

Court No.
03.02.2023

(Item No. 125)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 810 of 2023

Md. Mobarak Hossain & Ors.
VS
The State of West Bengal & Ors.

Mr. Golam Mostafa
Mr. Tarasankar Samanta
.... For the petitioners
Mr. Rezaul Hossain
.... For the State

Affidavit of service filed in Court today, is taken on record.

The petitioners claimed to be **Shiksha Samprasarakhs** at **Naoda Darul Ulloom Ashrafia Madrasah Shiksha Kendra (MSK)**. The petitioners claimed for approval of service.

In the previous round of writ litigation **WPA 8733 of 2020** a co-ordinate bench of this Court by its order dated **December 9, 2020** at **page 27** to the writ petition directed the appropriate State authority to consider the case of the petitioner. Pursuant to the said direction the Additional Secretary to the Government of West Bengal considered the case of the petitioner by its reasoned order dated **April 6, 2020** at **page 24** to the writ petition, the same is impugned in the instant writ petition.

The relevant observation from the said impugned order relied upon by Mr. Golam Mostafa, learned counsel for the petitioner is quoted below:

“Now, series of similar type of cases are suffering from different MSKs where the names of the incumbents were recorded only in the 2nd DLIT report but not in the 1st DLIT report. It appears that there may be similarly placed other staff of MSKs/SSKs who have not approached the Hon’ble Court yet. Therefore, before further considering any similar type of case, a policy decision is felt necessary whether the incumbents whose names are recorded only in the 2nd DLIT reports shall be approved or not as it has financial implication too. The matter as reported has been taken up with the Finance Department for consideration and for a general policy decision.”

Relying upon the said observation of the said impugned order learned counsel for the petitioner submitted that, the Additional Secretary opined that, the matter was reported and taken up with the Finance Department for consideration and for a general policy decision. The petitioners now seek to enforce this view expressed in the impugned order by the Additional Secretary to the extent that necessary direction be made upon the appropriate State authority/Finance department to frame the necessary policy by taking a policy decision on the issue.

Mr. Rezaul Hossain, learned advocate appearing for the respondent Nos. 1 to 5 placed the two Government Memos dated **September 20, 2017** bearing No. **1982-MD/O/2M-08/17** and memo **No. 76/1(4)-JS(MD)/9** dated **February 12, 2009** and submitted that, the petitioner are not entitled to

receive any approval as **Samprasarak** . copies of the said memos are taken on record. The learned State counsel also made over copies of the said memos to Mr. Golam Mostafa, learned counsel for the petitioner.

After considering the rival contentions of the parties and on perusal of materials on record it appears to this Court that, the writ petitioners sought for a direction upon the State Executive/Finance Department to go for framing a policy for the petitioners so that the petitioners can know their fate. This Court is of the firm view that, in exercise of power under the judicial review in its high prerogative writ jurisdiction under Article 226 of the Constitution of India, a writ Court cannot direct the State Executive to go and frame a policy. It is totally within the domain of the State. Writ Court can only assess a policy decision, of course, in a very restricted manner if the legality of the same is challenged before a Court or the same is challenged on the ground of exercise of power in malice. This is not the case of the petitioners.

For the foregoing discussions and reasons, this Court is of the firm view that, this writ petition is totally devoid of any merit.

Resultantly, this writ petition being **WPA 810 of 2023** stands dismissed.

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

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)