

WPA 13092 OF 2016

Md. Mohsin Ansari

Vs.

The State of West Bengal & Ors.

Mr. Saibal Acharya
Mr. Jakir Hossain
Mr. Soumen Burman.

....For the Petitioner

Mr. Prosenjit Mukherjee
Ms. Madhurima Sarkar.

...For the Madrasah
Service Commission

This is a hearing matter.

Time to file affidavit-in-reply stands extended till today and the affidavit-in-reply affirmed on June 7, 2022 brought to Court today, is taken on record.

The petitioner claimed that, by virtue of an ***Appointment Letter dated October 1, 2007, at page 22*** to the writ petition, the petitioner was permitted to act as a ***Group-D staff at one Adabi Society High Madrasah, District - Hooghly*** (for short 'the said madrasah').

Drawing attention to ***page 18*** onwards to the writ petition, Mr. Saibal Acharya, learned advocate appearing for the petitioner submitted that, the appointment of the petitioner was made as a Group-D staff at the said madrasah following the resolution of the Managing Committee of the said madrasah. The petitioner claimed permanent appointment as a Group-D staff at the said

madrasah. Though the said resolution of the managing committee of the said madrasah depicted that, the appointment of the petitioner was on a temporary basis, the petitioner made **representation dated April 1, 2016, inter alia**, before the respondent no.3. It was submitted that, the said representation had not received any attention of the State authority.

Learned advocate for the petitioner placed reliance upon an **order dated September 9, 2013** passed by a coordinate Bench in **W.P. No. 12147 (W) of 2010, In the matter of : Ashis Kumar Roy & Ors. -vs- The State of West Bengal & Ors.** and submitted that, **the writ petition was disposed of by directing the jurisdictional District Inspector of Schools to approve the appointment of the writ petitioner as a regular teacher in the vacant post** as stated in the facts and circumstance in that writ petition.

Mr. Acharya, learned advocate for the petitioner claimed identical relief in this writ petition.

None appeared for the State respondents.

Mr. Prosenjit Mukherjee, learned advocate appeared for the added respondent no.8. Relying upon the averments made in the affidavit-in-opposition of his client affirmed on February 23, 2022, he submitted that, the entire selection process alleged to have been held by the said madrasah authority was without any sanction or permission being obtained from the respondent no.3. He

submitted that, in absence of such prior permission/sanction from the respondent no.3, the selection process itself was void, illegal and, therefore, any step taken thereunder would amount to illegal, wrongful and void step. He submitted that, the alleged appointment of the petitioner in such backdrop of the fact was also bad in law, illegal and cannot be termed as an irregular one, but a void one.

Mr. Mukherjee also submitted that, the entire selection process and the consequential appointment of the petitioner as a Group-D staff at the said madrasah was in violation of the provisions laid down under the ***West Bengal School Service Commission act, 1997.***

In the light of the above submissions, Mr. Prosenjit Mukherjee, learned advocate for the respondent no.8 submitted that, ***the appointment of the petitioner cannot be made permanent or regularised*** in any manner.

In reply, Mr. Acharya, learned advocate for the petitioner submitted that, under the provisions of the ***West Bengal School Service Commission Act, 1997,*** no specific provision was there for framing the criteria for appointment of non-teaching staff and the ***appointment of the petitioner was for the post of a non-teaching staff in the year 2007.*** The appointment for the post of non-teaching staff was included in the ***West Bengal School Service Commission Act in 2008*** but by that

time, the petitioner had joined his service in **2007**. Hence, the provision of the ***West Bengal School Service Commission Act, 2008 in no way shall come into play to regulate the appointment of the petitioner.***

Mr. Acharya further prayed for consideration of the representation made on behalf of his client dated ***April 1, 2016 at page 28*** to the writ petition by the respondent no.3.

After considering the rival contentions of the parties and upon perusal of the materials and pleadings on record, it appeared to this Court that, the specific contention raised on behalf of the respondent no.8 that the entire selection process, under which the petitioner was appointed, took place without any prior approval or sanction of the District Inspector of Schools, as stated in the affidavit-in-opposition, was never denied by the petitioner in his affidavit-in-reply. Inasmuch as, the petitioner could not produce an iota of evidence that, for holding the relevant selection process, under which the petitioner was appointed, prior permission/sanction was obtained by the madrasah authority from respondent no.3. There is no evidence disclosed on behalf of the petitioner that, the relevant madrasah authority had also made any recommendation before the respondent no.3 in support of the petitioner to make his employment permanent/approved.

It is well settled that, if the appointment of the employee is ex facie illegal and not irregular, the employee cannot claim any relief to become permanent in his employment. In absence of the prior approval/sanction from the respondent no.3, the entire selection process under which the petitioner was appointed was illegal and consequentially the appointment of the petitioner, though on a temporary basis for the post of Group-D staff, was also illegal and valid and the petitioner is not eligible to claim permanent/approved appointment.

For the foregoing discussions and reasons this Court is of the firm view that, the petitioner cannot claim his relief as prayed for in the writ petition.

The writ petition is devoid of any merit.

Resultantly, the writ petition, **WPA 13092 of 2016** stands ***dismissed***, without any order as to costs.

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

(Aniruddha Roy, J.)