

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

BEFORE:

THE HON'BLE JUSTICE M. V. MURALIDARAN

W.P.A.No. 1233 of 2016
Ghanashyam Das
Vs
The State of West Bengal & Ors.

Mr. G. F. Hossain,

Ms. Varsha Roy

----- for the Petitioners

Mr. Supriyo Chattopadhyay,

Mr. Sabyasachi Mondal

--- for the State

Hearing Concluded On :

08.02.2024

Judgment On :

21.02.2024

M. V. Muralidaran, J.

Heard Mr.G.F.Hossain, learned counsel for the petitioner. None appears for the respondents.

2. This writ petition has been filed by the petitioner seeking a writ of mandamus directing the respondents to allow him to put his signature

in the attendance register and regularise his attendance since 5.9.2015 and to disburse the salary admissible to him and also to allow him to take part as Teacher Representative in the Madrasah Committee.

3. The case of the petitioner is that the petitioner was appointed as an Assistant Teacher on 4.5.2002 in Social Science Group by the Managing Committee of Pakrabari Bousa Junior High Madrasah. After a long interval, the Madrasah was inspected by the District Level Inspection Team on 22.1.2013. Later the petitioner came through the RTI information that the District Level Inspection Team granted recognition to the said Madrasah from Class V to VIII on 23.5.2013 provisionally for a period of three years commencing from the academic session 2013 subject to fulfillment of normal conditions of West Bengal Board of Madrasah Education. While granting recognition, the Board stated that the Madrasah may apply for extension of the period of provisional recognition for a further period of three years and to abide by all formalities. Thereafter, the Management Committee took resolution and forwarded to the authority for getting the service of the teaching and non-teaching staff of the said Madrasah approved. While so, respondent No.11 started a step-motherly attitude towards the petitioner and was hiding action of the Managing Committee though the petitioner is one of

the members of the Managing Committee as Teacher Representative. Though an amount of Rs.1,80,000/- sanctioned by the authority towards the salary of the teaching and non-teaching staff, the petitioner has not paid single paise.

4. Further case of the petitioner is that respondent No.11 created an unholy ambiance with some antisocial which created the smooth function of the school and of course disturbing the education of 277 students of the Madrasah. Upon protest the Secretary of the Madrasah was humiliated and eventually he tendered his resignation. Respondent No.11 made a desperate attempt to delete the name of the petitioner from the approved list and the first attempt of such act was not allowing the petitioner from putting his signature since 5.9.2015 in the attendance register though the petitioner attended the school regularly. Further, new Committee has been reconstituted without any intimation to the petitioner. Alleging all, the petitioner has made a representation on 19.5.2015. Despite receipt of the same, the respondent authority has not considered the same, which seriously prejudices the petitioner's rights and interest. Hence, the writ petition.

5. The learned counsel for the petitioner submitted that the name of the petitioner appears in the report of the District Level Inspection Team and upon recognition of the Madrasah his rights accrue to continue with the work as an Assistant Teacher unless his service is terminated. Since the authority has sanctioned certain amount, the Madrasah authority is under obligation to disburse the same amongst the teaching and non-teaching staff. Unless the service of the petitioner is terminated, the authority cannot stop him putting his signature in the attendance register without any sufficient reason.

6. The learned counsel further submitted that the authority has approved the service of the petitioner and, as such, his rights of an approved teacher is required to be protected under the statute and by not doing so, the authority has done miscarriage of justice. The petitioner is the teacher representative in the Managing Committee and, therefore, authority ought to have informed the petitioner periodically the action of the Managing Committee and by not doing so has done grave injustice to the petitioner.

7. The learned counsel further submitted that the action in the nature of inaction on the part of the respondents for not considering the

representation of the petitioner is against the principles of natural justice. The action of the Teacher-in-Charge against the statutory provisions and when the same was complained of, the higher authority ought to have questioned the said act of the Teacher-in-Charge for the interest of the students. However, in the instant case, the higher authorities have not questioned the same. The non-taking of action against the Teacher-in-Charge, based on the complaint of the petitioner, is mala fide and against all cannons of justice.

8. None appeared for the respondents when the matter is taken up for hearing and no affidavit-in-opposition is filed by the respondents resisting the writ petition.

9. It is the contention of the learned counsel for the petitioner that the petitioner was an organizing staff of Pakrabari Bousa Junior High Madrasah School. The District Level Inspection Team inspected the said Madrasah and had submitted a report and based on the said report, the Madrasah was recognized by a Memorandum dated 23.5.2013. It is the further contention of the petitioner that though the petitioner's name appeared in the report of the District Level Inspection Team, no formal approval was issued by the competent authority. However, the petitioner

was allowed to continue in the Madrasah as Assistant Teacher. Without any reason, the petitioner was prevented from discharging his normal duties and from signing the attendance register on and from 5.9.2015. Aggrieved thereby, the petitioner has submitted representations, but the same have not been attended to.

10. Earlier this Court observed that no information is forthcoming as to why the representations made by the petitioner have not been attended to by the respondents and, as such, the presence of the other respondents, including the Madrasah authorities, is required for adjudication of this matter. The petitioner was also directed to intimate the order of this Court to the respondents, particularly respondents 5, 10 and 11, and file an affidavit of service on the returnable date. Pursuant to the order of this Court, the petitioner took steps and served copy of the writ petition upon the respondents and filed affidavit of service.

11. As could be seen from the records, on 20.4.2016, when the matter is taken up for hearing, the then learned counsel appearing for the respondent State submitted that the matter involves disputed questions of fact and the same cannot be considered in the writ petition. Upon hearing the learned advocates appearing for the respective parties, this

Court observed that the matter needs to be decided upon exchange of affidavits. Accordingly, directed the respondents to file their affidavits-in-opposition and reply thereto, if any, by the petitioner. Despite the specific direction, the respondents have not filed the affidavit-in-opposition. The report of this Court reveals that no affidavit-in-opposition and reply thereto are filed by the learned counsels for the parties. When this Court specifically directs the respondents to file affidavit-in-opposition, it is the bounden duty of the respondents to file the affidavit-in-opposition. The non-filing of the affidavit-in-opposition despite specific direction is not appreciable and there is also no proper assistance from the side of the respondents to arrive at a logical conclusion.

12. The specific case of the petitioner is that though the other organizing staff of the said Madrasah were granted approval, the petitioner was left out without any reason and the petitioner was not allowed to sign in the attendance register though he attended the school and discharged his duties since 5.9.2015. It appears that the petitioner has submitted several representations. Admittedly, the said representations have not been considered by the respondent authorities. The non-consideration of the representations of the petitioner resulted in filing the present writ petition.

13. On a perusal of the annexures, particularly Annexure-4, it is seen that on 19.5.2015, the petitioner has submitted a representation to the Director, West Bengal Madrasah Education. In the said representation, it has been stated that the act of the Abdur Rahim (claiming Headmaster) in not allowing the petitioner to put his signature in the attendance register and the misappropriation of the sum of Rs.1,80,000/- has not only caused much hardship to the petitioner, but also the environment of the school. In such circumstances, he prayed for action against the said Abdur Rahim. The postal receipt for sending the said representation is also annexed with Annexure-4. It is also seen that, on 19.8.2015, the petitioner submitted another representation to the District Magistrate, Uttar Dianjpur District to take action against Abdur Rahim, Teacher-in-Charge. Since serious allegations are levelled, the authorities ought to have decided the representations of the petitioner immediately upon the receipt of the same. However, in the instant case, the respondent authorities have failed to do so.

14. Considering the facts and circumstances of the case and taking note of the fact that the representations of the petitioner have not been considered by the respondent authorities till date and put it on the back

burner, this Court feels that it would be appropriate to direct the respondent authorities to consider the representations of the petitioner and pass orders thereon in the interest of justice.

15. Accordingly, the petitioner is directed to forward a copy of this order along with his representations within two weeks from receipt of the same and thereafter, the respondent authorities shall afford reasonable opportunity to the petitioner, and pass appropriate orders on merits and in accordance with law within a period of twelve weeks.

16. With the above observation and direction, the writ petition is disposed. No costs.

(M.V. Muralidaran, J.)