

12.07.2023
SL No.78
Court No.8
(gc)

MAT 1644 of 2016
CAN 1 of 2018 (Old No: CAN 670 of 2018)

**The Chairman, Birbhum District Primary
School Council at Vidyasagar Bhawan, Suri**
Vs.
Md. Sujauddin & Ors.

Mr. Subir Sanyal,
Ms. Sumita Sen,

...for the Appellant.

Mr. Washef Ali Mondal,
Mr. Syed Nazmul Hossain,
Mr. Syed R. Hossain,
Mr. Syed A. Ali,
Mrs. Syeda M. Sahin,

...for the Writ petitioner/
Respondent No.1.

The appeal is arising out of an order passed by the learned Single Judge on 8th July, 2016 in connection with the writ application filed by the writ petitioner for releasing his arrears salary with immediate effect. The salary of the writ petitioner was withheld pending an undertaking with regard to the authenticity of the certificate. The Commissioner of School Education had requested the school education department of Madhya Pradesh to determine the petitioners' educational qualification. Considering that the petitioner was appointed by the Chairman of Birbhum District Primary School Council on 22nd January, 2014 and pursuant thereof he joined the school on 25th January, 2014, the learned Single Judge allowed the

application. In deciding the application in favour of the writ petitioner, the learned Single Judge has given the following reasons:-

“(1) The Petitioner had produced his Educational Qualification certificates and other testimonials along with his application for the appointment of Assistant Teacher under the West Bengal Board of Primary Education. After scrutinizing his application and his annexed documents viz. an admit card which had been issued to him for appearing at the Teacher Eligibility Test. The said Admit Card had been issued by the Secretary who is the recognized officer attached to the West Bengal Board of Primary Education. Subsequently, the Chairman attached to the Birbhum District Primary School Council, had issued an Appointment Order dated 22.01.2014.

(2) On the basis of the Appointment order the Head Master of the said School had permitted the Petitioner to commence his service as an Assistant Teacher of the said School on 25.01.2014 forenoon. Accordingly, the Petitioner without any break remains in his service by teaching the students of the said School efficiently.

(3) After availing teaching service from the Petitioner, the Respondent cannot deny his salary which is not within the legal norms.

(4) The Chairman, Secretary and the Head Master are all competent authorities attached to the Education Department who verified the Petitioner's documents of Educational Qualifications and the scholastic achievements. Now as an afterthought it is found that the proceedings initiated by the then Commissioner

of School Education dated 04.04.2016 should not be restrained as a bar against the petitioner's receiving the salary."

Considering the aforesaid facts, the writ petition was allowed and the respondent authorities were directed to release the petitioner's monthly salary from 25th January, 2014.

It appears from the impugned order that the respondents expressed their reservation and prayed for stay of operation of the order. The order was accordingly modified by giving liberty to the respondents to prefer an appeal subject to the payment of 50 percent of the salary amount to the petitioner by way of pay order.

The Chairman of Birbhum District Primary School Council has preferred the instant appeal. In the appeal, the Chairman has categorically stated that the writ petition was not maintainable against the Chairman and the Birbhum District Primary School Council constituted under the Board of Primary Education Act, 1973 ought to have been made a party. During the pendency of the appeal, question arose with regard to the authenticity of the documents produced by the writ petitioner along with the application seeking appointment.

Mr. Subir Sanyal, learned Counsel appearing on behalf of the appellant has produced before us a

communication dated 9th July, 2019 received from Head of Branch, CBI SPE/Dehradun in which it was categorically stated that during the course of enquiry it has been revealed that the Ministry of Human Resource Development, New Delhi, Education Departments of Government of Uttar Pradesh and Madhya Pradesh have neither approved nor recognized any board in the name of “Board of Secondary Education, Madhya Bharat, Gwalior” and had informed that the issuance of mark sheets and certificates by the board is completely illegal as an Educational board is constituted as per statute can only issue mark sheets and certificates.

Mr. Sanyal has also referred to the communication received from the Directorate of Public Instruction, Madhya Pradesh, Bhopal dated 7th July, 2016 that the certificate relied upon by the petitioner is neither recognized nor equivalent to the examinations conducted by the Board of Secondary Education, Madhya Bharat, Gwalior. This document was, however, not considered by the learned Single Judge.

Mr. Washef Ali Mondal, the learned Advocate appearing on behalf of the writ petitioner submits that in a similar matter a Co-ordinate Bench in WPCT No. 233 of 2015 (In re: ***Union of India & Ors. vs. Satyanarayan Biswas & Ors.***), rejected

the submission of Union of India that no recognition was granted to Gwalior Board and hence the certificate granted by the said Gwalior Board cannot be considered to be valid. It is submitted that the question came up for consideration was whether an appointment obtained by producing certificate from Madhya Bharat, Gwalior was liable to be cancelled. It is submitted that the appellant did not make any effort to find out the authority of Board of Secondary Education, Madhya Bharat, Gwalior regarding the status of such Board. In any event, from the letter dated 8th May, 2017 issued by the Deputy Secretary to the government of India that the innocent students should not be suffered due to the activities of unscrupulous fake/unrecognized boards the interest of the appellant needs to be protected.

Unlike Satyanarayan Biswas (*supra*) in the instant case Directorate of Public Institution, Madhya Pradesh, Bhopal in its communication has specifically stated that the Gwalior Board was never recognized. Moreover if it is assumed that the Board of Secondary Education, Madhya Bharat, Gwalior, Madhya Pradesh was governed by the regulation made under the Uttar Pradesh Intermediate Education Act, 1921 the Secondary Education Board on 29th September, 2011 had taken a resolution towards de-recognition of the Gwalior Board and hence no waitage could be granted to the

certificate issued by the Gwalior Board in favour of the writ petitioner. The certificate in the instant case was issued in the year 2012. The petitioner may be a victim of fraud played by the said Board.

Under such circumstances, the appeal succeeds.

The documents produced by Mr. Sanyal which, inter alia, include the communication dated 9th July, 2019 addressed to the Chief Secretary, Government of West Bengal, Kolkata from Government of India, Central Bureau of Investigation, Special Police Establishment, Indira Nagar, Dehradun are taken on record.

The impugned order is set aside.

Accordingly, the appeal and the application stand disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)