

49. 11.08.2023
Ct. No.22
Tanmoy

WPA 2647 of 2020

**Mostab Ali Molla & Ors.
-Versus-
The State of West Bengal & Ors.**

Mr. Shamim ul Bari, Adv.,
Ms. Keya Sutradhar, Adv.

...for the petitioners.

Mr. Supriyo Chattopadhyay, Ld. AGP.,
Ms. Sayantanee Bhattacharjee, Adv.,
Ms. Tuli Sinha, Adv.

...for the State.

Mr. K.M. Hossain, Adv.

...for the respondent no.7.

Mr. Shamim ul Bari, learned Advocate, appeared
for the petitioners.

Mr. K.M. Hossain, learned Advocate, appeared for
the respondent no.7.

Pursuant to the request made by this Court on
July 24, 2023, Ms. Sayantanee Bhattacharjee, learned
Advocate led by Mr. Supriyo Chattopadhyay, learned
Additional Government Pleader, appeared today
representing the State.

In the midst of the hearing, Ms. Tuli Sinha,
learned Advocate for the State submitted that, the
Office of the learned Government Pleader has also
appointed Mr. Tapan Kumar Mukherjee, learned
Additional Government Pleader and Ms. Tuli Sinha,
learned Advocate, in this matter.

In any event Mr. Mukherjee, learned Additional Government Pleader is, however, not present today before this Court while the matter was taken up for consideration. In such circumstance, Ms. Tuli Sinha shall also assist Mr. Supriyo Chattopadhyay, learned Additional Government Pleader, in this matter. Her appearance shall be regularized by the Office of the learned Government Pleader forthwith.

This is a hearing matter upon filing of reports and counter thereto on affidavits by the parties.

Mr. Shamim ul Bari, learned Counsel for the petitioners, submitted that the petitioners are working as *Mukshya Samprasarak/Samprasarak/Clerk & Peon* at **Mothbari Siddiquia Madrassh Shiksha Kendra, District – North 24-Parganas**, since the day of its recognition dated **May 1, 2008** as would be evident from **Annexure P/2 at page 28** to the writ petition. The recognition had initially expired but, ultimately, was renewed and extended by the relevant State Authority through the communication dated **February 17, 2009, Annexure P/2** as referred to above. He then drew attention of this Court to the report of the **District Level Inspection Team** (for short, 'DLIT report'), **Annexure P/1 at page 24 to 27** to the writ petition and submitted that the names of all these nine petitioners have featured therein at **page 26** to the writ

petition showing that the petitioners were working on the relevant date of recognition of the Madrassah.

The petitioners claimed their approval since the date of recognition of the Madrassah, that is, **May 1, 2008** and the allied monetary benefits. The claim of the petitioner travelled at the desk of the respondent no.4 when a reasoned order dated **December 1, 2010**, passed by the respondent no.4, **Annexure P/5 at page 34** to the writ petition. The relevant observation made by the respondent no.4 is quoted below:

“From the above facts it reveals that the Teaching & Non teaching staff shown in DLIT report dated 04.11.08 mentioned in Para 7 who have organized the madrassah before 2000-AD-are eligible for holding chairs of Mukshya Samprasarak, Samprasarak, Clerk & Peon subject to verification of their biodata.”

Learned Counsel for the petitioners then submitted that the said reasoned decision of the respondent no.4 was subjected to challenge by way of two independent writ petitions. The first writ petition being WP No. 24766 (W) of 2010 was filed by the petitioners herein seeking implementation of the said reasoned order. The second writ petition being WP No. 456 (W) of 2011 was filed by a rival group challenging the said reasoned order passed by the respondent no.4. learned Counsel then referred to two orders, one dated September 19, 2013 and the other one dated June 8, 2015, at **page 36** to the **writ petition** and at **page 7** to the **affidavit report filed by the respondent nos.1 to**

4 and 6, affirmed on March 22, 2021, respectively and submitted that, both the said two writ petitions arising out of the said reasoned order dated December 1, 2010, were dismissed as not pressed. He submitted that, thus, the said reasoned order dated **December 1, 2010** stands.

Learned Counsel for the petitioners submitted that on record it is admitted that, the petitioners were working as *Mukshya Samprasarak/Samprasarak/Clerk & Peon* at the relevant **Madrassah Siksha Kendra** (for short “MSK”) since the date of its recognition dated May 1, 2008 and, therefore, they shall have to be granted their approval from the said date of recognition of the MSK with all monetary benefits from that day.

Mr. Bari, learned Counsel for the petitioners further submitted that law is well-settled that in the facts of this case, the petitioners are eligible to receive their approval and all allied monetary benefits from the date of the original date of recognition of the MSK, i.e. May 1, 2008.

It is noted that the petitioners are receiving their current salary without any interruption.

Ms. K.M. Hossain, learned Counsel appeared for the respondent no.7, the relevant MSK, submitted that insofar as the factual submissions were made by Mr. Bari, learned Counsel for the petitioners, he has no quarrel on that and had adapt the same. He also

submitted that the MSK has forwarded all the records and documents in compliance with its statutory duties before the respondent no.4 but no result has been communicated to the MSK as of now.

Mr. Supriyo Chattopadhyay, learned Additional Government Pleader appeared for the respondent nos. 1 to 4 and 6 and submitted that in view of the relevant **Government Order dated April 30, 2010** issued by the State, there was no question of granting any approval to any MSK for further extension of its recognition. He further submitted that, the relevant MSK has also shifted from its original place as would appear from the records of the State and has not been functioning therefrom any further.

Considering the rival submissions made on behalf of the parties and considering the materials on record, this Court is of the considered view that, to decide the issue several factual information are required to be looked into and if necessary, some fact-finding enquiry has to be made, which is not the job of a writ Court. It is a fact that the Government Memo., as referred to by learned Additional Government Pleader dated April 30, 2010, is a subsequent event and prior thereto the relevant MSK was approved by the State Authority through the said communication dated February 17, 2009 w.e.f. its original date of recognition i.e. May 1, 2008 **Annexure P/2 at Page 28 to the writ petition.**

Considering the above, this Court is of the firm opinion that the issue raised by the petitioner needs to be considered by an appropriate Authority of the State by passing a reasoned order after conducting the necessary fact-finding enquiry.

Accordingly, the respondent no.4 is directed to consider the representation of the relevant Madrassah **March 27, 2017 at page 51** to the writ petition upon issuing at least a prior hearing notice of seven days to the petitioners and the respondent no.7 and after giving them an opportunity of hearing, shall pass a reasoned order, in accordance with law.

The entire exercise, as directed above, shall be carried out and completed by the respondent no.4 positively within a period of **six weeks** from the date of communication of this order. The respondent no.4 then shall communicate his reasoned order to the petitioners and the respondent no.7 within a further period of **two weeks** from the date of the reasoned order.

It is made clear that, this Court has not gone into the merits of the claim of the petitioners in any manner and the petitioners and the respondent no.7 shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon, **but the same shall not travel beyond the scope of the case as made out in the document dated March 27, 2017 at page 51 to the**

writ petition. The petitioner shall also be at liberty to file a written note before the respondent no.4 appending all the relevant documents and records they wish to rely upon but **the same shall also not travel beyond the scope of the case as made out at page 51 to the writ petition.**

It is made clear that, this order shall not create any equity or right in favour of the petitioner and the respondent no.4 shall be free to decide the issue, strictly in accordance with law, on the basis of the relevant materials to be placed before him.

In the event, the reasoned decision goes in favour of the petitioner, then the respondent no.4 and the respondent no.7 shall give immediate effect thereto but positively within a period of **three weeks** from the date of the said reasoned order to be passed. In the event, the petitioners are found to be eligible to their claim and succeed to their claim, then the respondent no.4, while calculating the monetary benefits to be given to the petitioners, shall calculate **along with interest @8% per annum, from the date of the eligibility of the petitioners,** in accordance with law and shall release the payment to the petitioners upon receiving the relevant Bank details from the petitioners positively within a period of **six weeks** from the date of the reasoned order to be passed.

This order shall be effected only upon payment of individual Court fees by the individual writ petitioners, in accordance with law and upon producing the proof thereof before the respondent no.4 and subject thereto.

On the above terms, this writ petition being WPA 2647 of 2020 stands disposed of, without any order as to costs.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Aniruddha Roy, J.)