

40 05.6.2023
Sc Ct. no.22

WPA 2714 OF 2009
with
I.A. No. CAN 2 OF 2020

Joydeb Ghosh

Vs.

The State of West Bengal & Ors.

Mr. Gouranga Kumar Das
Ms. Swati Mandal
Ms. Iris Rahman.

...For the Petitioner

Mr. Soumitra Bandopadhyay
Ms. Iti Dutta
Mr. Aniruddha Sen.

...For the State

Mr. Nadeem Sulaiman

....For the Madrasah
Board

This is a hearing matter. Despite directions made from time to time it appeared from record that the respondents chose not to file any affidavit-in-opposition.

Considering the issue involved in this writ petition, this Court is of the firm view that, this writ petition though was filed in the year 2009, the petitioner had not yet received any attention of the authority on the issue raised by him and if the time to file affidavits is extended further, it will merely cause another period of inordinate delay in disposing of the grievance of the writ petitioner. The moment the petitioner had raised his grievance, at least he has a right to know the fate of his grievance. He may succeed or he may not succeed, but he must be known of his fate of his grievance.

The writ petitioner claimed to be an organising teacher at the relevant madrasah since his joining in the year 1992. The petitioner then claimed regularisation of his employment.

Mr. Gouranga Kumar Das, learned advocate appearing for the petitioner referring to a direction of the Hon'ble Supreme Court dated **September 30, 1996** issued in **SLP(C) No.24195/93** at page 43 to the writ petition submitted that, pursuant to the direction of the Hon'ble Supreme Court the petitioner's employment was provisionally approved and he was receiving the salary accordingly.

The petitioner through this writ petition claimed regularisation of his service.

Drawing attention to **page 9** from an inter locutory application being **CAN 1189 of 2014** affirmed on February 11, 2014, learned counsel for the petitioner referred to a decision of the **Principal Secretary, Minority Affairs & Madrasah Education Department dated June 10, 2009** and submitted that, one **Md. Saficul Islam** who was a similarly placed candidate as that of the petitioner, had received his approval for the post of Teacher of the relevant madrasah.

Learned counsel claimed that, the petitioner being similarly placed person must also get the identical relief as that of Saficul Islam.

Mr. Gouranga Kumar Das, learned advocate appearing for the petitioner then drew attention of this Court to a representation of the petitioner at **page 92** to the writ petition claiming the petitioner's prayer for **approval of appointment**.

Mr. Nadeem Sulaiman, learned counsel appearing for the West Bengal Madrasah Board, the respondent no.5, submitted that, the law of madrasah education had changed after 2009. At present the Madrasah Service Commission is the appropriate authority to take a decision on the issue, raised by the petitioner.

Ms. Iti Dutta, learned advocate led by Mr. Soumitra Bandopadhyay, Learned Advocate appeared for the State respondents.

Considering the submissions made on behalf of the parties and considering the materials on record and the issue involved in this writ petition, to subserve justice, instead of keeping the writ petition pending, the **Secretary, West Bengal Madrasah Service Commission** is directed to decide the representation of the petitioner at **page 92** to the writ petition upon giving at least seven days' prior hearing notice to the petitioner and the respondent no.7 and after giving them an opportunity of hearing shall decide the issue by passing a reasoned order in accordance with law.

The entire exercise, as directed above, shall be carried out and completed by the Secretary, West Bengal

Madrasah Service Commission positively within a period of six weeks from the date of communication of this order.

It is made clear that, this Court has not gone into the merits of the claim of the petitioner in any manner and the petitioner and the relevant madrasah authority shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the Secretary, West Bengal Madrasah Service Commission.

While deciding the issue the Secretary, West Bengal Madrasah Service Commission shall also consider the said document for appointment of ***Md. Saficul Islam*** dated ***June 10, 2009 at page 9 to CAN 1189 of 2014*** as referred to above.

It is further made clear that, if a similarly placed person as that of the petitioner had received an appointment then the Secretary, West Bengal Madrasah Service Commission must also consider as to why the petitioner shall not receive the same claim if he is really similarly placed and is otherwise eligible to receive his claim strictly in accordance with law.

It is made clear that, this order shall not create any equity or right in favour of the petitioner if the petitioner is not eligible to receive his claim strictly in accordance with law but if it is found that, the petitioner is eligible to receive his claim then he must be granted all the

necessary and consequential reliefs in accordance with law.

In the event the reasoned decision goes in favour of the petitioner, then all other relevant authorities including the jurisdictional District Inspector of Schools and the relevant Madrasah authority and the Director and Secretary, West Bengal Madrasah Service Commission shall take all further and consequential steps positively within a period of four weeks from the date of communication of the said reasoned order to them to give effect thereto with all benefits in accordance with law.

On the above terms this writ petition, **WPA 2714 of 2009** with all connected applications stand disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)