

Court No. 22
01.12.2022
(Item No. 76)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 17242 of 2022

Mir Serajul Islam
VS
The State of West Bengal & Ors.

Mr. Robiul Islam
Nr. Jayed Hossain
..... for the petitioner
Mr. Supriyo Chattopadhyay
Mr. Suman Dey
.....For the State

Affidavit of service filed in Court, is taken on record.

The petitioner claimed to have appointed as an organizing **Clerk** of **Madrasah Siksha Kendra, Talnanna.**

When he applied for approval of his employment he did not qualify because of the relevant age bar. Subsequently the State authority had issued a notification dated September 11, 2017 at **page 27** to this writ petition fixing certain eligibility criteria for approval with regard to the age bar.

The writ petitioner filed a previous writ petition, **WPA 4825 of 2022** which was disposed of by a co-ordinate bench by its order dated April 12, 2022, **Annexure P-13** to the writ petition.

The relevant observation from the said order dated April 12, 2022 is quoted below:

***“The petitioner prays for granting approval of his service in accordance with the memo of the Department dated 11th September, 2017.*”**

As it appears that the case of the petitioner is pending consideration for approval before the Minority Affairs and Madrasah Education Department accordingly, the instant writ petition is disposed of by directing the respondent No. 3 being the District Inspector of Minority Affairs, Purba Medinipur to take a decision with regard to the prayer of the petitioner for approval of his service in accordance with the Departmental Memo dated 11th September, 2017.

Decision shall be taken within a period of eight weeks from the date of communication of a copy of this order and the reasoned order be communicated to the petitioner immediately thereafter.

The petitioner is directed to forward all supporting documents to the aforesaid respondents at the time of communicating the order passed by the Court.

The writ petition stands disposed of

Pursuant to the said direction the respondent No. 3 had passed its reasoned order dated June 24, 2022 as would be evident from the order sheet annexed to the writ petition as **P – 14** and the relevant portion starts at **page 40** to the writ petition.

Mr. Robiul Islam, learned advocate appearing for the petitioner submitted that, the said impugned order of the respondent No. 3 dated June 24, 2022 is wholly perverse on the face of it as while passing the said impugned order the respondent No. 3 failed to consider the scope of preference fixed in the said order dated April 12, 2022. He specifically submitted that,

while passing the impugned order the memo of the State authority dated September 11, 2017 at **page 27** to this writ petition was never discussed and accordingly was never taken into account. In as much as, he further submitted that, the document disclosed in this writ petition which were there before the respondent No. 3 would clearly show that there was no unauthorized absence on the part of the petitioner and the petitioner was eligible for approval of his employment in every respect.

Mr. Supriyo Chattopadhyay, learned State counsel appears for respondent Nos. 1 and 3 referring to entire order sheet passed by the respondent No. 3, **Annexure P-14** to the writ petition submitted that, the very beginning of the said order recorded that, the impugned order was passed in terms of the direction made on April 12, 2022 in the erstwhile writ petition and hence the case of the petitioner was considered strictly in terms thereof and without any deviation there from. He submitted that, just because the said memo of the State authority dated September 11, 2017 was not mentioned in the impugned order, this cannot render the impugned order perverse. He submitted that, from a plain reading of the entire order sheet it would be evident that, the case of the petitioner was duly considered upon due fact finding enquiry being conducted by the respondent No. 3 and the case of the petitioner was rejected accordingly. He

also submitted that, since the unauthorized absence was proved beyond doubt against the petitioner, the question of approval in any event did not arise.

After considering the rival submissions made on behalf of the parties and upon perusal of the materials on record it appears to this Court that, the direction of the co-ordinate bench in its said order dated April 12, 2022, **Annexure P-13** to the writ petition was very specific as quoted above. On a scrutiny of the entire order sheet containing the decision of the respondent No. 3, **Annexure P-14** to the writ petition, this Court is of the firm view that, the scope, effect and application of the said memo dated September 11, 2017 at **page 27** to the writ petition was never discussed in the facts of the case of the petitioner. The hearing authority had not come to a specific finding whether provisions under the State authorities memo dated September 11, 2017 would apply or would not apply in the facts and circumstances of the petitioner's case.

In absence of such finding, this Court is of the view that, entire hearing proceeding before the respondent No. 3 including the said impugned order dated June 24, 2022 suffers from serious infirmity and perversity is apparent on the face of it.

For the foregoing reasons and discussions the entire decision of the respondent No. 3 as contained in the entire order sheet **Annexure P-14** to the writ

petition **including the decision of the respondent No. 3 dated June 24, 2022 stands set aside and quashed.**

However. The respondent No. 3 is further directed to **revisit** the issue on the basis of the existing materials and records before it and without being influenced by any observation either made by it on the previous occasion or by this Court in this order.

The respondent No. 3 is directed to consider the case of the petitioner upon giving at least seven days prior hearing notice to the petitioner and respondent No. 4/the relevant Madrasah authority and then after giving them an opportunity of hearing shall decide the issue with its reasoned decision/order strictly **in terms of the direction made by the co-ordinate bench in the earlier writ petition in its order dated April 12, 2022 in accordance with law.**

The entire exercise as directed above, shall be carried out and completed by the respondent No. 3 positively within a period of six weeks from the date of communication of this order and then the respondent No. 3 shall communicate its reasoned decision/order to the petitioner and the relevant Madrasah within a further period of two weeks from the date of the said reasoned order to be passed.

In the event, the reasoned order goes in favour of the petitioner, then the respondent No. 3 shall take

all further necessary and consequential steps on the issue strictly in accordance with law within a further period of four weeks from the date of communication of the said reasoned order to the petitioner and the relevant Madrasah authority.

It is made clear that, this Court has not gone into the merit of the claim of the writ petitioner in any manner whatsoever and **the same shall be decided strictly in terms of the reference made in the order of the co-ordinate bench dated April 12, 2022 on the basis of the existing materials before it as directed above.**

All points are kept open for the petitioner to urge before the respondent No. 3. The petitioner will be at liberty to rely upon whatever documents and record it wishes to rely upon. Similarly the other parties also will be at liberty to rely upon whatever documents they wish to rely upon before the respondent no. 3 with their supporting materials.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

It is further made clear that, this order shall not create any equity in favour of the petitioner, in the event, the petitioner is otherwise not eligible to receive the claim as made by him after considering the issue strictly **in accordance with the direction made on April 12, 2022 by the co-ordinate bench.**

On the above terms, this writ petition being **WPA 17242 of 2022** stands disposed of.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)