

17.10.2023  
SL No.94  
Court No.8  
(gc)

**FMA 456 of 2010**

**Sahana Begum  
Vs.  
Sazzad Hossain & Ors.**

Mr. Anjan Bhattacharya,  
... For the Appellant.

Mr. Subir Sanyal,  
Mr. Saikat Banerjee,  
Mrs. Juin Dutta Chakraborty,  
...For the Writ Petitioner/  
Respondent No.1.

Mr. Saikat Banerjee,  
Mr. Narayan Ghosh,  
...for the Respondent No.8.

Mr. Pinaki Dhole,  
Mrs. Tapati Samanta,  
... For the State.

1. The appellant is aggrieved by the order dated 2<sup>nd</sup> September, 2009 by which his challenge to the order passed by the Director of School Education, West Bengal (in short “the Director”) contained in Memo dated 25<sup>th</sup> May, 2007 was not interfered with by the learned Single Judge and as a consequence whereof the writ petition was dismissed. The petitioner along with five others claimed to have been appointed as organizer teachers in a non-Government Junior School before it was recognized for the upper primary school and thereafter high school. The school was initially

recognized by the West Bengal Board of Secondary Education as 4-Class Junior High School upto 30<sup>th</sup> April, 2002 with effect from 1<sup>st</sup> May, 1999, vide Memo dated 7<sup>th</sup> June, 1999. The staff whose services were approved by the District Inspector vide Memo dated 4<sup>th</sup> August, 1999 with effect from 1<sup>st</sup> May, 1999 comprised of A.F.R. Karim (Teacher-in-charge), Md. Humayun Kabir, Rafiqul Islam, Sazzad, Safiqul Haque (hereafter Safiqul) and Tarun Kanti Paul (all Assistant Teachers), Ranjit Kumar Singh (Clerk) and Aklima Khatun (Class IV staff). It is evident from the materials on record that Sahana was not considered for approval since she was treated to be the 3<sup>rd</sup> Language Teacher, behind Rafiqul Islam and Sazzad.

2. Sahana feeling aggrieved by her exclusion filed a writ petition that was disposed of on 28<sup>th</sup> August, 2000 with a direction upon the Director to treat her writ petition as a representation and to dispose it of after hearing the parties by a reasoned order. The Director in compliance with the order dated 28<sup>th</sup> August, 2000 passed an order on 29<sup>th</sup> May, 2002 with the following observation:-

*“In the circumstances, I find that the petitioner was claiming to be an Asstt. Teacher in Bengali, i.e. in the Language Group, but at the same time she does not deny that she was the third teacher in the Language Group and that the other two teachers have been appointed earlier. According to the Govt. Order in no.670-Edn (S) dated 04.09.1990, a 4-Class Jr. High School is entitled to two teacher in the Language Group. The petitioner being the third teacher as per her claim, cannot have any right to appointment, even if we assume that her contention is correct. The D.L.I.T. which inspected the School on 03.11.1998 also did not find the petitioner as one of the existing Asstt. Teachers and this report of DLIT was the basis on which the School was granted recognition as a 4-Class Jr. High School with effect from 01.05.1999 and it was also the basis for approval of the teaching posts as accorded by the D.I. of Schools (S.E.), North 24-Parganas, in Office Memo No.1125/G Dated 04.08.1999 showing the two teachers, namely, Rafiqul Islam and Sazzad Hossain as teachers in the Language Group.”*

3. This order was challenged by filing another writ petition where Sazzad was impleaded as respondent No.13. Initially, the learned Single Judge dismissed the writ petition on 23<sup>rd</sup> July, 2002, however, in appeal, the Division Bench by an order dated 16<sup>th</sup> June, 2005 directed the Director

*“to hold a fresh enquiry after spot verification through a competent officer and to decide after hearing all interested parties and on examination of all relevant documents, who were the actual organizing teachers at the time of approval of the school in the year 1999 and after holding such enquiry, the Director of School Education would pass necessary order regarding fresh approval of the actual teaches of the school including the writ petitioner/appellant”.*

4. The review petition filed by Sazzad and Safiqul was disposed of by the Hon’ble Division Bench on 8<sup>th</sup> August, 2005 with the following observation:-

*“Having regard to the submissions put forward by Mr. Chatterjee, appearing on behalf of the petitioners in both the review applications, and having regard to the submissions made on behalf of the opposite parties, we feel that there is no scope of any review of our ultimate direction given to the Director of Education for holding verification of the entire affair relating to the appointment of Organizing Teachers through the report of the D.L.I.T. submitted earlier. We, however, are very much impressed with the submissions of Mr. Chatterjee that some of the observations of ours in the body of the judgment might create some confusion in the mind of the*

*officers holding such inspection and for that purpose to remove all doubts in the minds of the petitioners and also the opposite parties, who will be actively participating in the inspection process we make it clear that our observations touching the earlier appointment of the review petitioners shall have no bearing upon the inspection team and also upon the report to be submitted by the inspection team after thorough probe and enquiry and after examining all the documents and papers the team may think expedient for the purpose of making a full fledged and just enquiry to carry out in letter and spirit of our order reviewed against.*

*We these observations, both the review applications are disposed of. ”*

5. This time on a fresh enquiry being made, the Director disbelieved the contention of the school authorities and was of the view that the inclusion of the appellant was by way of manipulation. However, it records that the school authority had admitted during enquiry that Sahana was present on the date of DLIT inspection held on 3<sup>rd</sup> November, 1998 and her name was not recorded as she was the 3<sup>rd</sup> teacher in Language group and 7<sup>th</sup> in the position of teaching staff. The Director was of the view that the date of appointment of

Sazzad has not been proved as 20<sup>th</sup> March, 1990 and on the other hand his date of appointment as 20<sup>th</sup> March, 1991 has not been disproved. The Director gave credence to the affidavit dated 29<sup>th</sup> April, 2003 and 29<sup>th</sup> January, 1995 of Md. Mozzaffar Hossain and Md. Morsed Ali the present Managing Committee members to the effect that the name of the appellant were excluded from the DLIT report in order to give birth to Md. Sazzad Hossain. The Director on the basis of the aforesaid believing the version of Sazzad to be sacrosanct approved Safiqul Hoque and Aklima Khatun and set aside the approval of Sazzad.

6. The learned Single Judge has proceeded on the basis of the pleadings of Sahana and observed:-

*“The appointment letter of Sahana, her letters dated 31.12.1994 and 1.1.1995 and copy of daily attendance register for the months of January, 1992 and April, 1992 are sufficient to establish that Sahana, at the time of her appointment, was the seventh teacher while Sazzad was the sixth teacher. If indeed Sazzad had been appointed after Sahana’s appointment, as was her claim in the latter writ petition filed by her,*

*there is no valid reason as to why Sahana signed the attendance register despite being aware that Sazzad's name preceded her name in such register and he, for all practical purposes and intents, was shown as the sixth teacher. It also appears from copies of daily attendance register for the months of October, 1998 and November, 1998, attested by the Headmaster, that the names of Sazzad and Sahana were written therein, in sequential order, as the fifth and sixth teachers. That was obviously because of the death of Abu Bakkar Siddique, the second teacher in position, resulting in Sazzad and Sahana being elevated from their original positions and becoming the fifth and sixth teachers in position respectively. Even if original records had been suppressed and new records produced before the D.L.I.T., the copies of daily attendance register for the months of January and April, 1992 and October and November, 1998, duly attested by the Headmaster and annexed by Sahana to her latter writ petition, were the relevant records making the position absolutely clear that Sazzad was senior to Sahana. These documents either escaped the notice of the Director or he ignored the same, much to the detriment of Sazzad.*

*The date of appointment of Sazzad which he claimed to be 20.3.1990, according to the Director, was not established owing to non-production of original attendance register and*

*Managing Committee resolution book for the period 1990-1999. Even though original of the relevant records had not been produced before the Director, to the mind of this Court, the same could not have been the basis for negating the claim of Sazzad. Sahana herself having admitted that she was appointed as the seventh teacher of the school, the Director ought to have directed his enquiry for returning a finding as to who, in fact, were the six teachers after whom Sahana was appointed. Answer to this vexed question would have solved the problem since Sahana never objected to her status of seventh teacher at the time of her appointment on 26.4.1990. Copies of pages from the daily attendance register for the months referred to above, duly attested by the Headmaster of the School on 3.12.1998, were annexed by Sahana to her latter writ petition. Obviously, the same were lied on to vindicate her stand that she was senior to Safiqul who, according to her, was the eighth teacher in position. Sahana could not have disputed the genuineness of these documentary evidence. Relying thereon, the conclusion is irresistible that Sazzad was senior to Sahana.”*

7. On a reading of the said judgment, it appears that there are two conflicting DLIT reports operating in the field and the finding was on the basis of applying trial

and error method. The learned Single Judge disregarded the fact and merely because erstwhile Secretary was the father of Sazzad, it cannot be presumed that he had indulged in nepotism thereby negating the “likelihood of bias test” which otherwise could have been inferred having regard to the nature of relationship of the Secretary and Sazzad when Sazzad was appointed as an assistant teacher.

8. We feel that this was a relevant factor which was required to be taken into consideration in a conflict where as compared to Sazzad, the appellant would be in a far inferior position to manipulate the record. However, having regard to the fact that Sazzad has been given the appointment and is continuing with the said post, we do not want to disturb the appointment of Sazzad merely on the assumption of likelihood of bias. At the same time, the appellant is also working in the said school as an unapproved Bengali teacher.

9. Mrs. Samanta, learned Counsel representing the State has submitted that at present there is only one vacancy

occurred in the year 2019 on retirement of the recommended candidate in 2019.

10. Although, the proper procedure would be to have the said post filled up through selection process, but having regard to the fact that the claim of the appellant cannot be fully disbelieved, we direct the District Inspector of Schools (S.E.) to give appointment to the appellant as an Organizing Clerk against the sanctioned vacant post with all consequential benefits.
11. The appellant shall be entitled to all consequential benefits upon her post being approved with all notional benefits from the date of approval of other teachers.
12. We record that as on date, the appellant was discharging her duty as an unapproved organizing teacher.
13. The entire process shall be completed within four weeks from date.
14. We make it clear that in the special facts and circumstances of the case, we pass this order.
15. With the aforesaid observation, the appeal stands disposed of.
16. However, there shall be no order as to costs.

17. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

**(Uday Kumar, J.)**

**(Soumen Sen, J.)**