

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA No.21878 of 2022

Aditi Majumder

....Petitioner

-Vs-

The State of West Bengal & Ors.

..... Respondents

- - - - -

Mr. Rabilal Moitra, Sr. Adv.

Mr. Dhiman Ray, Adv.

Mr. Dip Chand, Adv.

..... for the Petitioner

Mr. Supriyo Chattopadhyay, Sr. Govt. Adv.

Ms. Iti Dutta, Adv.

..... for the State Respondents

Heard On : 22.02.2023

Judgment on : 03.04.2023

Rabindranath Samanta, J:-

1. Aggrieved by the order of the State authority in not absorbing her as a full time assistant teacher of an Educational Institution namely Howrah Vasha Bikash Kendra for hearing impaired and mentally retarded children, the petitioner has preferred this writ petition.
2. The facts which led to the filing of this writ petition may be adumbrated as under:

The petitioner is an organizing teaching staff of Howrah Vasha Bikash Kendra, an educational Institution for hearing impaired and mentally retarded children. This Institution is running for many years and academic recognition was granted to the institution on 3rd December, 1998 by the order of the Governor of West Bengal. The petitioner was engaged as an Assistant Teacher for the mentally retarded children of the Institution on 3rd February, 1998. She possesses the requisite qualification to be a teacher for the children who require special attention.

3. By virtue of a Government order being G.O No. 24/MME/Sectt dated 8th January, 2010, Howrah Vasha Bikash Kendra was accorded sponsorship under the Department of Mass Education and Library Services, Government of West Bengal. Before the sponsorship was granted to the Institution, the Institution had 13 (thirteen) posts including organizing teaching and non-teaching staff. Unfortunately, by the order of sponsorship five posts of teaching staff and three posts of non-teaching staff were absorbed. The rest five organizing staff including the petitioner have not been absorbed in the Institution. The petitioner states that she came to learn that she was not absorbed on the ground that she was not sufficiently trained and/or qualified. The petitioner submits that she possesses the requisite experience and qualification to teach the mentally retarded children and by not absorbing her as a teaching staff of the Institution the authority has violated the Government orders dated 20th April, 1995 and 25th February, 2002.
4. The petitioner having requisite qualification was appointed as an Assistant Teacher. She completed her B.Ed. (Special Education) in November, 2009 and this fact was communicated to all the appropriate authorities.
5. Out of teaching and non-teaching staff who were absorbed in the Institution by the Government order dated 8th January, 2010, Smt.

Malancha Mondal (Assistant Teacher) joined on 3rd May, 1999 and Suresh Das, a non-teaching staff joined on 04.01.2000. Though the petitioner joined on 3rd February, 1998 prior to the joining of the aforesaid teaching and non-teaching staff, she was not considered for absorption.

6. The petitioner by making a number of representations made appeal to the various Government Officials to look into the issue and absorb her, but to no effect.
7. After filing an application under the Right to Information Act on 5th January, 2010, the Public Information Officer, Mass Education Department, Government of West Bengal, by a reply dated 25th January, 2010 informed the petitioner that who possessed the requisite qualification and training at the time of submitting application for sponsorship were allowed to be absorbed in their respective post. Such information by the Public Information Officer is contrary to the Government Orders dated 20th April, 1995 and 25th February, 2002.
8. The District Mass Education Extension Officer, considering the Student-Teacher ratio, by a letter dated 29th July, 2011 requested the Director of Mass Education Extension, Government of West Bengal for absorption of the rest 5(five) regular organizing teaching and non-teaching staff. The authority of Howrah Vasha Bikash Kendra also made appeal to the Hon'ble Finance Minister as well as to the Hon'ble Chief Minister of West Bengal for absorption of the rest five regular organizing teaching and non-teaching staff of the Educational Institution. By an another letter dated 17.03.2021 the District Mass Education Extension Officer, Howrah requested the Director of Mass Education and Extension, Government of West Bengal to absorb the organizing employees of the Institution including the petitioner. But, the authority concerned turned deaf ear to the request made by the District Mass Education Extension Officer. Ultimately, the petitioner

through her learned lawyer by a letter dated 15.07.2022 requested the authorities concerned to absorb the petitioner as a teaching staff of the Institution, but this letter also yielded no result. On 8th September, 2022 when the petitioner entered into the school, the teacher-in-charge told her not to enter the school as she was not allowed to enter the school and put her signature on the attendance register. Under such circumstances, the petitioner by preferring this writ petition seeks direction upon the respondent authorities to absorb her as a full time Assistant Teacher of the Institution with effect from 03.12.1998 and to release the arrear and current salaries to her with effect from the date when she joined the Institution.

9. The respondent No.3, the Director of Mass Education Extension, Government of West Bengal, in his reply in the form of affidavit states that since the petitioner did not possess the requisite qualification to be absorbed as an Assistant Teacher (M.R. Section) of Howrah Vasha Bikash Kendra she was not absorbed as a teaching staff of the Institution. This answering respondent states that at the time of making the application for sponsorship of the Institution the left out teaching and non-teaching staff did not possess the requisite qualification to be absorbed in the Institution. As such, 5(five) teaching and 3(three) non-teaching staff who possessed the requisite qualification were absorbed and the rest 5(five) teaching and non-teaching staff including the petitioner who lacked the requisite qualification were denied absorption. On such grounds and disputing and denying the averments as made in the writ petition this answering respondent submits that the petitioner is not entitled to get the relief as sought for.
10. As it is evident from Annexure P2, the petitioner joined as an Assistant Teacher (M.R Section) of Howrah Vasha Bikash Kendra as an organizing teacher on 3rd February, 1998.

11. By virtue of Memo dated 3rd December, 1998 issued by the Mass Education Extension Department, Government of West Bengal the educational Institution Howrah Vasha Bikash Kendra for hearing impaired and mentally retarded children was accorded academic recognition without any financial involvement. Apart from the petitioner some other teaching and non-teaching staff also worked at the Institution as organizing teaching and non-teaching staff. After the academic recognition was granted to the Institution the Secretary of the Institution by a letter dated 7th February, 2002 made proposal for sponsorship in favour of Howrah Vasha Bikash Kendra to the Director of Mass Education and Extension, Government of West Bengal and absorption of all the organizing staff working in the Institution. Thereafter, the Institution by an another letter dated 9th July, 2007 submitted revised proposal for sponsorship to the Director of Mass Education and Extension, Government of West Bengal. Undisputedly, the Institution while made the proposal for sponsorship included 13(thirteen) organizing teaching and non-teaching staff who were then working in the Institution. By the memo dated 8th January, 2010 issued by the Department of Mass Education Extension and Library Services, Government of West Bengal, sponsorship was accorded to the Institution with eight (8) teaching and non-teaching post as detailed in Annexure-I with effect from 15th January, 2009. The eight(8) teaching and non-teaching staff who have been absorbed on conferring sponsorship may be detailed as under:

<u>Sl.No. Name of the Organising Staff</u>	<u>Designation</u>
1) Miss Ranu Thandar	Asstt. Teacher (M.R. Section)
2) Miss Nupur Das	Asstt. Teacher(M.R.Section)
3) Smt. Bulbul Do	Asstt. Teacher(M.R.Section)
4) Smt. Malancha Mondal	Asstt. Teacher(M.R.Section)
5) Smt. Renuka Ghosal	Craft Instructor(M.R.Section)

- | | |
|----------------------------|-----------------------------|
| 6) Sri Satyabrata Do | Clerk-cum-Typist-cumCashier |
| 7) Smt. Minakshi Mukherjee | Peon |
| 8) Sri Suresh Das | Darwan |

12. But the name of the petitioner is absent in the list. It is the contention of the petitioner that Smt. Malancha Mondal, Assistant Teacher (M.R.Section) and Suresh Das, a non-teaching staff of the Institution who have been absorbed joined much later than that of the date of joining of her.
13. However, on the request of the school authority, the District Mass Education Extension Officer by memo dated 29th July, 2011 made appeal to the Director of Mass Education Extension to absorb 5(five) regular organizing teaching and non-teaching staff who have been left out in the Memo of Sponsorship dated 8th January, 2010. Subsequently, the school authority by another letter dated 15.03.2021 requested the Director of Mass Education and Extension for absorption of the aforesaid five regular organizing teaching and non-teaching staff by creating posts for them through the District Mass Education Extension Officer. In turn, the District Mass Education Extension by Memo dated 17.03.2021 requested the Director of Mass Education Extension to absorb the left out 5(five) teaching and non-teaching staff including the petitioner by creating appropriate posts for them.
14. It is submitted on behalf of the answering respondent that the left out 5(five) teaching and non-teaching staff could not be absorbed as they lacked requisite qualification.
15. Mr. Rabilal Moitra, learned Senior Counsel appearing for the petitioner submits that in terms of Government Memorandum dated 25th February, 2002 an organizing untrained teacher of a sponsored Institution for the handicapped should be absorbed, but on the condition that he/she would complete the requisite training from the Government organised training centre within three years from the

date of their approval of appointment. Mr. Moitra submits that as per this Memorandum incremental benefit will not be allowed to an organizing teacher till he/she completed the teachers' training course. Learned Counsel further submits that the petitioner while working in the Institution as an organizing teacher possessed certificates of training to impart education to mentally retarded children. Learned Counsel points out that before the sponsorship was accorded to the Institution vide Memo dated 08.01.2010, the petitioner then completed B.Ed. (Special Education-Distance Education) in the field of Mental Retardation(M.R) in June, 2009 from Netaji Subhas Open University. On such score, learned counsel emphasises that the petitioner deserves to be absorbed as an Assistant Teacher for mentally retarded children of the Institution.

16. Per Contra, Mr. Supriyo Chattopadhyay, learned counsel for the State submits that at the time when the school authority forwarded proposal for sponsorship of the Institution and absorption of the teaching and non-teaching staff of the Institution in the years 2002 and 2007 the petitioner did not possess the requisite qualification to be appointed as an Assistant Teacher for mentally retarded children in terms of the Government Memo dated 20th April, 1995 issued by the Mass Education Extension Department, Government of West Bengal. In such context learned counsel submits that non-absorbing the petitioner as a teaching staff of the Institution is justified.
17. As stated above, the Mass Education Extension Department by the Memo dated 8th January, 2010 granted sponsorship to the Institution and absorbed 5(five) teaching and 3(three) non-teaching staff on consideration of the proposal initially put forward by the Managing Committee of the Institution on 7th February, 2002 and subsequently revised proposal forwarded vide letter dated 09.07.2007. However, as it is found from the documents on record, the school authority and the District Mass Education and Extension Officer by subsequent

correspondences including a correspondence dated 17.03.2021 made appeal to the Director of the Mass Education Extension to absorb the left out five (5) organizing teaching and non-teaching staff. Even an Advocate's letter dated 15.07.2022 made on behalf of the petitioner to the concerned authorities seeking absorption of the petitioner failed to draw any attention of the authorities concerned.

18. As I perceive, the notification dated 20th April, 1995 issued by the Mass Education and Extension Department, Government of West Bengal gives guidelines relating to eligibility criteria of a candidate to be appointed afresh as a teaching or non-teaching staff of a Government sponsored Institution for the handicapped under the Mass Education Extension Department. But, as to absorption of an organizing teaching or non-teaching staff in a newly sponsored Educational Institution for handicapped the memorandum dated 25th February, 2002 issued by the Mass Education Department, Government of West Bengal occupies the field. In such context, it will be apposite to excerpt the Memo dated 25th February, 2002 which is as follows:

“After careful consideration the Governor has been pleased to absorb the untrained teachers of the sponsored Institutions for the handicapped from the date of sponsorship of concerned Institutions with immediate effect with the condition that they would complete the requisite training from a Govt. recognised training centre within three years from the date of their approval of appointment. It may be mentioned that no incremental benefit will be allowed till completion of the concerned teacher's training course.”

19. As pointed out by the learned Senior Counsel appearing for the petitioner, the petitioner, before the sponsorship was granted to the Institution had certificate under Bridge Course in the field of mental

retardation. It is not in dispute that the petitioner since her joining the Institution on 03.02.1998 discharged her duties as an Assistant Teacher for mentally retarded children till the time when she was disallowed to enter into the Institution. It appears from a document dated 25.07.2012 that the Registrar of Netaji Subhas Open University certifies that the petitioner Aditi Majumder(Ray) (Enrollment no. 07221600003) was a student of Bikashayan Study Centre (SEMR-01) has completed B.Ed(Special Education-Distance Education) in the field of Mental Retardation(MR) in June, 2009. As the convocation was pending, the provisional certificate was issued to her by the Office of the Controller of Examinations shall be deemed to be equivalent to the original certificate of the University. This shows that the petitioner completed B.Ed (Special Education) in the field of Mental Retardation in June, 2009. Therefore, before the sponsorship was granted to the Institution the petitioner already then possessed the requisite qualification. As it appears, the school authority as well as the District Mass Education Extension Officer through their relevant correspondence communicated to the Director of Mass Education, Government of West Bengal about the acquiring requisite qualification by the petitioner in the field of mental retardation. Despite several communications were made with the Director of Mass Education including the notice demanding justice, the authority concerned paid no heed to the plea of the petitioner seeking absorption as an Assistant Teacher (M.R) as an organizing teacher. This demonstrates the utter inaction on the part of the authority concerned to address the genuine grievances of the petitioner.

20. An organizing teacher at the time of getting sponsorship by the Institution, deserves to be absorbed, but if he/she lacked the requisite training, he or she would have to complete the requisite training from the appropriate Government centre within three years from the date of approval of appointment, otherwise, he or she would not be allowed to

- get incremental benefit. As it is crystallised, the petitioner being an eligible organizing teacher completed the requisite training from the aforesaid University in the month of June, 2009 long prior to according sponsorship to the Institution on 8th February, 2010.
21. Therefore, the petitioner as an organizing Assistant Teacher (M.R.) and having requisite qualification is entitled to be absorbed in the said Institution with effect from the same date i.e. on 01.01.2009, the benefit of which was extended to the other organizing teaching and non-teaching staff.
 22. In the result, the writ petition merits success and accordingly the writ petition is allowed on contest.
 23. The concerned respondents are directed to absorb the petitioner as a Full Time Assistant Teacher (M.R) in the Educational Institution namely Howrah Vasha Bikash Kendra by creating a post for her with effect from 01.01.2009 and allow her to join the Institution within six weeks from date. The concerned respondents are further directed to pay the salary as admissible to an absorbed organizing Assistant Teacher to the petitioner after she joins the Institution as an absorbed Assistant Teacher (M.R.). The concerned respondents are further directed to pay the arrear pay to the petitioner which is admissible to her with effect from 01.01.2009 within six weeks after she joins her duties treating her service as continuing one.
 24. With the aforesaid directions the writ petition stands disposed of.
 25. No order as to costs.
 26. Parties may act on the Server Copy of this judgment duly downloaded from the Official Website of this Court.
 27. Urgent certified website copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)