

ORDER SHEET
WPO/2482/2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

Surinder Kapoor.
Versus
The State of West Bengal & Ors.

BEFORE:
The Hon'ble JUSTICE ANIRUDDHA ROY
Date : 6th September, 2022.

Mr. Biswaroop Bhattacharya with
Mr. Chhandak Dutta, Advs.
... for petitioner.

Mr. Tapan Kr. Mukherjee, Sr. Adv.
With Ms. Tuli Sinha, Adv.
... for State respondents.

Mr. Tanoy Chakraborty with
Ms. Anjana Banerjee, Advs.
... for respondent no.9.

This writ petition assails the impugned order dated January 24, 2017 passed by the eighth respondent being **Annexure P-8** to the writ petition and the impugned order dated April 7, 2016 passed by the said eighth respondent being **Annexure P-11** to the writ petition.

The petitioner was appointed an English Teacher at the respondent no. 9 school which, according to the petitioner, is a linguistic minority school. The petitioner had been elevated to the post of Head Mistress of the respondent no.9 school in April 2015. The petitioner demanded the proportionate Government Dearness Allowance (D.A.) commensurating to her rank and for the approval for such elevated appointment. Supporting the cause of the petitioner, the respondent no.9

school had also made representation before the eighth respondent. The eighth respondent finally by the said two impugned orders, as mentioned above, rejected the demand of the petitioner and the supporting demand of the school holding that, the petitioner was not entitled to get Post-Graduate Scale of Pay as per the Government Order dated November 27, 2007 as mentioned in the impugned order dated January 24, 2017, Annexure P-8 to the writ petition. By the impugned order dated April 7, 2016, Annexure P-11 to the writ petition, the eighth respondent held that the appointment of the petitioner as Head Mistress was not in order as per the Government Rules laid down. The petitioner made a detailed representation before the respondent authorities by her letter dated June 20, 2022 being **Annexure P-14** to the writ petition.

Both the said impugned orders had been challenged through this writ petition principally on the ground, as submitted by Mr. Bhattacharya, learned Counsel for the writ petitioner that, both the said impugned orders were devoid of any reason and a result of non-application of mind on the part of the deciding authority. He placed reliance upon the circular dated November 27, 2007, which was relied upon by the eighth respondent while passing the impugned order and at the threshold, he submitted that, the said circular applies for the State-aided School and the respondent no.9 is

not being a State-aided School, the said circular had no application in the facts of this case.

Mr. Mukherjee, learned Senior Counsel and Additional Government Pleader appearing for the respondent nos. 1 to 8 submitted that, the impugned orders are not at all devoid of any reason. The impugned orders clearly mention about the relevant Government Circular under which the petitioner was disqualified and accordingly her prayer for approval in the post of Head Mistress as also the prayer for corresponding scale of pay/D.A. were rejected. He also relied upon the relevant provisions from The West Bengal Schools (Control of Expenditure) Act, 2005 and submitted that in view of the provisions laid down under the said Act, the petitioner was not eligible to succeed to her demand.

Mr. Chakraborty, learned Advocate appears for the respondent no.9. He submitted that, the issue being long pending before the eighth respondent, the school is also suffering. He also adopted the submissions made by Mr. Bhattacharya in support of the writ petition and further submitted that, both the said impugned orders being devoid of any reason, cannot sustain in the eye of law.

After considering the rival contentions argued by the learned Counsel for the appearing parties and on perusal of materials on record, it appears to this Court that, facts of this case are not really disputed by the

parties. The question remains for decision is whether the petitioner is eligible to get her approval from the State authority for acting as a Head Mistress of respondent no.9 school and whether she would be eligible for the corresponding D.A. commensurating her post as demanded by her.

This Court, in exercise of high prerogative writ jurisdiction, has a limited authority and jurisdiction to adjudicate upon the impugned orders being **Annexures P-8 and P-11** to the writ petition. This Court will only look into the decision-making process of the deciding authority while passing the said impugned orders. From a close scrutiny of the impugned orders, this Court is of the firm view that, no reason was mentioned therein as to why the demands of the petitioner were rejected. Mere mentioning of the circular dated November 27, 2007 would not suffice. It should have spelt out the reason specifically, as to why such circular would make the petitioner ineligible for not receiving the benefits in terms of her demand. Similarly, in the impugned order dated April 7, 2016, a vague observation was made that the placement or appointment of the petitioner as Head Mistress was not as per the Government Rules laid down. The order did not speak of as to why the specific Government Rules, if any, would not apply or make the petitioner ineligible for her appointment as Head Mistress in the school.

To ascribe reason in an order or decision, be it in an executive order or in a quasi judicial or judicial order, is an elementary rule, so that the person affected by such a decision must know the reason. Furnishing reason in a decision is a fundamental element of natural justice. In violation whereof the decision becomes without jurisdiction and bad in law. The two impugned orders, **Annexures P-8 and P-11** to the writ petition, suffer from serious infirmity being devoid of any reason.

In view of the forgoing discussion and reasons, **the two impugned orders dated January 24, 2017, Annexure P-8 and April 7, 2016, Annexure P-11 to the writ petition stand set aside and quashed.**

The respondent no.7 is directed revisit the issue on the basis of the representation of the petitioner **dated June 20, 2022, Annexure P-14** to the writ petition and to come to a reasonable conclusion thereupon with his reasoned decision and order. The respondent no.7 shall give a prior at least seven days hearing notice to the petitioner and also the respondent no.9 and upon giving an opportunity to both the petitioner and the respondent no.9 shall pass his reasoned decision/order on the issue.

The entire exercise, as directed above, shall be carried out and completed by the respondent no.7 within a period of six weeks from the date of communication of this order along with a copy of the said **representation dated June 20, 2022 being Annexure P-14** to the writ

petition. The respondent no.7 then communicate his reasoned decision/order to the petitioner and the respondent no.9 within a further period of two weeks from the date of such reasoned decision/order to be passed.

In the event, the said decision/order goes in favour of the petitioner, then all the consequential benefits to be given and steps to be taken to give effect to the said reasoned decision/order by the respondent no.7 in favour of the petitioner within a period of six weeks from the date of communication of the said reasoned decision/order to be passed by the respondent no.7.

It is made clear that this Court has not gone into the merits of this writ petition in any manner. The petitioner will be at liberty to urge all the points available before the respondent no.7.

Since no affidavit was called for, the allegations made in the writ petition deemed not to have been admitted by the respondents.

On the above terms, this writ petition being **WPO No.2482 of 2022** stands allowed, without any order as to costs.

(ANIRUDDHA ROY, J.)