

S/L 18
04.4.2024
Court No.11
SD

WPA 16929 of 2004

Nagendra Nath Das & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari
Sk. Imtiaj Uddin

...for the Petitioners.

Mr. Jayanta Samanta
Ms. Indu Mouli Banerjee

...for the State.

A group of people of Gopalnagar Gram Panchayat of District- Coochbehar to obliterate the plight of the school-going children of the locality set up a Junior High School namely, Chhagalber Junior High School (from class VI to VIII) (in short, the school) in 1994. A managing committee was constituted to manage the affairs of the school. Some teaching and non-teaching staff were engaged. The petitioner nos. 1 and 2 joined the school on 19.05.1995 as a Clerk and Peon respectively.

Ultimately, the school was granted recognition provisionally as 'newly set up' Junior High school w.e.f. 01.05.2000 with a condition that the school would appoint its teaching and non-teaching staff following the prescribed procedure. Such condition incorporated in the order of recognition dragged the organizing teaching and non-teaching staff of the school in the legal battle field to achieve the approval of their appointments.

The issue ultimately came up in this Court in a writ petition being WP no. 10966 (W) of 2005. By an order dated

24.08.2012 passed in W.P. no. 10966 (W) of 2005, a coordinate Bench of this Court directed the District Magistrate, Coochbehar to make an enquiry and report. Pursuant thereto, upon completion of enquiry, a report detailing the names of the organizing teaching and non-teaching staff of the school was submitted by the District Magistrate. In the enquiry report, names of one Nagendra Nath Roy and one Paresh Chandra Das featured as organizing non-teaching staff.

Finally, the W.P. no. no. 10966 (W) of 2005 was disposed of by directing the District Inspector of School concerned to approve the appointment of the writ petitioners therein except the petitioner no.6 w.e.f. June 5, 2014 with a rider that the notional benefit would be given from the date of recognition of the school. The order dated June 5, 2014 was carried in an appeal being FMA 1497 of 2015. The appeal was allowed by an order dated 06.03.2019 and the order dated 5.6.2014 passed in W.P. no. 10966 (W) of 2005 was set aside.

Eventually, the matter went up to the Hon'ble Supreme Court and as such, the Hon'ble Supreme Court got the occasion to deal with the issue in Special Leave Petition being SLP (C) No.27804 of 2009. By an order dated May 6, 2022 handed down by the Hon'ble Apex Court, the SLP was disposed of. By that order, the order of the Hon'ble Division Bench was annulled and the order of the learned Single Bench was restored.

In deference to the order of the Hon'ble Supreme Court read with the order dated 5.6.2014 passed in W.P. no. 10966 (W) of 2005, the appointments of the teaching staff, whose names featured in the enquiry report of the District Magistrate, were approved but the fact remains that the appointments of the petitioners, whose names were incorporated in the enquiry report as non-teaching staff of the school, have not been approved. Hence, the writ petition.

Mr. Bari, learned advocate for the petitioners submits that the issue involves in the writ petition has already been resolved by the Hon'ble Supreme Court. He contends that the order of the Supreme Court has been duly complied with by according approval to the appointments of the teaching staff but as the non-teaching staff due to their financial crunch could not approach this Court, their appointments have not been approved though their names featured in the enquiry report, as submitted by the District Magistrate concerned.

Mr. Samanta, learned advocate for the State does not dispute the contention canvassed by Mr. Bari and he only draws my attention to the inspection report, as submitted by the District Magistrate and contends that the name of one Nagendra Nath Roy having qualification of Higher Secondary was mentioned as a clerk in the school but in the given case, one Nagendra Nath Das along with one Paresh Chandra Das has knocked on the door of this Court by taking out this writ petition to obtain the approval of their appointments as non-teaching staff of the school.

In reply, Mr. Bari contends that it is the petitioner no.1 who was engaged as one of the non-teaching staff (clerk) in the school and the name of the petitioner no. 1 was mistakenly recorded in the enquiry report as 'Nagendra Nath Roy' instead of 'Nagendra Nath Das'. He submits that from the enquiry report, it would be explicit that one Nagendra Nath Roy was engaged as a teaching staff of the school and hence, such mistaken crept in the report. He submits that a direction be given to make enquiry and if upon enquiry it is detected that the petitioner no.1 namely, Nagendra Nath Das is not the person whose name featured in the inspection report of the District Magistrate as non-teaching staff (clerk), he will withdraw his claim and face all sorts of consequences.

Heard learned advocates for the parties. Perused the materials on record.

Indisputably, in the order dated 6.5.2022, the Hon'ble Apex Court in unequivocal terms observed that the engaged of the writ petitioners therein (i.e. the organizing teaching staffs) cannot be stated to illegal. In the enquiry report, as submitted by the District Magistrate, names of one Nagendra Nath Roy and one Paresh Chandra Das featured as non-teaching staff of the school. Needless to state that the teaching and non-teaching staff of the school were engaged by the managing committee of the school in the same mode and manner. No reasonable classification based on intelligible differentia can made in between organizing teaching staff and organizing non-teaching staff of the

school. There is no justification to give different treatment to the organizing non-teaching staff of the school. Therefore, the only analogy which can be drawn from the discussion made hereinabove is that engagements of the non-teaching staff of the school were not illegal and their appointments also deserve to be approved.

Regarding the petitioner no. 2, namely, Paresh Chandra Das, who was engaged as organizing non-teaching staff (Peon), there is no such confusion. His name featured in the enquiry report and the State has not come up with a contrary argument. There is a confusion regarding identity of organizing non-teaching staff (Clerk). In the enquiry report, as submitted by the District Magistrate, name of organizing non-teaching staff (clerk) was mentioned as 'Nagendra Nath Roy' but the petitioner no. 1 claims that he (Nagendra Nath Das) was engaged as clerk in the school.

On studied scrutiny of the record, it transpires that by adopting a resolution dated 16.5.1995, the managing committee engaged one Nagendra Nath Das as clerk and such fact found its corroboration from the order dated 24.05.2004 issued by the D.I. of Schools in terms of the order dated 18.12.2000 in W.P. no. 20935(W) of 2000. From the attendance register of October and November, 2000, it would be explicit, one N.N. Das would work as clerk in the school but in the enquiry report, name of non-teaching staff (clerk) was recorded as Nagendra Nath Roy. Therefore, the record speaks of the probability that in the enquiry report, the name of non-teaching staff (clerk) was recorded

mistakenly as 'Nagendra Nath Roy' in place of 'Nagendra Nath Das'.

Therefore, taking stock of chronological events and resume, the writ petition is disposed of by directing the D.I. of Schools to approve the appointment of petitioner no. 2 on the similar terms the appointments of the petitioners of W.P. no. 10966(w) of 2005 have been approved. Such approval shall be given within a period of six weeks from the date of receipt of copy of this order.

To extirpate any confusion, the D.I. of Schools is at liberty to make enquiry to ascertain whether it was the petitioner no. 1 who was engaged as non-teaching staff (clerk) on 16.5.1995 but in the enquiry report, his name was erroneously recorded as 'Nagendra Nath Roy' in place of 'Nagendra Nath Das'. If D.I. of School makes such enquiry and if outcomes of such enquiry indicates that it is the petitioner no. 1 who was engaged in the school as non-teaching staff (Clerk), the D.I. of Schools shall approve his appointment on the similar terms the appointments of the petitioners of W.P. no. 10966(w) of 2005 have been approved, within six weeks from the date of receipt of a copy of this order but if in enquiry, anything comes out which may entail the negation of the claim of the petitioner no.1, the D.I. of Schools shall afford an opportunity of hearing to the petitioner no. 1 and render a reasoned decision within the same time-frame. The decision so taken must be communicated to the petitioner within two weeks from the date of taking such decision.

With these observations and order, the writ petition,
is, thus, disposed of.

There shall be no order as to costs.

All parties are to act on the website copy of this order.

(Partha Sarathi Chatterjee, J.)