

17.11.2022
Court No.32
rpan/02

MAT 1221 of 2022
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IA No.: CAN 1 of 2022

**The Teacher In Charge, Dhuliyān High
Madrasah (H.S.) & Another
– Versus –
The State of West Bengal & Others**

Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee
... for the Appellants.
Mr. Supriyo Chattopadhyay,
Mr. Pinaki Bhattacharjee
... for the State.
Mr. Nadeem Sulaiman,
Ms. Sunita Guha
... for the Madrasah Board.
Mr. Sarwar Jahan,
Sk. Nayeemul Haque
... for the Respondent no.11

The present appeal has been preferred challenging an order dated 26th July, 2022 passed in a writ petition being WPA 9239 of 2022.

Mr. Roy, learned advocate appearing for the appellants submits that at the time of hearing of the writ petition a memo dated 15th July, 2022, issued by the respondent no.6, was not brought to the notice of the learned single Judge. By the said memo the approval of the respondent no.11 as teacher-in-charge of the Dhuliyān High Madrasah (H.S.) [in short, the said madrasah] was kept in abeyance until further orders.

According to Mr. Roy, the learned single Judge erred in law in disposing of the writ petition on the first

date without calling for affidavits from the parties and as such, all the relevant documents could not be placed for consideration.

Drawing our attention to an order passed in an earlier writ petition, being WPA 6952 of 2022 preferred by the appellant no.2, Mr. Roy submits that the learned single Judge in the said writ petition being *prima facie* satisfied about the allegations of financial irregularity, as levelled against the respondent no.11, was pleased to direct the District Inspector of schools (S.E), Murshidabad to cause an independent enquiry. A person against whom there are allegations of financial irregularity should not be allowed to function as the teacher-in-charge.

Per contra, Mr. Jahan, learned advocate appearing for the respondent no.11 submits that the said respondent had been appointed and approved as the assistant headmaster of the said Madrasah. As an approved assistant headmaster, he is also entitled to function as the teacher-in-charge of the said madrasah as presently there is no headmaster. Such proposition stands supported by the government circulars issued by the School Education Directorate. Let the circulars, as produced, be kept on record.

He further submits that the appellant no.2 himself contested with the respondent no.11 in the selection process conducted for filling up of the post of Assistant Headmaster. As the results were not palatable to the

appellant no.2, he had attempted to prevent the respondent no.11 to function as the teacher-in-charge. Appreciating such fact the learned single Judge rightly passed the order impugned in the present appeal. In spite of the order passed by the learned single Judge till date all the documents, as directed, have been illegally withheld.

Mr. Chattopadhyay, learned senior advocate appearing for the State respondents submits that it is no longer *res integra* that the institution where there is no headmaster/headmistress, the approved assistant headmaster/headmistress shall function as the teacher-in-charge. In support of such contention he has referred to the judgment delivered in the case of *Smt. Rina Roy Vs. State of West Bengal & Others* passed in *W.P. no.37202 (W) of 2013*.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It is well-settled that in the absence of a regular headmaster/headmistress in an institution, the approved assistant headmaster/headmistress should be allowed to function as the teacher-in-charge. Indisputably the respondent no.11 was approved as the assistant headmaster in the said madrasah by the respondent no.6, *vide* memo dated 1st February, 2022 after he emerged to be successful in the selection process. The memo dated 15th July, 2022 upon which reliance has been placed by

Mr. Roy is a memo issued by the respondent no.6 by which the approval of the respondent no.11 as teacher-in-charge had been kept in abeyance. The said direction, in our opinion, cannot prevent the respondent no.11 from functioning as the teacher-in-charge in the absence of a regular headmaster since he had been selected to the post of assistant headmaster on merit upon emerging to be successful in a selection process in which the appellant no.2 was also a contestant.

In view thereof, we do not find any infirmity in the order impugned in the present appeal.

The appeal and the connected application, being IA No.: CAN 1 of 2022 are, accordingly, dismissed.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)