

25.07.2022
Court No.13
Item No.19
AP

WPA 5544 of 2022

**Smt. Rupali Mitra
Vs.
The State of West Bengal and Ors.**

Mr. Supratim Dhar
Ms. Madhu Priya
Mr. Dhananjay Nayak

... For the Petitioner.

Mr. Ekramul Bari
Mr. K. Dalal

... For the School.

Mr. Supriyo Chattopadhyay
Mr. Suman Dey

... For the State.

Mr. Bharat Chandra Simai

... For the Respondent No.7.

The writ petitioner is aggrieved by the appointment of the respondent as teacher-in-charge of the school in question, being Balika Siksha Sadan, Kolkata.

Admittedly the school is getting DA from the State. There is otherwise no control of the State on the school.

On the question of maintainability of the writ petition, counsel for the petitioner Mr. Supratim Dhar, would rely upon the decision of the Supreme Court in the case of **Marwari Balika Vidyalaya Vs. Asha Srivastava and Ors.** reported in **(2020) 14 SCC 449** particularly paragraphs 18, 19 and 20 thereof.

Reliance has also been placed on the decision of a Division Bench of this Court in the case of **Ballygunge**

Siksha Samity and Ors. Vs. Ms. Susmita Basu and Ors. reported in ***2000 (I) CHN Page 635.***

Further reference is made to the decision in the case of ***Tarun Dutta Vs. The State of West Bengal and Ors.*** reported in ***(2005) 3 CAL LT 143 (HC).***

On merits it is argued by Mr. Dhar that the claim of the writ petitioner for appointment as a teacher-in-charge arises out of a 75 years old tradition in the school of appointing the senior most teaching staff as the teacher-in-charge.

It is submitted that in an earlier round of litigation that a Coordinate Bench of this Court in WP 11357 of 2020 by an order dated 5th January 2021, the appointment of the private respondent Madhumita Dutta was interfered with by the Court.

The interference was clearly limited to the absence of reasons of the resolution of the Managing Committee making such appointment.

Mr. Dhar next submits that she was denied as a senior most teaching staff to be appointed as teacher-in-charge has been upheld by a Single Bench and Division Bench of this Court.

This Court without hesitation, notices that the observations of the Coordinate Bench was restricted to the absence of reasons in the resolution appointing the private respondent as teacher-in-charge. There was no adjudication of any vested right in the writ petitioner to

claim appointment as teacher-in-charge merely because she is the senior most teacher. A tradition in appointment is not an enforceable or binding Rule.

Counsel for the petitioner would however raise his case slightly higher on the ground of legitimate expectation, which according to him has matured into an estoppel.

It is also submitted that the respondent school was under an obligation to appoint the senior most teacher as teacher-in-charge.

Reliance is placed on the decision of the Supreme Court in the case of ***The State of Jharkhand and Ors. Vs. Brahmputra Metallica Ltd. and Ors.*** reported in ***2021 (1) SCJ 131***. This Court notices that the observations of the Supreme Court in paragraphs 38, 39, 41 and 42 on the principle of legitimate expectation was in the context of the electricity duty and industrial policy of the State of Jharkhand from the year 2011 till the year 2014.

The Supreme Court was considering as to whether a notification of rebate in electricity duty should apply prospectively or retrospectively. The said decision would have no manner of application in the facts of the instant writ petition.

Mr. Dhar, learned counsel for the petitioner, next relied on a decision in the case of ***Ramana Dayaram Shetty Vs. International Airport Authority of India***

and Ors. reported in **(1979) 3 SCC 489**. The Supreme Court was considering a tender process for awarding of canteen contract at the Bombay Airport. It is in that light i.e. distribution of State largesse. The said decision and its observation cannot be applied in the facts of the case.

In the instant case, we are concerned with a right of seniority in appointment based on a practice which have nothing to do with principles to be followed in Tender and commercial contracts. The said **Ramana Dayaram Shetty (supra)** decision cannot come to the aid of the writ petitioner.

Another decision relied upon by the petitioner is the case of **Amarjit Singh Ahluwalia Vs. The State of Punjab and Ors.** reported in **(1975) 3 SCC 503**. This Court notices that the decision concerned a dispute between two cadres for the post of Assistant Director in Provincial Civil Medical Service. The process of reckoning of inter se seniority between two cadres was being considered. It is in that light that the Hon'ble Supreme Court made observations in Paragraph 9 thereof of the said decision.

Mr. Dhar lastly relied upon the decision of a Coordinate Bench in the case of **Mityl Chakravorty and Ors. Vs. State of West Bengal and Ors.** in **WPA 78 of 2021** to say that even the practice of seniority being required to be followed for the purpose of

appointment to the post of teacher-in-charge has now been recognized and accepted. Mr. Bari, learned counsel for the School, submits that the said decision relating to a non-DA getting school.

Having considered the entire facts and circumstances of the case, this Court cannot help but notice the submissions of Mr. Bari regarding disciplinary proceedings pending against the petitioner.

Be that as it may, the fundamental issue is as to whether the school in question, which is privately managed, is required to follow any mandatory process or rule for appointing the teacher-in-charge.

Admittedly, the counsel for the parties are *ad idem* that there is no mandatory process or rule that is binding the school in this regard.

The only question, therefore, that remains is as to whether a practice that is being followed by a school for a substantial period of time for over 75 years is binding upon the School and/or creates any legitimate expectation or even mature into any estoppel against this school.

This Court is of the clear view that there may be some elements of legitimate expectation on the part of the writ petitioner, but the same cannot be to the extent of negating the school's right to appoint any candidate of their choice, if there is some material on record justifying such appointment.

In essence, there cannot be any vested rights in any teacher, -even the senior most- one cannot say that they ought to be appointed as the teacher-in-charge merely because a practice has existed in the past.

The teacher-in-charge has administrative responsibilities apart from the responsibility of fulfilling the object and purpose for which the school may have been founded. It is the managing committee that is best placed to determine-albeit with an element of subjectivity- as to who is best qualified to administer the school.

The State cannot fulfil the entire responsibility under Article 21A of the Constitution. Non-State actors who are playing a major role in this regard have some element of discretion vested in them, inter alia, to appoint a Headmistress of their choice. Such power must be understood in the larger perspective of Article 21A of the Constitution of India.

In the above circumstances, this Court is of the clear and unequivocal view that there is no vested right on the part of the writ petitioner to claim the right of appointment as teacher-in-charge merely because she is the senior-most teacher.

In these circumstances, the writ petition fails and is hereby dismissed.

There shall be no order as to costs.

This Court wishes to place on record appreciation for the manner in which Mr. Dhar has conducted the case diligently on behalf of his client.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)