

Court No.22

21.8.2023

(Item No. 4)

(AB)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 6042 of 2019

Asim Kumar Mondal

VS

The State of West Bengal & Ors.

Mr. Indradeep Pal

Mr. Sougata Pal

Mr. M. F. Rahaman

.... For the petitioner

Mr. Tapan Kumar Mukherjee

Mr. Pinaki Bhattacharyya

.... For respondent Nos. 1 to 5

Mr. Rajnil Mukherjee

.... For respondent Nos. 6 & 7

This is a hearing matter upon affidavits.

The petitioner has a checkered history of travelling to this Court in its Constitutional Writ jurisdiction at least thrice. This is the third writ litigation by the petitioner.

The petitioner claimed to have been appointed as an **Organizing Teacher** for subject **Geography** at **Khenaibanda Gorakshanath Vidyamandir, District – Purba Burdwan (for short, the school)**. The petitioner claimed approval as an **Organizing Teacher**. Initially in the second writ petition the claim of the petitioner was allowed. The State carried out an appeal being **F.M.A. 804 of 2017**. The appeal was allowed by the Hon'ble Division Bench by its order dated **December 6, 2017**. The relevant observation of the Hon'ble Division Bench is quoted below:

“Instead of remanding the matter to the trial court we feel that the ends of justice will be sub-served if the entire matter is referred to the Principal Secretary, School Education Department, Government of West Bengal, who shall adjudicate the issues involved in the writ petition, after considering the evidence, hearing the parties and by a reasoned order within three months of communication of this order. We order accordingly.

If the fourth respondent is able to prove before the Principal Secretary that regular classes were held in classes IX and X with an organizing staff of which the said respondent was regularly or irregularly appointed a member, the Principal Secretary shall direct the District Inspector of Schools to approve the appointment of the said respondent as directed by the learned Judge of the Court below. The school will produce all the records as requisitioned by the fourth respondent at the time of hearing before the Principal Secretary. If it is unable to produce them, then the Principal Secretary, Government of West Bengal will draw an adverse inference against the school, in favour of the petitioner.

The impugned judgment and order dated 1st July 2015 is set aside.

The appeal is allowed to the above extent.”

Pursuant to the above direction of the Hon’ble Division Bench, **Annexure P-7** at **page 69** to the writ petition the respondent No. 4 passed its impugned order dated **October 31, 2018, Annexure P-9** at **page 79** to the writ petition. The same is impugned through this writ petition.

Mr. Indradeep Pal, learned counsel for the petitioner referring to the said impugned order submitted that, the appointment of the petitioner at the school as an **Organizing Teacher** whether legal or illegal could not have been gone into by the respondent No. 4 in view of the specific finding made by the Hon'ble Division Bench. It was the duty of the respondent No. 4 to carry out the hearing and pass its reasoned order in the strict compliance of the direction of the Division Bench. The Hon'ble Division Bench directed that, in the event, the School authority failed to produce the relevant records before the respondent No. 4 then, the respondent No. 4 would have to draw an adverse inference against the School, in favour of the petitioner. Learned counsel then submitted that, the School authority was duly present and represented before the respondent No. 4 on the relevant day when the hearing took place. He submitted that, the School authority had produced all the relevant documents including the original attendance register and on scrutiny of all those records it was found that, the petitioner was a regular Organizing Teacher but neither the participation of the School authority nor the production of records by the School authority was at all considered by the respondent No. 4 while conducting the hearing and passing the impugned order. He submitted that, on

this score alone the impugned order suffers from gross perversity and is liable to be set aside.

Mr. Rajnil Mukherjee, learned counsel appearing for respondent Nos. 6 and 7 draws attention of this Court to the averments made in the affidavit-in-opposition filed by respondent No. 7 affirmed on July 18, 2023, the relevant averments are re-produced and quoted below:

“4. x x x x x x x x x x x x x x
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(vii) That thereafter State has preferred an Appeal being F.M.A. No. 804 of 2017 challenging the order of the Hon’ble Single Bench for setting aside the order. Hearing the parties their Lordships the Hon’ble Justice I.P. Mukherjee and Hon’ble Justice Mumtaz Khan has passed an order on 06/12/2017 and directed to the Principal Secretary, School Education Department to Adjudicate the issue involved in the instant Writ Petition, after considering the evidence, hearing the parties and by reasoned order within three months of communication of this order. Hon’ble Court further directed that, if fourth respondent i.e. petitioner is able to prove before the Principle Secretary that, regular classes were held in class IX and X with an Organizing Staff of which the said respondent was regular or irregular appointed member, Principle Secretary shall direct District Inspector of Schools to approve appointment of the said respondent i.e. petitioner as directed by the Learned Single Judge of the Court below. In the said order the Hon’ble Division Bench specifically directed to consider the evidences induced by petitioner and School

Authority. Though the order had not been complied by State Authority.

(viii) That thereafter the Principal Secretary of the School Education Department issued a notice of hearing in favour of the Head Master of the School in compliance of the order passed by the Hon'ble High Court at Calcutta. Headmaster of the School was duly present on the date of hearing. Finally on 31/10/2018 the Secretary has passed the impugned order in order Secretary did not bother to consider original documents/evidences produced by the Head Master of the School at the time of hearing."

Learned counsel for the respondent No. 7 submitted that, the records produced before the respondent No. 4 including the original attendance registrar of the School for the Organizing Teacher of the relevant point of time would demonstrate that petitioner was a regular attending Teacher at the Organizing Section of the School. It would also appear from the record that the petitioner was present on **July 9, 1999** when the District Level Inspection Team (DLIT) inspected the School and prepared the report.

In the light of the above submissions, Mr. Mukherjee, learned counsel for the respondent Nos. 6 and 7 submitted that, the impugned order suffers from gross perversity and was passed in violation of the specific direction of the Hon'ble Division Bench. The same cannot sustain.

Mr. Pinaki Bhattacharyya, learned counsel appearing for respondent Nos. 1, 2, 4 and 5 referring to the said impugned order submitted that, while considering the issue at the hearing the respondent No. 4 duly considered all the material facts and the records produced by the petitioner. Upon scrutiny of such materials the respondent No. 4 came to a specific finding that, the appointment of the petitioner was totally an illegal appointment without following the due process of recruitment rules as provided under the law prevailing at the relevant point of time. He submits that, once a Teacher is appointed illegally, the question of approval does not arise. He also submits that, law is well settled. Learned State counsel further submits that, the impugned order was passed in due compliance of the direction of the Hon'ble Division Bench.

After considering the rival submissions of the parties and after considering the materials on record, this Court first reiterates the principle and jurisdiction of this Court in exercise of its power under judicial review, that while exercising the power of judicial review under Article 226 of the Constitution of India a constitutional Court has a very limited jurisdiction to assess the impugned order. The Constitutional Court will only scrutinize the decision making process of the hearing authority and if there is any glaring perversity on the face of the impugned order.

Keeping the settled position of law as discussed above, this Court proceeds to scrutiny the said impugned order dated **October 31, 2018, Annexure P-9** at **page 79** to the writ petition. On a close scrutiny of the said impugned order, it appears to this Court that, the impugned order would show that the School Authority was not present and as such there was no occasion for the respondent No. 4 to consider the materials to be produced by the School authority.

Considering the case made out in the writ petition and the submissions made on behalf of the writ petitioner and considering the stand taken by the School authority in its affidavit-in-opposition on oath as quoted above, that the School authority was duly represented, the School has duly produced all the relevant materials and documents before the respondent No. 4 including the original attendance register showing attendance of the petitioner as an Organizing Teacher, nothing is reflected on the face of the impugned order.

Considering the issue involved in the writ petition and considering the specific direction of the Hon'ble Division Bench as quoted above, the impugned order dated **October 31, 2018, Annexure P-9** at **page 79** to the writ petition stands **set aside** and **quashed**.

To sub-serve justice the respondent No. 4 shall revisit the issue on the basis of the materials already made available before it and upon issuing prior hearing notice of at least seven days to the petitioner and the respondent Nos. 6 and 7 and then after granting an opportunity of hearing to them and/or their duly authorized representatives shall pass the reasoned order in strict compliance of the direction of the Hon'ble Division Bench as quoted above from the order dated **December 6, 2017** 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 **four weeks** from the date of communication of this order and then the respondent No. 4 shall communicate its reasoned order to the petitioner and respondent Nos. 6 and 7 positively within a period of **two weeks** from the date of the reasoned order to be passed.

It is made clear that, this Court has not gone into the merits of the claim of the petitioner in any manner whatsoever and the petitioner and the respondent Nos. 6 and 7 shall be free to urge whatever point they wish to urge before the respondent No. 4 but **the same shall be confined to the extent of the direction made by the Hon'ble Division Bench.**

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 in compliance of the direction made by the Hon'ble Division Bench as referred to above.

On the above terms, this writ petition being **WPA 6042 of 2019** stands allowed.

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.)