

WPA 12294 of 2009

29.8.2024
Ct.35,sl. 229
sk

Nandini Kundu .-vs-State of West Bengal & Ors..

Mr. Ekramul Bari
Sk. Imtiazuddin
....for the petitioner.

Mr. Sudipta Disgupta
Mr. Anath Nath Naskar
Mr. Baibhab Roy
...for the respondent nos.4 & 5.

- 1.The impugned order dated March 27, 2009 is challenged by the petitioner on the basis of the fact that pursuant to the Larger Bench decision of this Court in ***Utpal Kanti Karan-vs-State of West Bengal*** reported in ***2024 SCC Online Cal 1274***, the petitioner would not be required to seek prior permission, to appear for the examinations of the Master's Degree Course, though the respondent/the Director of School Education, S.E., Kolkata has erroneously held therein regarding applicability of G.O. No. 593-SE(B) dated 27.11.2007 in case of the petitioner and non-maintainability of the petitioner's prayer for grant of higher pay scale.
2. Mr. Bari, learned advocate appearing for the petitioner would heavily rely on the judgment of the Hon'ble Larger Bench of this Court in support of the petitioner's case that once enrolled in the Master's Degree Course before entering into service, the petitioner would be squarely covered with the ratio thereof, which has stated that in such an event, the petitioner would not at all require to obtain prior

permission to appear in the Part-II examination of the Master's Degree.

3. Mr. Bari would further suggest that application of the Act of 2005 [The West Bengal Schools (Control of Expenditure) Act, 2005] in the case of the petitioner and the connected G.O.No. 593-SE(B) dated 27.11.2007, is not proper in case of the present petitioner, the same having no retrospective effect. In this regard he has relied on the said Larger Bench judgment of this Court.
4. Finally, Mr. Bari relied on the resolution of the Managing Committee of the School dated November 17, 1999 and a certificate issued by the same dated November 12, 1999, which state that there has not been any fraud on the part of the petitioner in seeking permission from the authorities, even before appearing in the Part-II examination of the M.A. Degree and the School Managing Committee has duly approved her prayer by dint of the documents. Mr. Bari mentions that it is not the petitioner's fault that no formal permission of the respondent/District Inspector of Schools has been received by the writ petitioner.
5. The State is not represented in this case. The respondent/school has been represented.
6. Mr. Dasgupta, learned advocate appearing for the respondent/schools has, however, indicated to the fact of alleged fraud having been exercised by the petitioner

as enumerated in the affidavit-in-opposition filed by the respondent/school authorities.

- 7.** It is stated that the Attendance Register of the relevant dates of examinations, i.e. November 22, 1999, December 1, 2000 and December 4, 2000 would show the writ petitioner having signed therein, indicating her being present in the school on the said relevant dates of examination.
- 8.** Mr. Dasgupta has shown that an alleged fraud may vitiate the entire claim of the writ petitioner.
- 9.** He has further indicated that the record would not reveal about grant of any “half day leave” to the petitioner to attend the examination, as claimed by her.
- 10.** Mr. Bari, as regards this, would rely on the averments of the petitioner in the affidavit-in-reply. He says that due to the distance between the school and the examination centre, the writ petitioner travelled from the school after obtaining verbal permission from the head of the institution. She would deny that there is any element of fraud being committed by her, as alleged by the school authority.
- 11.** So far as the impugned order is concerned, reliance by the respondent/District Inspector of Schools, S.E. Kolkata in G.O.No. 593-SE(B) appear to be misplaced reliance, insofar as neither the Act of 2005 nor the G.O.No. 593-SE(B) in connection with the said Act, would have any retrospective operation.

12. The petitioner having completed her Master's Degree course in 2000 would not be governed by the provisions of the 2005 Act or G.O.No. 593-SE(B), both of which came into force after the date of the petitioner's being qualified in the Master's Degree course.

13. So far as the allegation of exercise of fraud by the petitioner is concerned, the school managing committee, vide resolution and a certificate dated November 17, 1999 and November 12, 1999 respectively, has declined any such fraudulent exercise being made by the petitioner. The respondent authority in the impugned order has however, not dealt with the declaration by the school managing committee in this regard, as above. It can also be noted that so far, no enquiry/proceeding has ever been initiated to enquire about any fraudulent practice being undertaken by the concerned teacher, that is the petitioner. Therefore, such plea by the respondent DI is not only a belated one but also not supported with cogent, tangible material. Hence, the Court finds the grounds of rejection of the petitioner's prayer to be unfounded and not maintainable.

14. In this case, the Court would also be guided by the judgment of the Hon'ble Larger Bench of this Court, as mentioned above, which has held that the person having enrolled himself for the Master's Degree Course, before entering into service, would not be

required to obtain prior permission from the concerned respondent authority for appearing in the Part-II examinations of the Master's Degree Course. The same squarely applies in case of the writ petitioner too. It is noted that in the impugned order, the respondent authority has given a complete go by to the settled law as mentioned above. This would prompt the Court to set aside the order of the Director of School Education, West Bengal dated March 27, 2009.

15. Hence, the instant writ petition being WPA 12294 of 2009 is allowed and the impugned order dated March 27, 2009 is set aside.

16. The respondent, i.e. the Commissioner of School Education, is directed to consider the petitioner's prayer for grant of higher pay scale afresh, after granting opportunity of hearing to the petitioner, as well as the respondent/school authority and/or any one or more of its authorized representative and other person, as it may deem fit and proper, if any.

17. The Commissioner of School Education shall also consider the averments made by the school authority in its affidavit-in-opposition filed before this Court and the petitioner's averments made in the affidavit-in-reply to the same.

18. The Commissioner of School Education thus shall dispose of the petitioner's prayer as above by dint of a reasoned order.

- 19.** The entire exercise as above shall be concluded by the same within a period of six weeks from the date of communication of this order.
- 20.** The writ petition is allowed and disposed of.
- 21.** Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)