

11.08.2022

Item Nos.1-4

Crt. No.11.

FB/KB

MAT 596 of 2022
with
IA No. CAN 1 of 2022
The Headmaster, Raiganj Coronation
High School
-Versus-
Sanjukata Roy and ors.
with
MAT 494 of 2022
with
IA No. CAN 1 of 2022
with
IA No. CAN 2 of 2022
with
IA No. CAN 3 of 2022
Sanjukta Roy
-Versus-
Md. Mahidur Alam & Ors
with
MAT 562 of 2022
with
IA No. CAN 1 of 2022
The Headmaster, Raiganj Coronation
High School
-Versus-
Sanjukata Roy and ors
with
MAT 631 of 2022
with
IA No. CAN 1 of 2022
Md. Mahidur Alam
-Versus-
Sanjukta Roy & Ors.

Syed Mansur Ali

Sk. Imtiaj Uddin

.... For the Appellant in MAT 596
of 2022 and MAT 562 of 2022.

Mr. Anjan Bhattacharya

... For the Appellant in MAT 494
of 2022 & Writ Petitioners/
Respondents in MAT 596 of
2022, MAT 562 of 2022 and
MAT 631 of 2022

Mr. A. Ray, Ld. G.P.
 Mr. Raja Saha
 Mr. Shamim-ul-Bari

... For the State-respondents
 in all the appeals.

Mr. Arabinda Chatterjee
 Mr. Munshi Ashiq Elahi

... For the Respondent/Writ
 Petitioner in MAT 494 of
 2022 and also Respondent
 No.12 in MAT 596 of 2022
 and appellant in MAT 631
 of 2022.

Mr. Partha Sarathi Bhattacharyya
 Mr. Raju Bhattacharyya
 Mr. Arunava Maiti
 Mr. Tanweer J. Mandal

... For the Respondent Nos.13
 & 14 in MAT 596 of 2022.

Md. Sarwar Jahan
 Mr. Maidul Islan Kayal
 Mr. Binay Shaw

... For the Respondent No.5 in
 MAT 494 of 2022 and
 Respondent Nos.8, 10 & 11
 In MAT 596dent Nos.8, 10 &
 11 in MAT 596 of 2022, MAT
 562 of 2022 & MAT 631 of
 2022.

Ms. Koyeli Bhattacharyya

...For WBBSE in all the appeals.

Party/parties is/are represented in the order of
 their name/names as printed above in the cause title.

Four appeals, analogous in nature, are under
 consideration by this Court. Out of the four appeals
 MAT 562 of 2022, MAT 631 of 2022 and MAT 596 of
 2022 are directed against a common Order of the
 Hon'ble Single Bench dated 7th April, 2022.

The fourth appeal, being MAT 494 of 2022, is directed against the final Judgement and Order dated 14th September, 2021 in WPA 13836 of 2021 issued by a Co-ordinate Hon'ble Single Bench.

However, both the Orders dated 14th of September, 2021 and the 7th of April, 2022 touch upon a common issue which relates to the appointment of an Assistant Teacher in a Government aided High School.

In two of the appeals namely, MAT 596 of 2022 and MAT 562 of 2022, the Headmaster, Raiganj Coronation High School (for short, referred to only as the School) is the appellant. In MAT 631 of 2022, one Md. Mahidur Alam is the appellant. The three appeals as stated above, namely, MAT 596 of 2022, MAT 562 of 2022 and MAT 631 of 2022 are directed against the common Order of the Hon'ble Single Bench dated 7th of April, 2022.

The fourth appeal, being MAT 494 of 2022 is filed by one Sanjukta Roy against the Order of Hon'ble Single Bench dated 14th September, 2021.

As stated earlier both Md. Mahidur Alam and Sanjukta Roy claim to be Assistant Teachers of the School-in-issue.

Learned Counsel, Mr. Anjan Bhattacharyya, appearing in support of MAT 494 of 2022, submits that his client, the appellant/Sanjukta Roy was never impleaded in WPA 13836 of 2021 which is a Writ

Petition filed by Md. Mahidur Alam against the State of West Bengal. It is submitted that by the Order dated 14th of September, 2021 disposing of WPA 13836 of 2021, the rights of the appellant/Sanjukta Roy have been vitally affected.

It is submitted that Md. Mahidur Alam has been convicted on a serious criminal charge of murder of his wife. Md. Mahidur Alam was continuing as an Assistant Teacher of the School-in-issue. After the conviction, under the applicable rules and regulations the service of Md. Mahidur Alam was terminated. The Respondent/the West Bengal Board of Secondary Education, was directed to recommend a name for appointment as Assistant Teacher of the School-in-issue in place and stead of Md. Mahidur Alam. The name of the appellant Sanjukta Roy was recommended for appointment as Assistant Teacher in place and in stead of Md. Mahidur Alam.

Mr. Bhattacharyya submits that suppressing the above facts Md. Mahidur Alam filed a Writ Petition being, WPA 13836 of 2021. The appellant/incumbent to the Office of Assistant Teacher/Sanjukta Roy was not impleaded as a party respondent. The Order dated 14th of September, 2021 in WPA 13836 of 2021 was passed even in the absence of the School Authority, who connived with the said Md. Mahidur Alam to stay away from the hearing.

Mr. Bhattacharyya submits that the Hon'ble Single Bench was therefore misled into directing the Board to reconsider the position of termination of service of the said Md. Mahidur Alam in the light of the law applicable and to pass a reasoned decision as to whether the said Md. Mahidur Alam can be permitted to resume his duties as Assistant Teacher in the School-in-issue.

Mr. Bhattacharyya submits that the issue of suppression of facts before the Hon'ble Single Bench deciding WPA 13836 of 2021 was noticed by the second Hon'ble Single Bench in the subsequent Order dated 7th of April, 2022. The discussion pertaining to the said Md. Mahidur Alam and the events following filing of WPA 13836 of 2021 have been elaborately discussed by the Hon'ble Single Bench in its Order dated 7th of April, 2022. Such a discussion shall appear from the following paragraphs of the Order dated 7th of April, 2022, which is the subject matter of challenge in the other appeals, except MAT 494 of 2022.

“6. The terminated teacher Md. Mahidur Alam filed one writ application in this court, being WPA 13836 of 2021, wherein this court (Bhattacharya, J.) after hearing the petitioner, the State and the Board, but not the school, (as it appears that no copy of the writ application was served upon the school though there is a document of despatch and as it has been

stated by the then Teacher-in-Charge, Mr. Swapan Chakraborty, before this court today in reply to the question of this court that the school did not receive any such writ application) this court directed the Board to consider the application of the petitioner of WPA 13836 of 2021, namely, Md. Mahidur Alam.

... ..

10. *Therefore, it is clear before me that the Hon'ble Court while passing the final order in WPA 13836 of 2021 on 14.09.2021, was squarely misled by the petitioner therein (i.e. Mahidur for which a cost of Rs.20,000/- is imposed upon the said petitioner, to be paid to the school, (the Coronation School), within a period of 15 days from the date of this order. This order is being passed in his presence.*

.... ..

14. *Now I should go to the merit of the said order of reinstatement of said Md. Mahidur Alam. The order is a wholly baseless order. It does not disclose any reason whatsoever. The dismissal order was passed under the prevalent rule, being Rule 8 of Rules 2018. The*

reinstatement order has been passed after being swayed by the misleading submission made on behalf of the petitioner and recorded by the court applying 1969 Rules so far as the termination, discipline etc. of the teachers are concerned. That 1969 Rule in respect of such termination, discipline, suspension etc. was not at all in existence when the writ court decide the matter being WPA 13836 of 2021 as the new rule came into force in respect of those matters in the year 2018. Apart from that the said order of the President of the Ad hoc committee, being the disciplinary authority, does not disclose a single reason wherefor the same order of termination could not have been passed in respect of said Md. Mahidur Alam. It is a matter of surprise that in the said hearing before the President, the headmaster of the school Mr. Kali Charan Saha, was present. It was clearly known to Mr. Saha, as appears from the supplementary affidavit affirmed on 21st March, 2022 and filed by the petitioner from annexure, being P-

11 at pages 19 and 20, where in respect of the joining of the petitioner her husband Mr. Rwitwik Dey wanted to know through whatsapp message about her joining in the school and wanted to know whether the Headmaster Mr. Saha had thought anything about such joining; the said headmaster Mr. Kali Charan Saha replied also through whatsapp message to the husband of the petitioner that he had heard everything and he will do something after the reopening of the school. This conversation was of 27th October, 2021. The hearing before the President of the Ad hoc committee, being the disciplinary authority, took place on 08.11.2021, i.e., after the said Whatsapp conversation between the husband of the petitioner and the headmaster Mr. Saha took place. Though the said headmaster, Mr. Saha, knew it very well that there had been a pending issue regarding joining of the petitioner in the school with a valid appointment letter on transfer from another school, he, for the reasons best known to him, suppressed the whole

fact from the Chairman of the Board and squarely mislead the Board. Such mischievous person is not a fit person to hold the post of a headmaster of any school, let alone Raiganj Coronation High School.”

Mr. Arabinda Chatterjee, Learned Senior Counsel appearing for the said Md. Mahidur Alam, submits that at the stage when WPA 13836 of 2021 was filed, there was no material available before the Writ Petitioner/the said Md. Mahidur Alam to be informed of the appointment of the said Sanjukta Roy as an Assistant Teacher. Therefore, it is argued that the only issue before his client, Md. Mahidur Alam, was restoration of his status as Assistant Teacher upon setting aside the order of termination.

Accordingly, his client, Md. Mahidur Alam filed WPA 13836 of 2021 seeking necessary reliefs against his unfair termination at the hands of the Board. The Hon’ble Court, upon consideration of the facts and the law involved, directed the President of the Board to reconsider the claim for reinstatement made by his client, Md. Mahidur Alam.

Per contra, Mr. Bhattacharyya draws the attention of this Court to several documents attached to MAT 494 of 2022 to demonstrate that prior to filing of WPA 13836

of 2021 by the said Md. Mahidur Alam, facts were already on record to show that the Board had taken steps to transfer his client, Sanjukta Roy as Assistant Teacher to the School-in-issue.

It is reiterated that there has been a gross suppression of facts before the Hon'ble Single Bench which issued the Order dated 14th of September, 2021 in WPA 13836 of 2021. It is also submitted by Mr. Bhattacharyya that the school was hand in gloves with the said Md. Mahidur Alam and hence did not appear at the hearing before the Hon'ble Single Bench on the 14th of September, 2021. Accordingly, as correctly noticed by the second Hon'ble Single Bench in its Order dated 7th of April, 2022, the Hon'ble Single Bench hearing WPA 13836 of 2021 was misled into passing the Order dated 14th of September, 2021.

On behalf of the other Respondents namely, the erstwhile Headmaster of the School-in-issue and the present Headmaster, Mr. Partha Sarathi Bhattacharyya, Learned Senior Counsel and Mr. Mansur Ali, Learned Advocate respectively appear.

It is brought to the notice of this Court that there is an *interim* order of the Hon'ble Division Bench granting stay of operation of the Order of the Hon'ble Single Bench dated 7th of April, 2022 with regard to paragraphs 14, 15 and 16 of the said Order dated 7th of April, 2022. This Court is taken to the contents of

paragraphs 14, 15 and 16 of the Order dated 7th of April, 2022 and finds that the Hon'ble Single Bench had restrained the present Headmaster of the School-in-issue from serving in his present capacity and drawing benefits therefrom. However, such order of restraint has been stayed by the Hon'ble Division Bench.

The Hon'ble Single Bench has treated the Writ Petitions, being WPA 15962 of 2021 as considered by the Order dated 7th of April, 2022, to be heard-in-part. The next date of hearing of the Writ Petition has been fixed on the 12th of August, 2022. Mr. Ali, Learned Advocate appearing for the present Headmaster, submits that the *interim* order be continued and the present Headmaster be allowed to serve in his official capacity at the School-in-issue.

Having heard the parties and considering the materials placed, this Court finds that by the Order dated 7th of April, 2022, the Hon'ble Single Bench had correctly appreciated the facts and the law applicable. The Hon'ble Single Bench has also analysed the role of the parties claiming to be Assistant Teachers of the School-in-issue as well as the role of the school itself. The Hon'ble Single Bench had accordingly passed directions which appear in the following paragraphs and are reproduced below:-

“20. Learned advocate for the Md. Mahidur Alam, being the added

respondent, has also drawn my attention to Rule 11 of the aforesaid Rules of 2018 which says about interpretation and relaxation of rules.

... ..

22. Therefore, I set aside and quash the order dated 08.11.2021 passed by the President of the Ad hoc committee of the Board which is the disciplinary authority whereby said Md. Mahidur Alam was allowed to join the service in his post after withdrawal of the termination.

23. Now I direct the concerned DI to take immediate steps to declare that the petitioner of WPA 15962 of 2021, Ms. Sanjukta Roy, has joined the vacant post as was written by the DI and not only the DI, the Commissioner of School Education on different dates to the school, (as has been referred above) and Ms. Sanjukta Roy's confirmation in the service shall be made by the said DI within a period of seven days from date of this order.

... ..

25. I direct the school to take note of this order immediately as the present Teacher-in-Charge who has been appointed for one month from date after removal of the said headmaster who suppressed facts from the chairman of the Board being the Disciplinary Authority while reconsidering the matter by order of this court dated 14.09.2021 whereby the petitioner herein, namely Ms. Sanjukta Roy, was harassed for a substantial period of time.

26. This matter is kept pending as the lady after harassment has joined the post after 13 months and her pending salary has still not been paid though the persons have submitted before this court through their learned advocate Mr. Bhattacharya that on 11th April, 2022 the entire due salary would be paid by cheque to the lady, being the petitioner herein

and I grant liberty to the petitioner to mention, either personally or through her learned advocate or any other advocate, before me if she is harassed or any unwarranted comment or untoward gesture is made to her in the school.”

From a complete appreciation of the materials placed, this Court is of the view that the rules and regulations connected to the appointment and termination of Assistant Teachers in the facts of the case were correctly appreciated by the Order dated 7th of April, 2022. This Court also finds that by the Order dated 7th of April, 2022 the Writ Petition has been marked as heard-in-part and hence the *lis* between the parties cannot be said to have absolutely concluded.

Accordingly, the Order impugned dated 7th of April, 2022 stands affirmed. The Hon’ble Single Bench shall hear out all the pending writ petitions on merits.

The Order dated 14th of September, 2021 stands accordingly set aside.

MAT 494 of 2022 with **IA No. CAN 2 of 2022** for leave to appeal stands accordingly **allowed**.

IA No. CAN 1 of 2022 and **IA No. CAN 3 of 2022** in **MAT 494 of 2022** stand accordingly **disposed of**.

MAT 562 of 2022 with IA No. CAN 1 of 2022, MAT 631 of 2022 with IA No. CAN 1 of 2022 and MAT 596 of 2022 with IA No. CAN 1 of 2022 stand thus dismissed.

Interim Orders, if any, stand thus discharged.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Lapita Banerji, J.)

(Subrata Talukdar, J.)