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**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**WPA 17765 of 2021
(via Video Conference)**

**The Managing Committee of Margram High
Madrasah
-versus
The State of West Bengal & Ors.**

**Mr. Riaz Abedui,
Mr. Karim Warsi,
Mr. Asif Dewan,
Mr. Rahim Warsi,
Mrs. Arpita Mandal.
...For the Petitioner.**

**Mr. Rabi Shankar Chattopadhyay
Mr. Santanu Maji.
...For the respondent Nos. 7, 8
& 10.**

**Mr. Nadeem Sulaiman
...For the Madrasah Board**

The present writ petition has been filed by the Managing Committee by Margram High Madrasah (H.S.) represented by its Secretary.

The petitioner is aggrieved by the order dated 8th October, 2021 passed by the Secretary, West Bengal Board of Madrasah Education whereby the Board superseded the Managing Committee and directed the District Inspector of Schools (SE), Birbhum to appoint a DDO for smooth functioning of the Madrasah and subsequently the proposal for administrator will be sent.

The District Inspector was also directed to take all necessary steps in order to join the complainants namely Monirul Islam, Chanchal Pal, Subhayan Kumar and Wadida Khatun who were duly recommended by the West Bengal Madrasah Service Commission for the post of Assistant Teacher in the aforesaid Madrasah.

Direction was also passed to take all necessary action in order to conduct fresh election by strictly following the Management of Recognized Non-Government Madrasah (Aided and Unaided) Rules, 2002 for the formation of new Managing Committee.

According to the petitioner, the said order was passed *ex parte* without giving the Managing Committee of the Madrasah an opportunity of hearing.

It is the case of the petitioner that SLP being WP (Civil) Diary No. 1147 of 2021 relating to the recruitment of Assistant Teachers of the Madrasah was pending consideration before the Hon'ble Supreme Court and as such, the complainants being the private respondents herein who were recommended by the Madrasah Service Commission cannot be permitted to join the said Madrasah.

From the reasoned order that is impugned herein it appears that the Board of Madrasah Education took up the issue in response to the several complaints received by the Board against the existing Managing Committee. The Board has recorded that the aforesaid persons were recommended by the West Bengal Madrasah Service Commission for the post of Assistant Teacher through General Transfer Counselling.

The Board on receipt of the complaints decided to call for a hearing to understand the issue and decide the same on merits. Initially a hearing was called on 22nd April, 2021 with prior intimation to all concerned. On the said date the representative of District Inspector of Schools was present. As the other parties were not available the Board adjourned the hearing and fixed the same on 12th August, 2021.

The President of the Managing Committee of the Madrasah forwarded a letter to the Board on 11th August, 2021 with a prayer to postpone the hearing mentioning that they had already recruited other candidates as Assistant Teachers and Writ Petition (Civil) Diary No. 1147 of 2021 was pending consideration before the Hon'ble Apex Court. It was clearly mentioned that Managing Committee was unable to issue joining letter in favour of the candidates recommended by the West Bengal Madrasah Service Commission due to pendency of the writ petition before the Hon'ble Supreme Court.

On 12th August, 2021 that is on the scheduled date of hearing, the petitioner failed to appear.

The petitioner has annexed a photo copy of the status report of the aforesaid SLP that is available in the website of the Hon'ble Supreme Court. The same shows that Diary No. 1147 of 2021 was filed on 16th January, 2021 and the case was lying in the defect list for 90 days. It has been candidly submitted by the learned Advocate represented the petitioner that the defect has not been removed till date.

Learned Advocate representing the Board of Madrasah Education submits that the Board never

approved the service of any teacher appointed by the Managing Committee of the Madrasah.

Learned Advocate representing the respondent nos. 7, 8 and 10 submits that they were duly recommended by the West Bengal Madrasah Service Commission but the Managing Committee of the Madrasah is obstructing and restraining them to join their duties.

It appears from the submissions made on behalf of all the parties that the reasoned order, impugned herein, was passed after giving due opportunity of hearing to all necessary parties. The petitioner admittedly did not remain present at the time of hearing.

The petitioner primarily relied upon pendency of the writ petition before the Hon'ble Supreme Court being (Civil) Diary No. 1147 of 2021. The said petition was filed before the Hon'ble Supreme Court on 16th January, 2021 and from the date of filing of the writ petition no step was taken to cure the defects of the same. Till a petition is properly filed and numbered it cannot be said that the same is pending consideration before the Court for adjudication. Accordingly, it can be safely concluded that no writ petition on this issue is pending consideration before the Hon'ble Supreme Court.

Madrasah Service Commission has recommended the name of the private respondents through General Transfer Counselling for appointment in the said Madrasah and it is incumbent upon the Managing Committee to allow the said persons to join their duties immediately.

In view of the above, the instant writ petition is disposed of by directing the District Inspector of School (SE), Birbhum to take immediate steps to ensure that the private respondents are permitted to join the Madrasah. Steps shall be taken in the matter by the District Inspector of Schools at the earliest but positively within a period of seven days from the date of communication of a copy of this order.

The petitioner is restrained from either obstructing the private respondents in joining the Madrasah or performing their duties.

After dictating the order in open Court, prayer has been made by the Learned Advocate for the petitioner for stay of the order passed herein.

I have considered the prayer of the petitioner and refuse to stay the order as it is evident that the petitioner is openly trying to stall the joining of the private respondents who have been recommended by the West Bengal Madrasah Service Commission in a very illegal and arbitrary manner.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)