

Item No.41.

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

HEARD ON: 24.01.2023

DELIVERED ON: 24.01.2023

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA NO.23402 OF 2018

**Abhiram Das.
Vs.
State of West Bengal & Ors.**

Appearance:-

**Mr. Subhro Prokash Lahiri,
Mr. Habibur Rahaman,
Mr. R. Naskar**

...

for the petitioner.

Mr. Satyajit Talukdar

...

for the College Authority.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA , J.)

1. The petitioner has prayed for a direction upon the authorities of Saheed Kshudiram College (for short, "the college") to issue a no objection letter for applying to the

post of a teacher of Abbasganj High Madrasah (H.S.) (for short, "the Madrasah").

2. The petitioner was appointed as a clerk cum typist in the college. Vide memo dated February 8, 2003, his appointment was approved by the concerned Director of Public Instruction (for short, "DPI") on December 2, 2012. The petitioner claims that after intimating the college of his intention to apply for the post in the Madrasah, the petitioner appeared before the Regional School Service Commission and was ultimately recommended for the post of a teacher in the said Madrasah on February 27, 2006. The petitioner claims to have joined the said Madrasah on April 12, 2006. Subsequently, the petitioner submitted his resignation from the post of Clerk cum Typist in the college, which was accepted by the Governing Body of the college with effect from April 12, 2006. Thereafter, the petitioner prayed for continuance of his service with effect from February 11, 2003, i.e. while he was serving at the college and pursuant to such prayer, the petitioner was requested to furnish several documents including a no objection letter from the Principal of the College for application to the post of a teacher.

3. The grievance of the petitioner is that the college is not issuing the said no objection letter, which ultimately resulted in not favouring the petitioner with the continuation of his service at the said college.

4. Mr. Lahiri, learned Advocate appearing for the petitioner, submits that the petitioner was permitted by the college to apply for the post of a teacher in the Madrasah and therefore, the college authority is duty bound to issue such no objection letter. He refers to various documents annexed to the writ petition in support of his contention that the petitioner was allowed by the college authority to apply for a post of a teacher in the Madrasah and subsequently joined the said post.

5. Mr. Talukdar, learned Counsel appearing for the college, submits that the petitioner could not produce a scrap of paper before this Court in support of his claim that he submitted an application praying for permission from the college authority to apply for the post of a teacher in the Madrasah. He submits that the college authority did not grant permission for applying to appear in the selection test conducted by the West Bengal Regional School Service Commission. He, further, submits that the letter tendering resignation from the post of Clerk Cum Typist in the college was submitted long after he joined the

said Madrasah. He submits that the prayer for issuance of a no objection letter was made more than 10 years after submitting his resignation letter to the college. He concluded by submitting that on such facts, the petitioner does not have any right for a no objection letter being issued by the college authority.

6. None appears for the State in spite of service. No affidavit-in-opposition has also been filed by the State.

7. The primary objection of Mr. Talukdar against issuance of the no objection letter by the college is that the writ petitioner did not apply for permission for appearing in the selection test for appointment to the post of a teacher in the Madrasah.

8. The photocopy of the application form, which was submitted by the petitioner before the West Bengal Regional School Service Commission is annexed to the affidavit-in-reply. It is evident from the said document that the petitioner has furnished the details of his present employment, i.e. his employment with the college under serial no.14 of the said application form. The teacher in charge of the college has attested the particulars falling under various serial numbers of the said application form including serial no.14.

9. Therefore, this Court holds that the teacher in charge of the college, who is holding a responsible post in the college after being well-aware of the intention of the petitioner for filling up application form has attested various particulars appearing in the said form including employment of the petitioner at the relevant point of time with the college authority. No document has been produced by the college to show that the authorities of the college raised any objection to the petitioner applying for the post in the Madrasah. On the contrary, it appears from the letter of the college dated December 24, 2012 that the resolution of the Governing Body of the college with regard to acceptance of the resignation tendered by the writ petitioner from the post of clerk cum typist was quoted therein. It also appears therefrom that the Governing Body of the college unanimously accepted the resignation tendered by the petitioner with effect from April 12, 2006. There is no dispute that the petitioner joined the Madrasah on April 12, 2006.

10. Mr. Talukdar submits that the attestation of the application form does not amount to permission granted by the college to appear at the selection test conducted by the West Bengal Regional School Service Commission. Such submission is

also without any basis in view of the findings of this Court that the teacher in charge being a responsible officer of the college attested the said form being well-aware that the petitioner was applying for the permission to appear in the selection test conducted by the West Bengal Regional School Service Commission for the post of a teacher.

11. Upon a query from the Court, Mr. Talukdar, in his usual fairness, submitted that the petitioner did not attend the college after April 12, 2006 and the college authority also did not take any action against the petitioner for not joining the college after April 12, 2006. Such submission is also supported from an endorsement made by the Principal of the college in the Service Book of the petitioner wherefrom it appears that the petitioner after continuing service has tendered resignation from the post of clerk cum typist on April 12, 2006 and during his continuance of service the incumbent did not enjoy any kind of leave i.e. medical leave, earned leave, half pay leave as well as without pay leave. It was also mentioned therein that the petitioner does not have any liability to this college/institution.

12. Therefore, this Court holds that the college did not have any objection at any point of time either in the matter of the

petitioner appearing in the selection test conducted by the West Bengal Regional School Service Commission or for joining the post of a teacher in the Madrasah after being recommended for appointment as a teacher for the Madrasah or even at the time of acceptance of the resignation of the petitioner with effect from the date when he joined the Madrasah. Therefore, from the action of the authorities of the college it shall be deemed that permission was granted to the petitioner to apply for the post in the Madrasah. For the reasons, as aforesaid, this court holds that the petitioner is entitled to the relief prayed for in this writ petition.

13. Mr. Talukdar further refers to a Memo dated January 19, 1995 wherein the procedure regarding submission of applications by the persons in Government service for admission to various examinations/selections conducted by the Public Service Commission, West Bengal. He submits that since the procedure mentioned under the said Memo has not been followed by the petitioner in the instant case, the college authority did not issue the no objection letter in favour of the petitioner.

14. Mr. Lahiri, in course of his submission, sought to distinguish the Memo dated January 19, 1995 relied upon by the college by submitting that such procedure has been laid down

only in case of applicants, who are in Government service for appearing in the examinations conducted by the Public Service Commission, West Bengal and the same is inapplicable for candidates applying before the West Bengal Regional School Service Commission. However, this Court is of the view that the issue involved in this writ petition can be decided without deciding issue as to applicability of the said Memo in view of the observation made by this Court hereinbefore that the college authority allowed the petitioner to apply and for appearing in the selection test conducted by the West Bengal Regional School Service Commission. Such issue is, however, left open to be decided in future litigation.

15. The writ petition is accordingly disposed of with the following directions:-

- (i) The Principal, Saheed Kshudiram College, is directed to issue a no objection letter in favour of the petitioner for applying to the post of a teacher of the Madrasah within a period of four weeks from this date. Upon receipt of the same, the petitioner shall submit the no objection letter before the Director, Madrasah Education within a period of two weeks thereafter.

(ii) The Director, Madrasah Education is directed to pass necessary orders in accordance with law for continuance of the service of the petitioner with effect from February 11, 2003 after the no objection letter issued by the Principal of the said college is submitted by the petitioner within a period of three weeks from the date of receipt of the no objection letter.

16. There shall be no order as to costs.

17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

NAREN (AR.C)