siksha Kendra, also submits that the appellants have been continuing in service till date.

Mr. Manish Das, learned advocate representing the Zilla Parishad, and Mr. Galib, learned advocate appearing for the State, jointly submit that the appellants did not have the requisite qualification to be appointed. Therefore, their service was rightly terminated by the respondent authorities. No right accrues due to continuation of service since they worked illegally even after termination of their service by the competent authority.

We are of the view that even if it is accepted that the resolution dated July 1, 2001, is a genuine one, it cannot be held that the appellants are entitled to any relief. The relevant recruitment rule provides that only a Madhyamik pass female candidate should be appointed as Sahayika. If such a female candidate is not found, a physically handicapped male may be appointed subject to fulfillment of the eligibility criteria. In the case of tribal/backward areas, if a Madhyamik pass candidate is not available then a Madhyamik failed female (or handicapped male) may be appointed. When a candidate as qualified above is not available, a class ten pass female candidate (or handicapped male) may be appointed. If no female candidate (or handicapped male) is found with the above qualification then a class eight pass candidate may be appointed from a scheduled caste community.

The resolution whereby the appellant no.2 had been appointed has not been placed before us.

The resolution whereby the appellant no.1 was appointed does not reflect that there was any attempt made by the concerned Sishu Siksha Kendra to find out a Madhyamik pass candidate at the first instance. The locale, where the Sishu Siksha Kendra is situated, is not a backward/tribal area.

Therefore, it is evident that the appointments of the appellant nos.1 and 2 were not made following the

relevant recruitment rules. No fault can be found with the impugned order of termination as the appellants were not duly qualified at the time of appointment.

Mr. Lahiri relied on a judgment of the Hon'ble Supreme Court reported at **(1993) 3 Supreme Court Cases 591 (Dr. M.S. Mudhol v. S.D. Halegkar)** to argue that the appellants should be paid their remuneration for the service rendered by them as Sahayaks.

The relevant part of the said judgment is quoted below:

*“Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the 1<sup>st</sup> respondent for a long time, the fact remains that the court was moved in the matter after a long lapse of about 9 years. The post of the Principal in a private school though aided, is not of such sensitive public importance that the court should find itself impelled to interfere with the appointment by a writ of quo warranto even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the court was moved and today about 13 years have elapsed. The infraction of the*

*statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances, we deem it unnecessary to go into the question as to whether a writ of quo warranto would lie in the present case or not, and further whether mere laches would disentitle the petitioners to such a writ.”*

He further relied on another judgment reported at **2019 (5) CHN (CAL) 54 (Anil Kumar Xalxo v. The Lieutenant Governor, Andaman & Nicobar Islands)**

A Coordinate Bench of this Court in the said case observed as follows :-

*“Following the ratio of the said decision we make it clear that, although, we do not agree with the learned Counsels for the administration and for the private respondents for a moment that an illegal act can be made legalised due to passage of time, but after a passage of long period we do not take away the bread winning source of the respondents and of their dependent family members. It*

*may be clarified that, although, bridge course was not done by the respondents but we give some value to their past service of 25 years and the experience of teaching which may be considered to a little extent as substitute of their bridge course. For all practical purposes in the academic field if the respondents are allowed to use their expertise in their said academic field that may prove even better than having the bridge course to bridge the gap.”*

The facts involved in the aforesaid two cases were entirely different from the case in hand. In the present case, the services of the appellants were terminated on March 1, 2012, as they were not qualified. Even after such termination, they continued in service without any authority of law.

The interim order in this appeal was passed on December 17, 2012, directing to maintain the status quo with regard to the service of the appellants as on that date. The service of the appellants had been terminated on March 1, 2012. Therefore, the said interim order cannot be interpreted to mean that the appellants continued in the service by virtue of that Court-order. Such continuation in service does not

entail any equitable relief in their favour. In any event, the appellants were in contractual employment renewable after every one year. The competent authority after the termination of the service of the appellants never consented to or approved their continuation in service.

We see no reason to interfere with the impugned order. Accordingly, FMA 22 of 2013 and the connected application being IA No. CAN/1/2012 (Old No. CAN/10092/2012) are dismissed.

Urgent certified photostat copies of this order, if applied for, shall be given to the parties as expeditiously as possible after compliance with all the necessary formalities.

**(Kausik Chanda, J.)**

**(Arijit Banerjee, J.)**