

Court No. 22
10.5.2023
(Item No. 85)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 6313 of 2023

Collins Institute & Anr.
VS
The State of West Bengal & Ors.

Mr. Sandip Kumar De
Mr. Abhijit Sankar
Mr. Abhik Chitta Kundu
... for the petitioners
Ms. Chaitali Bhattacharya
Mr. Kartik Chandra Kapas
... for the State

The petitioner is a minority institution. The claim of the petitioner was for conversion of two teaching posts from Normal Section to Higher Secondary Section. The issue was earlier considered by this Court and the previous writ petition was disposed of on September 8, 2022.

Following the direction of this Court the respondent No. 2 had passed the impugned order dated December 16, 2022.

The petitioner contended that, the said order of respondent No. 2 was not tenable in law and accordingly though its learned advocate's letter dated **January 2, 2023, Annexure P-11** at **page 56** to the writ petition made a representation before the respondent No. 1. The said representation had not yet received attention of the respondent No. 1.

Ms. Chaitali Bhattacharya, learned State counsel appearing for respondents submitted that, in

terms of instruction from her client the respondent No. 3 is the competent authority to decide the issue. She submitted that, the Additional Secretary of the Education department directed the Commissioner of School Education to re-visit the issue. The Commissioner of School Education department made a communication dated **May 8, 2023** addressing the Additional Secretary, Education department informing as to its lacking of authority to decide the issue. The reasons were mentioned therein.

She further submitted that, the notification dated **December 6, 1994** under which the respondent No. 3 was the appropriate authority when neither the West Bengal School Service Commission Act nor the West Bengal Control of Expenditure Act, 2005 came into force. She submitted that, in 2016 a fresh staff pattern was notified under the provisions of Control of Expenditure Act. Accordingly, she submitted that, this 1994 notification was not as per the Control of Expenditure Act.

Mr. De, learned counsel for the petitioners submitted that, the West Bengal School Service Commission Act will have no effect in the instant case as the petitioner is a minority institution. Mr. De further submitted that, submissions made on behalf of the State respondents today did not find any place in the impugned order dated December 16, 2022.

Be that as it may, since several factual matrix needs to be gone into to decide upon the claim of the petitioner, to sub-serve justice, the Principal Secretary, School Education Department is directed to consider the representation of the petitioner dated **January 2, 2023, Annexure P-11** at **page 56** to the writ petition upon giving at least seven days prior notice to the petitioner and respondent Nos. 2 and 3 and then 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 concerned Principal Secretary 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 and rival claim as argued by the appearing parties and the parties who shall be attending the hearing before the Principal Secretary shall be at liberty to urge whatever points they wish to urge by relying upon whatever documents and records they wish to rely upon.

It is made clear that, the Principal Secretary may refer to the impugned order dated **December 16, 2022, Annexure P-10** at **page 48** to the writ petition but shall not be influenced by the finding made there under in any manner. The Principal Secretary shall

proceed and deal with the issue with his independent mind without being influenced by any observation existing on record and shall come to its reasonable conclusion strictly in accordance with law.

In the event, any documents or records are relied upon by the parties against each other the parties shall be granted opportunity to be provided with the copies thereof so that they can make respective submissions on that.

It is further made clear that, the Principal Secretary since has been directed to re-visit the issue with its own merit in accordance with law, the said impugned order dated **December 16, 2022, Annexure P-10** at **page 48** to the writ petition shall have no effect or bearing in the matter.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

It is further made clear that, this order shall not create any equity or right in favour of the parties and the issue shall be decided strictly in accordance with law.

With the above observations this writ petition being **WPA 6313 of 2023** stands disposed of.

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.)