

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side**

The Hon'ble Justice Lapita Banerji

WPA No.5549 (W) of 2016

With

IA No. CAN 1 of 2017 (Old No. CAN 10830 of 2017)

Tarapada Mondal and others

Vs.

The State of West Bengal and Others

For the petitioners	: Mr Amitava Mukherjee Ms. Arpita Saha Ms. Ankita Ghosh
For the State- respondent	: Mr. Tapan Kumar Mukherjee Mr. Somnath Naskar
Hearing concluded	: 03/08/2022
on Judgment on	: 26 th August 2022

1. **Lapita Banerji, J.:-** The challenge in the Writ Petition is against the Order dated February 17, 2016 passed by the Director of Mass Education, Government of West Bengal (Impugned Order). By the Impugned Order, the Director of Mass Education/respondent No.2

rejected the prayer of absorption of the petitioners who claim to be the organizing staff at Nimbark Math Pratibandhi Siksha Niketan (the School) in the District of Medinipore.

2. The undisputed facts of the case are:

- (a) The School got recognition from the respondent No.1/Deputy Secretary,

Mass Education Extension Department on October 12, 1998 vide Memo

No.2593/Edn(MEE).
3(a)-33/93
- (b) Along with the application for recognition the Institute submitted a list of organizing staff of the Institute, both teaching and non-teaching to the State Government, in 1991.
- (c) The said Institute got the sponsorship from the Government of West Bengal on February 10, 2006 with effect from December 1, 2005. Along with the initial application for sponsorship, the staff pattern of the school was also sent by the school through its Principal/Secretary in 2004.
- (d) The name of the petitioner No.1 would appear at Sl. 9. In the revised list From perusal of the said list, it would appear that the petitioner No. 1 was a 'Madhyamik pass' candidate and he worked in the post of a Peon in 2005. 141-MEE/Sectt.
- (e) From the sponsorship granted vide Memo No. 3'S'-27/2000 Pt.I,

it will appear that dated February 10, 2006, 16 teaching and non-teaching posts as detailed in the Annexure 'A' were accorded sponsorship from December 1, 2005 by the State Government.

- (f) Pursuant to the said sponsorship, initially appointments of 6 people were approved on June 1, 2007.
- (g) Later one more person was appointed on March 24, 2008.
- (h) In the initial application for sponsorship dated December 21, 2004 vide Memo No.S/51/04, 16 posts were requested to be sanctioned as per Annexure – A, even though the list of teaching and non-teaching staff of the people employed at the Institution were shown to be 20.
- (i) A second list was forwarded in June 2005 containing names of 14 staff members instead of twenty staff members as many were not attending school.
- (j) Despite the revised list for approval of the staff pattern forwarded on June 9, 2005, 6 months prior to the date of sponsorship, the respondent No.2 failed to consider the representation of the writ petitioners for approval of their appointments.
- (k) Being aggrieved by and dissatisfied with the action of the respondent No.2, the writ petitioners filed a previous Writ Petition being W.P.A. No.11811(W) of 2009, (**First writ petition**) which was disposed of by an Order dated September 11, 2009, passed by a Coordinate Bench of this Hon'ble High Court directing the

respondent No.2 to give a hearing and consider the representation of the petitioners and pass a reasoned order.

- (l) By the **First Impugned Order** dated December 18, 2009 vide Memo No.824/1(11)/10/E dated December 18, 2009 the respondent No.2 held:

“As per regulations the school authority cannot appoint any staff in between the date of application for sponsorship and the actual date of issue of sponsorship order without the permission of the Director, Mass Education Extension. And, for every appointment after the date of sponsorship of the school requires approval of the Government in the form of a Govt. order which is issued after clearance from the Finance Dept. as well as the State Cabinet and such appointment requires a specific procedure through advertisement in open media and selection by a committee to be appointed by order of the Director and since none of the procedures has been followed in case of the present petitioners their appointments by the school authority after sponsorship are arbitrary and cannot stand the test of rules/G.O. for such appointments.”

- (m) Therefore, the respondent No.2 came to the conclusion that the appointments of the petitioners were against the Government norms and if approved, will open a flood gate of applications of

such illegal appointments. Therefore, the prayers for approval of appointments of the petitioners stood rejected.

- (n) Challenging the reasoned/**First Impugned Order** dated December 18, 2009, the writ petitioners filed a Second **Writ** Petition being W.P. No.7449(W) of 2010. By an order dated June 14, 2012 passed by a coordinate Bench, the Memo dated December 18, 2009 was quashed and the respondent No.2 was directed to take a fresh decision relating to the approval of the appointments of the petitioners in the light of the fact that the cut-off date for granting approval of the appointments of the existing regular staff was to be the “date of the **sponsorship**” and “not the date of **academic recognition**”.
- (o) Pursuant to the Order dated June 14, 2012 the respondent No.2 by its Memo dated January 24, 2013 vide Memo No.58(5)/AB/E (**Second Impugned Order**) again rejected the prayer of the petitioner No.1 by, inter alia, formulating wrong questions relating to the issue whether the petitioners were working in the school/Institution at the time of academic **recognition** of the school.
- (p) On the issue that the petitioners were not working in the school on the “date of the **recognition**”, the prayers for absorption of the petitioners were rejected.

- (q) The **Second Impugned Order** dated January 10, 2013 was challenged by a **Third Writ Petition** filed by the writ petitioners by W.P. No. 15286(W) of 2013.
- (r) By an Order dated November 19, 2015, passed by a Coordinate Bench of this Hon'ble Court, the **Third Writ Petition** being W.P. No. 15286(W) of 2013 was disposed of.
- (s) The Hon'ble Coordinate Bench recorded that despite several opportunities given to the State respondents, no one appeared on their behalf and came to the finding that the **Second Impugned Order** passed on January 10, 2013 proceeded on the basis of the "date of **recognition**." All the four issues framed in the Order were considered on the basis of the "date of **recognition**." Therefore, the respondent No.2 proceeded on the wrong basis and came to an erroneous conclusion. Therefore, the **Second Impugned Order** would not be sustained and/or set aside.
- (t) The respondent No.2 was directed to consider the issue of approval of appointment of the writ petitioners afresh.
- (u) Pursuant to the Hon'ble High Court's Order dated November 19, 2015, in the **Third Writ Petition**, the respondent No.2 passed the present/ impugned Order dated February 19, 2016 vide Memo No.114(5)/AB/EOM-1/SB/MEE/16.
- (v) By the said impugned Order the prayers of four writ petitioners were rejected and one writ petitioner/Malati Gharami (Dhara)'s

prayer was allowed. The reasons in the third impugned order were:-

- (i) In the first list of the staff members submitted with the proposal for sponsorship in 2004, the names of the writ petitioners were not present. Their names were present in the revised list of staff which was submitted for approval of the appointments in June 2005.
 - (ii) The authorities appointed the writ petitioners after submission of the proposal of sponsorship. The authorities had to take express permission from Director of Mass Education for doing so. Admittedly, no express permission from the Director was taken.
 - (iii) Furthermore, the school authorities adopted a method that was directly against Clause 7 of the sponsorship policy dated September 13, 1996 and therefore, violated the sponsorship policy and the constitutional provisions. Therefore, the writ petitioners could not be appointed in any course in the school.
3. Mr. Amitava Mukherjee, Learned Counsel appearing for the petitioners argued that pursuant to the Order dated May 14, 2012 passed by this Hon'ble Court, the words '**existing** and **regular**' denote the regular staff working on the "date of **sponsorship**" and not afterwards. Admittedly, all the petitioners were found to be working prior to the "date of

sponsorship.” Therefore, the prayers for approval of appointment could not be rejected on the ground that their names were forwarded by the school after the initial application for sponsorship. From the letter dated June 9, 2005, it would clearly appear that the petitioners’ names were there in the staff pattern of the school. Therefore, the existing staff pattern was brought to the notice of the authority concerned 6 months prior to the approval of sponsorship.

4. Therefore, there has been no violation of any Notification of the Government. The Order passed on June 14, 2012 clearly stipulates the date of accepting the **regular** and **existing** staff as “date of **sponsorship.**” Without preferring an appeal the respondent No.2 could not have rejected the prayer for approval on the ground that their names were forwarded after the “initial application for sponsorship” in 2004.
5. Mr. Tapan Mukherjee, Learned Additional Government Pleader rebutted the submissions of Mr. Amitava Mukherjee, Learned Counsel appearing for the petitioners, on the ground that the approval of the appointment of the petitioners should only be done in accordance with Clause 7 of the sponsorship policy, vide G.O. No. 833-Edn(MEE) dated September 13, 1996. He further submitted that any appointment had to be in accordance with the approved posts on the date of sponsorship. He relied the case of Secretary, State of Karnataka and Ors vs. Uma Devi & ors. 2006(4) SCC 415 for supporting his contention.

6. Having considered the submissions of the parties and the materials on record, this Court finds:

- (a) By the **First Impugned Order** dated December 18, 2009 the respondent No.2 specifically rejected the prayer of the petitioners on the ground that the school could not appoint any staff in between the date of application for sponsorship and the date of actual issue of sponsorship order without the permission of the Director, Mass Education Extension.
- (b) Having considered the ground for rejection in the **First Impugned Order** of the respondent No.2, the Order dated June 14, 2012 was passed by a Coordinate Bench of this Hon'ble Court, whereby, the **cut-off date** for the regular staff working at the Institution/school was held to be the date of **sponsorship** and not afterwards.
- (c) No appeal was preferred from the Order dated June 14, 2012.
- (d) The findings in the said Order were also reiterated by an Order dated November 12, 2015 passed by another Coordinate Bench of this Hon'ble Court whereby the **Second Impugned Order** was quashed.
- (e) No appeal was preferred from the said Order dated November 12, 2015.
- (f) The **Third Impugned Order** dated February 17, 2016 has been passed in the teeth of two Orders of this Hon'ble Court

which clearly ‘stipulated the **cut-off date**’ to be the date on which the ‘**sponsorship**’ was approved of by the State Government and not any date prior to that.

- (g) In 2004 when the sponsorship was initially applied for, the school prayed for approval of 16 posts of teaching and non-teaching staff as per Annexure – A. All the said 16 posts were recognized and approved of by the letter dated February 10, 2006 from December 1, 2005.
- (h) In the initial list of the regular staff pattern sent in 2004, names of 20 staff were mentioned.
- (i) In the revised list for approval of sponsorship sent in 2005, the names of only 14 staff members, who were working regularly, were forwarded even though the prayer for approval of 16 staff members were made initially with the application for sponsorship.
- (j) The school authorities reduced the number of staff members in 2005 compared to the list that was initially forwarded to the State Government for approval in 2004. Therefore, the school authorities never intended any additional burden on the state exchequer.
- (k) With all the relevant materials before the State Government, it could have approved of lesser number of posts than the initial

number applied for and therefore, reduced the notional burden on the public exchequer on that date.

- (l) In fact, the school authorities acted with *bona fide* intent by stating that due to the exigency that arose because of some of the old staff members not attending the school duties, a revised list was required to be submitted.
- (m) The State Government had the revised list before it, 8 months prior to approval of the sponsorship to the school in February, 2006.
- (n) By no stretch of imagination can it be argued that the school authorities were trying to expand the list of the staff pattern behind the back of the State Government.
- (o) From Clauses 1 and 2 of the communication approving of sponsorship dated February 10, 2006, it appears:

“1. The existing teaching and non-teaching regular staff of the institution will be absorbed against the respective posts, as sanctioned herein and will be placed in the respective scales of pay. The scale of pay will be allowed to the teachers (Primary and pre-primary/preparatory grade) as the case may be in terms Notification number 553-Edn(MEE) DATED 20-4-95. The organizing staff having requisite qualification and training will be absorbed in the teaching post.

2. *No expansion in the setup of teaching/non teaching staff should be effected without prior approval of the Govt.”*

- (p) Therefore, no expansion was allowed by the school for teaching/non-teaching staff without prior approval of the Government from the date of communication of the sponsorship. Furthermore, all the 16 respective posts as per the Annexure 'A' to the application of 2004 were approved of by the State Government.
- (q) Therefore, the decision of **Uma Devi** (Supra) does not aid the respondents in any manner. The petitioner No.1 is seeking appointment against the post approved of by the State Government. The said list of sanctioned posts appear at page 17 of the Affidavit-in-Reply affirmed by the writ petitioner No.1 on November 15, 2017.
- (r) The appointment of the writ petitioner No. 1 was confirmed by a letter dated April 28, 1993 in the post of a rehabilitation officer. The said confirmation was made much prior to the date of **recognition** and as a corollary much prior to the date of approval of **sponsorship** given by the State Government.
- (s) Later, considering the requisite qualification of the writ petitioner No. 1 he was demoted to the post of peon.

- (t) No allegation has been made by the state respondent that the qualification of a 'Madhyamik pass candidate was not the requisite qualification for the sanctioned post of a peon.
- (u) Not only was the post of a peon approved by the State Government vide its communication dated February 10, 2006 but also a 'Madhyamik pass' candidate was deemed to have requisite qualification for the said post .
- (v) The fact that the writ petitioner No.1 is being harassed by agitating the same issue, again and again in the teeth of the orders passed by this Hon'ble Court, is also not lost upon this Court.
- (w) The Director of School Education by its first impugned Order tried to raise issues regarding two people working in the said school by the same name of Tarapada Mondal. The said issue is irrelevant since the revised staff pattern which was submitted on June 9, 2005 before the State Government for approval of sponsorship was for the approval of a Peon by the name of Tarapada Mondal who was a Madhyamik pass candidate and not of any Accountant by the name of Tarapada Mondal who was Graduate and worked as Accountant.

In the light of the discussions above, the impugned Order passed by the respondent No.2 on February 17, 2016 is quashed and/or set aside.

The Director of Mass Education Extension/Respondent No.2 is directed to give a fresh hearing to the writ petitioners keeping in mind the observations made hereinabove.

Such hearing is to be given within 4 weeks from the date of communication of this Order.

With the directions aforesaid, **W.P.A. No. 5549 of 2016** along with I.A. No. **CAN 1 of 2017** are **disposed of**.

An urgent Xeroxed certified copy, if applied for, be made over to the parties upon completion of all the requisite formalities.

(Lapita Banerji, J.)