

03 2.5.2024
Sc Ct. no.22

WPA 6713 OF 2016
with
I.A. No.CAN 1 OF 2016
(Old No.CAN 3990 OF 2016)
with
I.A. No.CAN 2 OF 2016
(Old No.CAN 3993 OF 2016)

Ruksona Begam & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Rabilal Maitra
Mr. Dilip Kr. Saha
Ms. Dhriti Das.
...For the Petitioners
Mr. Bhaskar Prasad Vaisya
Mr. Gourav Das.
...For the State

This is a hearing matter upon direction for filing affidavits. No affidavit-in-opposition has been filed. Considering the issue involved in this writ petition and since the writ petition was taken up for consideration from time to time and several orders were passed, this court proceeds for its final disposal today. The parties also agree to proceed for its disposal on the basis of the existing records.

The writ petitioners claim to be the organiser staff at one **Mother Centenary Institute, Nadia** (for short the school), which was established in the year 1973 as a junior high school. The school authority on **January 4, 1973** applied for recognition before the jurisdictional

District Inspector of Schools. Several writ litigations had taken place.

The ***District Level Inspection Team (DLIT)*** inspected the school on February 12, 2001 and submitted its report, ***Annexure-P13 at pages 62 to 66*** to the writ petition, before the authority.

In between, writ petitions were filed and orders were passed from time to time but for the purpose of adjudication of the instant writ petition, those facts are not required to be narrated.

Ultimately, on the basis of the said DLIT Report, the ***recognition*** was granted to the school by the Secretary, West Bengal Board of Secondary Education dated ***February 11, 2011*** read with a correction corrigendum dated March 1, 2011, ***Annexure-P12 at pages 59 and 61*** to the writ petition. The recognition was granted with a ***retrospective effect*** on and from ***December 20, 2002***.

When the petitioners sought for approval of their service, the same was rejected by the Commissioner of School Education under a reasoned order dated February 10, 2016, ***Annexure-P15 at page 74*** to the writ petition. The relevant observation in support of such rejection is quoted below :

“It is a fact that, if any appointment is itself infraction of rules or if it is in violation of provision of the Constitution, the appointment is illegal. The ratification or regularisation of an act is possible which is within the power and jurisdiction of this authority. The Executive don’t have any right to declare the appointment

as a permanent which was made in clear violation of the Constitutional scheme and the statutory rules made on that behalf.

In view of all the above, I hold that the petitioners were not appointed on or before 1973 when the school authority applied for recognition. So they cannot be treated as organisers and hence cannot get any benefit as organiser. Also the section 9 of the West Bengal School Service Commission Act 1997 does not allow the prayer of the petitioners. Besides, in terms of G.O. No.815-SE(S) dated 23.11.1994; appointment of Sri Surajit Bhattacharjee is illegal.

Considering all the above and in terms of G. O. No.117-SE(S) dated 24.02.1995, G. O. No.772-Edn (S) dated 08.07.1974, G.O. No.815-SE(S) dated 23.11.1994, the West Bengal School Service Commission Act 1997 and the Management of recognised non-government Institutions (Aided and Un-aided) Rules, 1969; I hold that the petitioners could not establish their claim for approval as organisers in the school as discussed above. So their prayer for approval as organisers cannot be allowed and the prayer is hereby regretted. So no relief is given to them. All concerned be informed accordingly.”

The petitioners through the instant writ petition has assailed the said impugned reasoned order passed by the Commissioner of School Education dated February 10, 2016 rejecting the approval of service of the petitioners.

Mr. Rabilal Maitra, learned senior counsel appearing for the petitioners submits it is an admitted position that, the names of the petitioners had featured in the said DLIT Report dated March 21, 2001. On the basis of the said DLIT Report the recognition of the school was granted on February 11, 2011 with a retrospective effect from December 20, 2002. Mr. Maitra submits that, the

recognition was effected on and from a date which is post DLIT Report and since the DLIT Report shows the presence and existence of the petitioners as organiser staff, they have a right to claim their approval of service. In support, learned senior counsel had relied upon a ***Government Memo. bearing No.2605 (16)-Sc/S dated December 20, 1984.***

Mr. Gourav Das, learned State counsel appearing for the respondent nos. 1 to 3 referring to the order impugned dated February 10, 2016 submits that, the Commissioner of School Education while passing the said order had taken into consideration all the relevant materials and thereafter due application of his mind had rejected the approval of service of the petitioners with reasons. The principal plea of rejection was that, the appointments of all the petitioners were irregular and/or illegal even at the organising stage of the school. Learned State counsel submits that, the law is well settled that, an irregular and/or illegal appointees cannot claim approval of their service. He submits that at the time of hearing when the impugned order was passed, the school authority failed to produce the relevant Attendance Register showing the presence of the petitioners since their appointment.

Mr. Gourav Das, learned State counsel further submits that, the ***third writ petitioner***, namely, ***Sri Surajit Bhattacharjee*** while was appointed as an

organiser teacher had the qualification of **M.Com.** Referring to a **Government Order No.815-SE(S) dated November 23, 1994**, which was also considered and mentioned in the impugned order, learned State counsel submits that, no recognised non-Government/aided /sponsored secondary school/madrasah (junior high or high) in the State shall be permitted to appoint any candidate with **B.Com./M.Com.** degree to any teaching post on the strength of such degrees. Thus, he submits in any event the service of the third writ petitioner **Sri Surajit Bhattacharjee** cannot be approved.

After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, this Court thinks it fit to deal with the case of the third writ petitioner, namely, **Sri Surajit Bhattacharjee**. The third writ petitioner admittedly an organiser teacher with his M.Com degree. He joined as an organiser teacher with his M.Com. degree and has been working as such since September 1, 1997 which is about nearly 30 years. Since there is a bar in the State policy under the said Government Order dated November 23, 1994, as referred to above by the learned State counsel, his appointment may not be considered for approval as a teacher even though his name had featured in the DLIT Report and he was working as such on the date of recognition of the school.

Now, this Court proceeds to deal with the case of the rest of the petitioners.

The rest of the petitioners except the third writ petitioner all having due qualification were engaged as organiser staff at the school. Except the petitioner no.7 who was an organiser non-teaching staff, the rest are all teaching staff. The DLIT Report dated March 21, 2001 is an admitted document. It is also an admitted fact that on the basis of the said DLIT Report, the school was recognised retrospectively with effect from December 20, 2002. The recognition of the school is, therefore, admittedly post DLIT Report.

The purpose of preparation of DLIT Report is that, before granting recognition to an organising school, the State authority must know what is the status of the school then, so that on the basis of such status, steps can be taken for granting recognition to the school. Since the DLIT Report shows the names of the staff, the same shall definitely prevail upon the Attendance Register of the school. To maintain the attendance register of the school or to produce the same before the authority is not the obligation of the staff of the school but of the authority of the school. Whether the Attendance Register was produced or not will have no bearing when the DLIT Report shows the names of the organiser staff of the school and on the basis thereof the recognition was granted to the school.

The organiser staff in the instant case had been working and still have been working nearly about thirty years with an unblemished career records. The policy of the State to give approval to the organising staff of the school with the recognition of the school is a benevolent employment policy and the same should be read, construed and understood in its true spirit and effect but as far as possible in favour of the beneficiaries of such policy.

In view of the foregoing discussions and reasons the service of the petitioners, ***except the third writ petitioner, Sri Surajit Bhattacharjee, stand approved*** with effect from the date of the recognition of school i.e. ***December 20, 2002***. The petitioners except the third writ petitioner, ***Sri Surajit Bhattacharjee*** shall get the ***notional benefit as approved teachers from the date of recognition of the school, i.e. December 20, 2002*** and shall get the ***actual monetary benefit*** on and from ***May 1, 2024*** and shall continue with the same throughout their rest of the employment career with all consequential benefits.

Accordingly, the impugned order dated ***February 10, 2016*** stands ***set aside*** and ***quashed*** in respect of the petitioners ***except the third writ petitioner, Sri Surajit Bhattacharjee***.

However, this Constitutional Court, in exercise of its equity jurisdiction considering the uninterrupted long

tenure of service with an unblemished career record of the third writ petitioner as discussed above, directs the respondent no.2 to take a sympathetic view in favour of the third writ petitioner, **Sri Surajit Bhattacharjee** if his employment can be approved as a non-teaching staff of the relevant school as a **special case** and the notional benefit can be given for such post where he shall be absorbed with effect from the date of recognition of the school, i.e., December 20, 2002.

It is made clear that, the portion of this order relating to the third petitioner, **Sri Surajit Bhattacharjee**, for his approval of service shall not be treated as a precedence.

Insofar as the directions and observations made in respect of the writ petitioners above, including the third writ petitioner the State authority shall give an immediate effect thereto but positively within a period of **eight weeks** from the date of communication of this order.

With the above observations and directions, the writ petition, **WPA 6713 of 2016** stands **disposed of**, without any order as to costs.

Accordingly, all the connected applications are disposed of.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)