

21.02.2022
SL No. 28
Court No. 24
(P.M)

WPA 19479 of 2021

Joyita Chakraborty
Vs
The State of West Bengal & Ors.
(Via Video Conference)

Mr. Sakti Pada Jana,
Mr. Subhajyoti Das
... for the petitioner.

Mr. Bhaskar Prasad Vaisya,
Mr. Joydip Banerjee
... for the State

The petitioner is aggrieved by the rejection of her prayer for approval of appointment by the District Inspector of Schools (Primary Education), Kolkata. The post in question is a sanctioned post of Jagabandhu Institution, a D.A. getting school.

The post fell vacant upon retirement of an approved teacher, Sabari Dasgupta on 24th December, 2018. The school authority applied for approval of appointment of the petitioner on 8th July, 2019 after the petitioner obtained the training qualification in May, 2019.

The ground for rejecting the prayer for approval of appointment is that the school authority did not inform the Government authority before starting the recruitment process. As D.A. will be paid from Government money, recruitment should be transparent and as per the approval of the

Government authority. Any mistake should not be reference for approval of an unauthorized appointment, if occurred previously.

The impugned order further mentions that the teacher was appointed without having the requisite training qualification as required according to the provisions of the RTE Act at the material point of time.

Learned advocate appearing on behalf of the petitioner has relied upon series of approval orders issued by the District Inspector of Schools (Primary Education), Kolkata in respect of several similarly placed teachers of the self same institution.

With regard to acquiring training qualification it has been submitted that as per the amendment made in Section 23(2) of the Right of Children to Free and Compulsory Education Act, 2009 as amended in 2017 every teacher appointed or in position as on 31st March, 2015, who does not possess minimum qualification as laid down under sub-Section (1) may acquire minimum qualification within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017.

It has been submitted that the proposal for approval of appointment of the petitioner was forwarded by the school to the District Inspector of Schools only after the result of the diploma in

Elementary Education was declared by the National Institute of Open Schooling on 22nd May, 2019.

Learned advocate representing the District Inspector of Schools (Primary Education), submits that in the event the teacher student ratio of the school is in accordance with the provisions laid down in the RTE Act, 2009, then the appointment of the petitioner may be approved by the said authority.

It has been submitted that the District Inspector of Schools may be directed to enquire about the teacher-student ratio of the said school.

After hearing the submissions made on behalf of the parties it appears that the ground taken by the District Inspector of Schools in rejecting the prayer of the petitioner that the school did not inform the Government authority before starting the recruitment process for advice will not be applicable in the present case. As per the Memorandum of the School Education Department dated 20th September, 2001 which is also followed in respect of the primary school, the vacant post within the sanctioned strength may be filled up from the teachers who are already working in the school but not in receipt of D.A. from the Government.

In the present case the petitioner appears to be the second senior-most teacher of the school who presently has the requisite qualification to be

approved in service. She was appointed on 10th June, 2013. The vacancy in question arose with effect from 24th December, 2018. The petitioner obtained her two year D.El.Ed. qualification in May, 2019. The proposal for approving the service of the petitioner was forwarded by the school in July, 2019.

It appears from the documents annexed to the writ petition and the exception thereto filed by the petitioner, that the order for approval of appointment has been issued in favour of several other similarly situated teachers of the self-same institution. There is hardly any reason for not approving the appointment of the petitioner on the grounds as mentioned in the impugned order.

Accordingly, the instant writ petition is disposed of by setting aside the impugned Office Memo dated 23rd March, 2020 by directing the District Inspector of Schools to reconsider the matter afresh strictly, in accordance with the relevant Government Memo which has been applied for approving appointment of the other teachers in respect of the self-same Institution. Such decision shall be taken within a period of twelve weeks from the date of communication of a copy of this order.

It will be open for the District Inspector of Schools to enquire as to whether the teacher-student ratio is being maintained in the said school or not.

The petitioner is directed to forward a copy of the order of approval of appointment passed by the District Inspector of Schools (Primary Education), Kolkata in respect of the other teachers of the self-same institution at the time of communicating the order of this Court.

The writ petition stands disposed of.

Exception in the form of an affidavit filed by the petitioner in Court today is taken on record.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

(Amrita Sinha, J.)