

22.03.2023
Item No. 01
Crt.No.11
b.r.

FMA 915 of 2021
with
IA No. CAN 1 of 2022

Sk. Asiruddin
-vs-
The State of West Bengal & Ors.

Mr. Biswaroop Bhattacharyya
Mr. Golam Mohiuddin
Ms. Puja Mondal
Mr. Soumya Sankar Chini
..... for the appellant.

Mr. Prosenjit Mukherjee
Ms. Madhurima Sarkar
.... For the Madrasah Commission.

Mr. Tapan Mukherjee
Ms. Tuli Sinha
..... for the State.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

The appellant/the writ petitioner is aggrieved by the order of the Hon'ble Single Bench dated 14th December, 2020 passed in a writ petition in WPA 4818 of 2020.

The appellant submits that although the appellant prayed for approval as a Peon in the service of the Madrasah-in-issue being the MSDU Dogachia Senior Madrasah, the writ petition was dismissed by the Hon'ble Single Bench on the ground that no evidence of appointment could be produced by the appellant/the writ petitioner.

Mr. Bhattacharyya, Learned Counsel appearing for the appellant takes this Court to a Memo dated 26th November, 2016 issued in favour of the appellant by the Secretary of the Madrasah-in-issue. It is submitted that in view of such Memo, the finding of the Hon'ble Single Bench that no evidence has been produced in favour of an appointment by the writ petitioner is erroneous and liable to be set aside.

Next, Mr. Bhattacharyya relies on a Judgement of the Hon'ble Apex Court in *Contempt Petition (Civil) No. 352 of 2022 in Civil Appeal No. 5808 of 2017* in the matter of *Snehasis Giri & Ors. -vs- Subhasis Mitra*.

On the basis of the said Judgement declared on the 2nd day of February, 2023 it is submitted by the appellant that a Committee has been constituted in exercise of Article 142 of the Constitution of India, headed by a retired Judge of this Hon'ble Court for considering the claim of all appointees to Madrasahs and make appropriate recommendation to the State Government. It is therefore submitted that the claim of the appellant, being appointed in 2016 is eligible to be referred to the said Committee for appropriate consideration on merits.

Mr. Mukherjee, Learned Counsel appearing for the Respondents/Madrasah Service Commission, submits that the Committee has been directed to perform its functions strictly in terms specified at Paragraph-17 of

the Judgement of the Hon'ble Apex Court dated 2nd February, 2023 (*supra*).

Ms. Tuli Sinha, Learned Advocate, appears for the State-Respondents led by Mr. Tapan Kumar Mukherjee, Learned Additional Government Pleader (*AGP*).

Having heard the parties and considering the materials placed, this Court finds that an acceptable case for consideration by the said Committee has been made out by the appellant before this Court today. This Court, without going into the merits of the claim of the appellant, refers such claim to the said Committee for an independent consideration strictly based on the terms of reference as held by the Judgement dated 2nd of February, 2023.

It is further brought to the notice of this Court that following the constitution of the said Committee the Minority Affairs and Madrasah Education Department, Government of West Bengal has published a Notification dated 28th of February, 2023 inviting all interested persons to submit their claims for verification on and by the 24th of March, 2023.

In view of the urgency involved in referring the claim of the appellant to the said Committee on and by 24th of March, 2023, this appeal and application stand finally disposed of by this order of the Court.

In view of the fact that such Committee has been constituted by the order of the Hon'ble Apex Court dated 2nd of February, 2023 subsequent to the impugned Judgement of the Hon'ble Single Bench dated 14th December, 2020, the impugned judgement shall be inoperative.

Needless to add, in view of the order passed by this Court today, referring the claim of the appellant to the said Committee for a decision on merits, the order of the Hon'ble Single Bench which is based on the record as available before the Hon'ble Single Bench shall cease to have any binding effect.

FMA 915 of 2021 with IA No. CAN 1 of 2022 stand accordingly **disposed of**.

Affidavit-of-Service filed in Court today be retained with the record.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all necessary formalities.

(Supratim Bhattacharya,J.)

(Subrata Talukdar,J.)