

08 30.08.2022
rkd Ct.15

W.P.A. 2943 of 2020
(IA NO: CAN 1 of 2021)

Dr. Md. Mohidur Rahaman
-vs-
The State of West Bengal & Ors.

Mr. B. K. Samanta

....for the petitioner.

Mr. Golam Mostafa,
Mr. T. S. Samanta,
Mr. S. Sardar

....for the respondent nos.5 & 6.

Mr. Bhaskar Prasad Banerjee,
Mr. Prashar Baidya

....for the University.

Mr. Sauvik Nandy

....for the NCTE.

The writ petitioner has questioned the termination letter dated 18th December, 2019 issued by the Secretary of David Hare Teachers' Training College (B.Ed), P.S. Gazole, District- Malda (hereinafter referred to as the "said college"). By the said termination letter dated 18th December, 2019 the petitioner who was working in the post of Principal of the said college has been terminated on the alleged ground of absence as indicated in the order of termination itself.

The learned advocate representing the petitioner has submitted that such order of

termination may not be allowed to stand since without following the procedure and without observing the principle of natural justice the termination letter dated 18th December, 2019 has been issued against the petitioner. In support of such submission the appointment letter of the petitioner dated 21st September, 2018 has been relied upon wherein it has been provided that service including pay scale would be guided by the rules and regulations of the NCTE/Government of West Bengal/Governing Body of the College.

Based on such insertion in the appointment letter dated 21st September, 2018, it has been contended on behalf of the petitioner that the said college authority before issuing the letter of termination dated 18th December, 2019 ought to have followed the procedure as contemplated under the West Bengal Service Rules and West Bengal Services (Classification, Control and Appeal) Rules, 1971. Such submission has been made since according to the petitioner the service condition of the petitioner is to be guided by the Regulations of the Government of West Bengal as contained in the letter of appointment dated 21st September, 2018.

Another limb of submission which has

been advanced on behalf of the petitioner is since the said college is a private B.Ed Training College which is affiliated to the West Bengal University of Teachers' Training, Education Planning and Administration and is recognized by the National Council for Teacher Education therefore the said college authority is amenable to the writ jurisdiction as a result whereof the writ petition is maintainable against the order of termination issued by the said college authority. In support of such submission reliance has been placed on the judgment of the Hon'ble Apex Court, reported in 1989 Vol. 2 SCC page-691 (Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. -vs- V. R. Rudani & Ors.).

The said college authority, the West Bengal University of Teachers' Training, Education Planning and Administration as well as NCTE are represented by the learned advocates.

It has been jointly submitted on behalf of the learned advocates that the writ petition is not maintainable against the said college authority since the said college is a private college and is not controlled by the instrumentalities of the State.

Mr. Mostafa, learned advocate representing

the said college authority has also submitted that the college is not in receipt of Government aid in any form and is not controlled by the instrumentalities of the State save and except having affiliation from the West Bengal University of Teachers' Training, Education Planning and Administration and recognition from the NCTE. It has also been submitted on behalf of the said college authority that the contention of the petitioner on applicability of the West Bengal Service Rules and West Bengal Services (Classification, Control and Appeal) Rules, 1971 cannot be accepted based on Clause 5.4 of the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2014.

The Court has also been apprised of by the respondent authorities that West Bengal Service Rules and West Bengal Services (Classification, Control and Appeal) Rules, 1971 have not been formally adopted by the State Government or the affiliating University for the purpose of its application in private B.Ed Colleges like that of the said college.

This Court has heard the learned advocates representing the petitioner as well as

respondents and perused the relevant materials available on record.

Though attempt has been made on the part of the writ petitioner based on Clause 5.4 of the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2014 the terms and conditions of the service of the petitioner is required to be guided by the West Bengal Service Rules and West Bengal Services (Classification, Control and Appeal) Rules, 1971 but this Court does not find anything on record or from the submissions made on behalf of the learned advocates representing the parties to this writ petition that such Rules of 1971 have been formally adopted either by the State Government in the Higher Education Department or by the affiliating University.

It further appears that said college is not in receipt of any Government aid and also not managed and governed by any instrumentalities of the State save and except having recognition from NCTE and affiliation from the West Bengal University of Teachers' Training, Education Planning and Administration.

In *Andi Mukta Sadguru (supra)* the Hon'ble Apex Court was considering payment of

emoluments in favour of teaching staff of a college which was in receipt of public money in the form of Government aid as it appears from paragraph 15 of the said judgment. But in the present case the said college is not receiving any Government aid in any form therefore according to the appreciation of this Court the law enunciated by the Hon'ble Apex Court in *Andi Mukta Sadguru* does not apply in the present case. Moreover, the said college authority being a private body not controlled by the statutory authorities and also not in receipt of aid from public fund cannot be held to be amenable to the writ jurisdiction.

Accordingly, the writ petition stands dismissed.

There shall be no order as to costs.

The application, if pending, also stands dismissed.

However, this order shall not preclude the writ petitioner to take steps in accordance with law against the order of termination, if so advised.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)