

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Reserved on: 14.11.2022
Pronounced on: 25.11.2022

WPA (P) 351 of 2022

Molla Abdus Samad

...Petitioner

-Vs-

State of West Bengal and Ors.

...Respondents

Along with

CONSTITUTIONAL WRIT JURISDICTION
(Original Side)

WPO 10 of 2018

Molla Abdus Samad & Anr.

...Petitioners

-Vs-

State of West Bengal and Ors.

...Respondents

Present:-

Mr. S.S. Arefin,
Ms, Payel Ghosh,
Ms. Nadira Abedi,
Ms. Priyanka Sharma,
Mr. Kaustuv Mitra, Advocates

... for the petitioners

Mr. S.N. Mookherjee, Id. AG
Sk. Md. Galib,
Mr. Yash Singhi, Advocates

...for the State
in WPA (P) 351 of 2022

Mr. S.N. Mookherjee, Id. AG
Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag, Advocates

...for the State
in WPO 10 of 2018

Mr. T.M. Siddiqui,
Mr. Nilotpal Chatterjee,
Ms. A. Pandey, Advocates

... for the respondent nos. 4 & 5
in WPA (P) 351 of 2022

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Prakash Shrivastava, CJ:

1. This order will govern the disposal of WPO 10 of 2018 and WPA (P) 351 of 2022.

2. WPO 10 of 2018 was filed by the petitioner raising grievance that Waqf Tribunal, West Bengal had become defunct with effect from 1st of December, 2017 on account of non-availability of one ex-officio member leading to the inconvenience of the lawyers and the litigants. The further plea was raised that after coming into force of the Waqf (Amendment) Act, 2013, the State Government had not framed any Rules though the Ministry of Minority Affairs, Government of India had prepared the Model Waqf Rules, 2016. Hence, in the petition, a direction was sought to the official respondents to repeal/amend the West Bengal Waqf Rules, 2001 by incorporating proper amendment following guidelines of Model Waqf Rules, 2016. A prayer was also made to ensure uninterrupted functioning of the Waqf Tribunal, West Bengal.

3. Undisputedly, after filing of WPO 10 of 2018, West Bengal Waqf Rules, 2022 have been notified on 6th of May, 2022. The members of the Waqf Tribunal have been appointed in terms of Section 83(4) of the Waqf Act, 1995 (for short, 'the Act'). Infact, the appointment of the members has been challenged by the petitioner in the connected petition. Hence, nothing survives in WPO 10 of 2018 which is accordingly dismissed as infructuous.

4. WPA (P) 351 of 2022 is a public interest petition filed by the petitioner claiming himself to be a practicing advocate of his Court and member of the Bar Association of Waqf Tribunal. In this public interest petition, the petitioner has challenged the appointment of respondent nos. 4 and 5 as member of the Waqf Tribunal on the ground that their appointment has been made in violation of the provisions of Section 83(4)(b) and (c) of the Act and without complying with the provisions of Rule 64(3) of the Waqf Rules, 2022.

5. Submission of learned counsel for the petitioner is that respondent no. 4 was working as Chief Executive Officer of the Waqf Board and the respondent no. 5 was working as Senior Law Officer in the Board of Waqf, therefore, their appointment under Section 83(4)(b) and (c) of the Act cannot be sustained. His further submission is that there is conflict of interest as respondent no. 4 was earlier posted as Deputy Chief Executive Officer or Chief Executive Officer of the Board of Waqf and had passed orders in that capacity, therefore, he cannot be appointed as member of the Tribunal to examine the correctness of his own orders. He further submitted that respondent no. 5 does not have any specialisation in Mohammedan law and jurisprudence which is the mandatory requirement and the respondent nos. 4 and 5 have been appointed by following the pick and choose method and the procedure prescribed under Rule 64(3) of the West Bengal Waqf Rules, 2022 has not been followed.

6. Learned Advocate General has opposed the petition by submitting that PIL in a service matter cannot be maintained and that no writ of quo warranto has been prayed, therefore, appointment of respondent nos. 4 and 5 cannot be questioned. He has also submitted

that respondent nos. 4 and 5 fulfil the eligibility condition, therefore, their suitability cannot be examined and that there is no conflict of interest in appointment of the said respondents. Learned Advocate General has also submitted that the Rules of 2022 are not applicable in the appointment of the respondent nos. 4 and 5.

7. Learned counsel for the respondent nos. 4 and 5 has also supported the submission of learned Advocate General and has submitted that they fulfil the requisite eligibility conditions.

8. We have heard learned counsel for the parties and perused the record. Section 83(4) of the Act provides for the eligibility conditions for appointment of the members of the Waqf Tribunal and reads as under:

“(4) Every Tribunal shall consist of –

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member,

and the appointment of every such person shall be made either by name or by designation.”

9. So far as the respondent no. 4 is concerned, he has been appointed as member of the Tribunal under Section 83(4)(b) of the Act which requires the person concerned to be “an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate”. The notification dated 18th of February, 2022 reveals that the respondent no. 4 was working as Joint Secretary,

Minority Affairs & Madrasah Education Department, Government of West Bengal and is of West Bengal Civil Services (Executive) batch, 1998. He has been disclosed to be a Senior Officer of the State Government having service length of more than 22 years. He had served as Revenue Officer for about 3 years after being selected through the Public Service Commission. (PSC). Thus, respondent no. 4 fulfils the requisite eligibility conditions prescribed under Section 83(4)(b) of the Act.

10. So far as the issue of conflict of interest raised by the petitioner in respect of appointment of respondent no. 4 is concerned, he had worked as Chief Executive of the Board of Auqaf. The appointment of the respondent no. 4 as CEO was in terms of Section 23 of the Act and in terms of Section 23(3), the CEO is the ex-officio Secretary of the Board and is under the administrative control of the Board. It has been pointed out that the respondent no. 4 as CEO was only implementing and/or carrying out the resolutions and orders of the Board taken on various occasions. Therefore, there is no question of any conflict of interest. Once the respondent no. 4 has been found to be eligible for appointment, the issue of his suitability for the post need not be gone into by the Court in view of the judgments of the Hon'ble Supreme Court in the matter of **Mahesh Chandra Gupta vs. Union of India and Others** reported in (2009) 8 SCC 273 and in the matter of **M. Manohar Reddy and Another vs. Union of India and Others** reported in (2013) 3 SCC 99.

11. Learned counsel for the petitioner has also raised an issue that while making the appointment of the respondent no. 4, the

Selection Committee, as provided by Rule 64(3) of the West Bengal Waqf Rules, 2022, has not been constituted.

12. Record reflects that the appointment of respondent no. 4 as member of the Tribunal was made on 18th of February, 2022 whereas West Bengal Waqf Rule, 2022 has been notified subsequently on 6th of May, 2022. Hence, the petitioner cannot allege violation of the Rule which has come into force subsequently.

13. So far as respondent no. 5 is concerned, his eligibility for appointment has been questioned on the ground that he does not have knowledge of Muslim law and jurisprudence. The affidavit-in-opposition filed by respondent no. 5 reveals that respondent no. 5 was Senior Law Officer of the Board of Waqf. He is of the cadre of West Bengal Legal Services under the Law Department, Government of West Bengal and was selected through PSC. He is an LL.B and LL.M. degree holder and has studied Muslim law and jurisprudence as subject in law. As Law Officer, his reporting officer was the Chief Executive Officer of the Board. Relevant material relating to his qualifications has been placed on record. No conflict of interest in his appointment also has been found and he fulfills the eligibility condition prescribed under the Act.

14. That apart, a perusal of the public interest petition also reveals that there is no prayer seeking a writ of quo warranto as against the appointment of respondent nos. 4 and 5. Hence, in view of the judgment of the Hon'ble Supreme Court in the matter of **Hari Bansh Lal vs. Sahodar Prasad Mahto and Others** reported in **(2010) 9 SCC 655**, the PIL in service matter cannot be entertained.

15. Hence, we find no ground to interfere in this public interest petition which is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
25.11.2022

PA(RB)

(A.F.R./N.A.F.R.)