

05.09.2024
Item No.5
gd/ssd

WPA/589/2024
SK. MUSTAK ALI
VS
STATE OF WEST BENGAL AND ORS.

Mr. Saptangsu Basu, Id. Sr. Advocate.
Mr. Soumen Kumar Dutta,
Mr. Sk. Sayan Uddin
..for the Petitioners

Mr. Pinaki Bhattacharyya,
Kazi Sajjad Alam
..for the State.

Mr. Nadeem Sulaiman
..for Madrasah Board.

The petitioner has prayed for setting aside the order of cancellation of approval of his appointment contained in the letter of District Inspector of Schools (SE), Birbhum (for short, the DI) dated January 05, 2024.

The Managing Committee of Metekona Maulana Abu Taher Senior Madrasah (for short, the Madrasah) adopted a resolution on September 16, 2015 for giving appointment to the petitioner as an Assistant Teacher in Bengali. Petitioner was given appointment vide letter dated December 02, 2015 and the petitioner joined the said post on December 10, 2015. The appointment of the petitioner along with two others were approved by the Office Memorandum issued by the DI, Birbhum dated July

31, 2018. By the letter of the DI dated January 05, 2024 such approval was cancelled.

Mr. Basu, learned senior counsel representing the petitioner submits that the approval of appointment of the petitioner was cancelled without informing the reasons for such cancellation. No proceeding within the knowledge of the petitioner was initiated prior to issuance of such order of cancellation. Mr. Basu further submits that though the said letter refers to a Memo dated December 29, 2023 issued by the OSD & Ex. Officio Director of Madrasah Education, West Bengal but the same was not supplied to the petitioner. Mr. Basu submits that the said Memo dated December 29, 2023 was supplied to the petitioner immediately after the writ petition was filed and the same was brought on record by the petitioner by filing a supplementary affidavit. Mr. Basu submits that the Memo dated December 29, 2023 only records that the petitioner obtained the Work Done Certificate from the said Madrasah which, prima facie, appears to be based on false statement. He submits that on the basis of such prima facie observation the approval of appointment of the petitioner could not have been cancelled.

In support of such contention Mr. Basu placed reliance upon a decision of the Hon'ble Supreme

Court reported at AIR 1964 SC 364 in the case of Union of India v. H.C. Goel.

The learned Advocate appearing for the State refers to the affidavit-in-opposition filed by the respondent nos.2 and 6 and submits that since the Work Done Certificate was obtained by the petitioner on the basis of false statement, the approval of appointment of the petitioner was cancelled. He submits that since the appointment was obtained by the petitioner relying upon a certificate issued on the basis of a false statement, no enquiry is required to be initiated and such approval of appointment can be cancelled straightway.

In support of such contention the learned Advocate refers to a decision of the Hon'ble Supreme Court reported at (2019) 13 SCC 250 in the case of State of Bihar and Others v. Kirti Narayan Prasad.

Heard the learned Advocates for the parties and perused the materials placed.

The relevant portion of the Memo dated December 29, 2023 is extracted hereinafter as the same forms the basis of the decision to cancel the approval of appointment of the petitioner.

“In reference to his report dated 14.11.2022 and in connection with reference (ii), (iii) & (iv) as mentioned above, this is to state that, it is not clear, as to how Sk. Mustak Ali was working in two separate institutions situated in two different States at one time.

It is also stated that, the direction/instruction for giving approval of this incumbent namely Sk. Mustak Ali was issued in compliance with the solemn interim order of Hon'ble Supreme Court dated 17.05.2023 in SLP(C) No. 6661 of 2016 in Civil Appeal No. 5808 of 2017, Sk. Md. Rafique -vs- M.C. Contai Rahamania High Madrasah and ors after verification of his original testimonials and the Work Done Certificate as produced by him, whereby it was mentioned that, he was working at Metekona Moulana Abu Taher Sr. Madrasah from 10.12.2015 to 30.06.2018. The Work Done Certificate was certified by the Teacher-in-Charge of the said institution, which prima facie appears to be based on false statement, as it has been come to the notice of the undersigned that, Sk. Mustak Ali was working in Jawahar Navodaya Vidyalaya, Jharkhand as a contractual TGT from July, 2016 to April, 2017 and again from July, 2017 to April, 2018.

It is to state that the direction vide 1148-ME dated 30.07.2018 given by the undersigned for giving approval of appointment of this incumbent was issued based on a document which has been found to be made of false statement, which is absolutely illegal and an offence punishable under law."

After going through the said Memo, this court finds that it was recorded that the work done certificate was issued by the Teacher-in-Charge of the said Madrasah, which prima facie appears to be based on false statement, as it has come to the notice of OSD & Ex. Officio Director of Madrasah Education, West Bengal that the petitioner was working in another institution as a contractual TGT for certain period. The order dated 5th January, 2024 only refers to the said Memo dated December 29, 2023 as the ground for cancellation of approval

of the appointment of the petitioner. The Memo dated December 29, 2023 is an internal communication between OSD & Ex. Officio Director of Madrasah Education, West Bengal and the DI, Birbhum and the same was supplied to the petitioner after filing of the writ petition.

It is not in dispute that prior to cancellation of the approval of appointment the petitioner was not given any opportunity to show cause as to why the appointment of approval of the petitioner should not be cancelled.

It further appears that only an observation was made in the Memo dated December 29, 2023 that the approval of appointment of the petitioner was issued based on a document which prima facie appears to be based on false statement.

Three Hon'ble Judges of the Supreme Court in Kirti Narayan Prasad (supra) while dealing with the issue of appointments being secured by producing fake or forged appointment letters held that the authorities were justified in cancelling the same as the appointees therein in spite of being given an opportunity to show cause to establish the genuineness of their appointment did not turn up to establish the genuineness or legality of their appointment before the State Committee. The Hon'ble Supreme Court further noted that the State

Committee on appreciation of the materials on record had opined that their appointment was illegal and void *ab initio*.

In H.C. Goel (supra) the Hon'ble Supreme Court held that mere suspicion should not be allowed to take the place of proof even in domestic enquiries.

In the case on hand there is no conclusive finding of any competent authority that the petitioner obtained the appointment based on documents obtained on the basis of false statements. The approval of appointment was cancelled only on the basis of prima facie observation which cannot be sustained in the eye of law.

The authorities ought to have given an opportunity to the petitioner to disprove the allegation leveled against him that he worked in separate institutions in different States at one time and also that he obtained the work done certificate on false statements. No enquiry in this regard appears to have been conducted prior to cancellation of approval of appointment. Therefore, the principles of natural justice has been grossly violated in the case on hand.

Since no opportunity was given to the petitioner to show cause as to why the approval of appointment should not be cancelled, this court is of

the considered view that the order cancelling the approval of appointment is liable to be set aside and quashed only for that reason.

Accordingly, the writ petition stands allowed. The order of the DI dated 5th January, 2024 and the Memo dated 29.12.2023 stand set aside and quashed.

However, this order shall not prevent the authorities from taking any steps against the petitioner in accordance with law.

The authorities are directed to take all consequential steps pursuant to this order including release of salary as well as other benefits, if the petitioner is entitled to.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)