

05 18.8.2022
Sc Ct. no.22

WPA 25903 OF 2015

Mrs. Najmun Nesa Ansari & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya
Mr. Jakir Hossain.

... For the Petitioners

Mr. Raja Saha
Mr. Amit Kr. Ghosh.

... For the State

The State was represented on the previous occasion on July 13, 2022. The said order speaks for itself.

Today Mr. Amit Kr. Ghosh, learned advocate represents the State. No affidavit-in-opposition has been filed despite peremptory direction.

This is a writ petition assailing the impugned order dated September 16, 2015 passed by the fourth respondent, the ***District Inspector of Schools (S.E.), Hooghly*** pursuant to a direction made by a coordinate Bench in a previous writ petition on December 24, 2014. The scope of reference before the fourth respondent was very specific and the same is reproduced hereinbelow :

“The District Inspector of Schools (S.E.) Hooghly, is directed to reconsider the matter afresh, after giving an opportunity of hearing to the petitioners and other respondents within a period of eight weeks from the date of communication of this order. The District Inspector of Schools, while reconsidering the matter, shall come to a definite finding as to

whether the writ petitioners were working in the school by virtue of their respective appointments given by the organizing Managing Committee of the school in question and if it is found that the said petitioners were working in the school in question and if it is found that the said petitioners were working in the school on the basis of the letter of appointment issued by the organizing Managing Committee as contained in Annexure P-2 to the writ petition at pages 59,60 and 61, the District Inspector of Schools (S.E.) Hooghly, shall also take a decision positively within the aforesaid period to approve the appointment of the petitioners as Assistant Teachers of Fatema Girls' Junior High School with effect from the date of recognition of the school."

(emphasis supplied)

On a plain reading of the impugned order, **Annexure P-20** to the writ petition, it appears to be a result of sheer non-application of mind and perverse. While deciding the issue in reference as set out above, the fourth respondent held - **"In the above two cases the issuing person is same but the signature differs giving rise to suspicion to its genuinity."** But on what basis the fourth respondent could arrive at such inference was not mentioned or discussed and no reason whatsoever in support thereof was also mentioned in the said impugned order.

The fourth respondent mentioned in the impugned order that **Fatima Girls Junior High School** (for short

“the said school”) had received the recognition from the **West Bengal Board of Secondary Education** on August 1, 2000 as **New Set Up Upper Primary School** (from Class-v to Class-viii). Then the fourth respondent discussed as to the procedure and formality to be observed before granting recognition in favour of a **New Set Up Upper Primary School**.

The respondent no. 4 further observed that “.....accordingly the New Set Up Upper Primary School was recognised by the Board. If it was organised in nature the Fatema Girls Junior High School could never be recognised as the New Set Up Upper Primary School. As such, the regularisation of the so-called service of the petitioners does not arise at all.”

Such finding is also without any basis or reason whatsoever. Such finding was also beyond the scope of reference.

In view of the above, this Court is of the considered opinion that the impugned order suffers from ex facie perversity and a result of without application of mind by the fourth respondent.

In view of the foregoing reasons, the said impugned order dated September 16, 2015 passed by the fourth respondent, the **District Inspector of Schools, (Secondary Education)**, stands set aside and quashed.

This Court is of the firm opinion that justice would be subserved if the issue under reference as was fixed by

the coordinate Bench in its said judgment and order dated December 24, 2014 as quoted above is considered and decided by the concerned **Secretary, Education Department, State of West Bengal**, and can come to a reasonable conclusion within a specified time by passing a reasoned order/decision.

In view of the above, the **Secretary, Education Department, State of West Bengal** is directed to consider the issue as mentioned in the said judgment and order dated December 24, 2014 passed by the coordinate Bench as quoted above upon giving a prior hearing notice of at least seven days to the petitioners individually and also to the relevant school authorities and after providing an opportunity of hearing to each of the petitioners and also to the relevant school authorities in accordance with law and then shall pass a reasoned order/decision on the issue.

The entire exercise shall be carried out by the **Secretary, Education Department, State of West Bengal**, as directed above, within a period of six weeks from the date of communication of this order.

The **Secretary, Education Department, State of West Bengal** is further directed to communicate his reasoned order/decision to each of these petitioners and the relevant school authorities within a further period of two weeks from the date of the said reasoned order/decision to be passed.

It is needless to mention that while holding the reference and passing the reasoned order, the **Secretary, Education Department, State of West Bengal** shall consider all the factual aspects and materials in detail in accordance with law and then shall come to a reasonable conclusion.

In the event the decision goes in favour of the petitioners then the petitioners shall immediately be granted all the possible benefits to which they will be entitled to arising out of their services already rendered and all concerned respondents shall give effect to such benefits in favour of the petitioners positively within a period of three months from the date of the said reasoned order/decision to be passed.

It is to be noted that the first and the second petitioners have already retired from their respective services. However, if the order/decision goes in their favour, they must also get their respective benefits to which they are entitled to in accordance with law in the same manner and within such period as directed above.

Accordingly, this writ petition, **WPA 25903 of 2015** is disposed of. There will be no order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)