

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

SPECIAL CIVIL JURISDICTION

APPELLATE SIDE

RESERVED ON: 25.04.2025

DELIVERED ON:16.05.2025

THE HON'BLE MR. JUSTICE REETOBROTO KUMAR MITRA

WPCRC 18195 OF 2000

IN

WPA 21325 OF 1999

MD. ALAUDDIN MOLLA

- VERSUS -

MD. ABDUR RAJAK MOLLA AND ORS.

Appearance:

Mr. Prabir Banerjee.

..... for the Petitioner

Mr. Tapan Kumar Mukherjee, Ld. AGP.

Mr. Shamim Ul Bari , Adv.

Mr. Suman Dey, Adv.

..... for the alleged Contemnor

Reetobroto Kumar Mitra, J.:

1. This petition has been filed for the alleged non-compliance of directions contained in the order dated 22nd December, 1999 passed by a learned Single Judge of this Hon'ble Court.
2. This proceeding has had a chequered history.
3. A brief enunciation of the facts is relevant to appreciate the present application.
4. The petitioner was appointed as an Assistant Teacher in the Dahakanda Siddiquia Junior High Madrasah (hereinafter Madrasah) sometime on 1st March, 1982 by the Managing Committee of the said Madrasah. The petitioner has been working as an Assistant Teacher since his date of appointment. The Madrasah had thereafter been placed under the management of an Administrator by the Board. The Sub-inspector of School, Mathurapur West Circle, was appointed as the Administrator. By a letter dated 6th April, 1992, the said Administrator had also appointed or at least accepted the petitioner as an Assistant Teacher of the Madrasah.
5. The school had thereafter fallen into difficult times, as the roll of the school diminished drastically, resulting in the District Inspector of Schools on 22nd February, 1995 vide his Memo No. 100/1(3) transferring three of the teachers, including the Head Master, along with their posts to various other schools in

the vicinity. This left the said Madrasah with only two sanctioned posts of Assistant Teacher.

6. Sometime in 1995, the administrator was replaced by an Ad hoc Committee to manage the affairs of the Madrasah. The Ad hoc Committee was appointed by the West Bengal Madrasah Education Board.
7. The petitioner continued as an Assistant Teacher in the Madrasah teaching Social Sciences.
8. The petitioner applied for regularisation of his appointment to the post of Assistant Teacher, which was not granted.
9. It was in these circumstances, that the petitioner filed a Writ Petition being WP 76 of 1997, challenging the District Inspector of School's refusal to recommend the regularization of the petitioner. Interestingly, the transfer of three teachers of the Madrasah along with their posts by the District Inspector was not challenged.
10. The aforesaid Writ Petition (WP 76 of 1997) was disposed of by an order of this Hon'ble Court dated 9th September, 1998, directing the District Inspector of School to treat the Writ Petition as a representation of the petitioner for regularization of his appointment to the

post of Assistant Teacher in the said Madrasah upon giving him an opportunity of hearing.

11. The said order was complied, and a hearing was given on 28th October, 1999.
12. Upon conclusion of such hearing, an order was passed by the District Inspector of Schools on 29th October, 1999 in compliance with the direction of this Hon'ble Court. The said order categorically stated that there was only one vacant post in the Madrasah, that of a Bio-science Teacher. Thus, the petitioner, a Social Science Teacher, under no circumstances could be approved for appointment as per the existing rules to the said post of Bio-science Teacher.
13. It is this order that was challenged by the petitioner by way of a second Writ Petition, WP No. 21325 of 1999.
14. The aforesaid Writ Petition was disposed of by the order dated 22nd December, 1999, by which this Hon'ble Court has been pleased to direct that the petitioner's appointment as an Assistant Teacher be regularised against vacant sanctioned posts within a period of four weeks.
15. These facts as aforestated are not in dispute.
16. The parties have put forth their respective arguments.

17. The petitioner contends that the order dated 22nd December, 1999 was an unfettered order, pursuant to which the contemnor herein, the District Inspector of School, ought to have regularised the petitioner's appointment to the post of Assistant Teacher. The petitioner has also argued that the District Inspector had no authority to issue the memo, transferring three teachers along with their posts.
18. The contemnor, pursuant to the direction of this Hon'ble Court, has filed a report by way of an affidavit affirmed on 30th September, 2021.
19. The respondent has principally given two fold explanation in his defence that he had not willfully or deliberately violated the directions in the order of 22nd December, 1999.
20. The first is that the order is not a blanket order of regularisation of appointment, but has set forth some parameters. The parameter being, regularisation can only be done against a vacant sanctioned post. Thus, a post has to be available and also be sanctioned before the appointment can be regularised.
21. The compliance report, in no uncertain terms, states that the Madrasah had only 3 posts which were sanctioned. None of the three posts were vacant on the date of passing of the order. Hence, there was no way in

which the order could have been enforced as there were no vacant sanctioned post to which the petitioner could have been regularised.

22. The second explanation offered is that post-2005, once the School Service Act, 2005 and the West Bengal Madrasah Service Commission Act 2008 came into force, there were more available posts of Assistant Teachers. However, such posts could be filled up only with a proper recommendation from the School Service Commission or a similar recommendation from the Madrasah Service Commission. All appointments to the posts in the Madrasah have been duly filled up by such persons who are duly recommended. The petitioner is not a recommended candidate. Thus, any enforcement of the order after 2005, would tantamount to commission of an act impermissible in law.
23. Subsequently, in 2010 and 2013, two posts, one for Work Education and the second for English, had fallen vacant, which were again filled up in terms of the recommendation by the concerned authority as aforesaid.
24. Thus, the directions contained in the order, over a passage of time and due to the promulgation of new laws, have become unenforceable.
25. I have heard the parties and considered the records of the case.

26. It is true, that the direction of this Court to the District Inspector of School was to regularise the appointment of the petitioner to the posts of Assistant Teacher in the Madrasah. It is equally true and would render a harmonious construction to the order, that the order directed that appointment be regularised only against a vacant and sanctioned post. Bereft of such interpretation, the order would not sound judicious.
27. Counsel for the contemnors has demonstrated from the records that at all material times, since 1999, there were no posts which were sanctioned and vacant, for the petitioner to be regularised till 2005. It has also been demonstrated that post-2005, the number of posts of Assistant Teachers in the concerned Madrasah had been increased, but with a rider that such posts could be filled up only by recommendation of the concerned authority.
28. The petitioner has relied upon a decision of the Hon'ble Supreme Court of India reported in *AIR 1997 Supreme Court 1390*. This decision relates to judicial review. It deals with imposition of costs on public authority for not discharging their functions as well as the direction of the Court in a manner stipulation. This decision will have some bearing only if a finding is reached that the contemnors are guilty of their acts of contempt.

29. The second decision is of a Division Bench of this Hon'ble Court, reported in *2016(2) CHN (CAL) 562*. This decision dealt with a case where the concerned authority, upon whom directions had been issued by the Hon'ble Court, sought to sit in appeal over the order and decide the correctness of the order so passed.
30. This case is factually different from the case in hand, as the respondents in the present case are not sitting in appeal nor have they stated that the direction of this Hon'ble Court dated 22nd December, 1999 is incorrect. The authority has merely stated that the directions in the order are not unfettered and has set forth certain parameters.
31. The respondents have relied upon a decision of this Hon'ble Court being No. *CRC 13 of 2015 in CPAN 1351 of 2012 in FMA 62 of 2006* in the case of *Md. Ainul Haque & Ors. vs. State of West Bengal & Anr.* In this matter, a Division Bench of this Hon'ble Court has categorically held that the Court cannot insist upon compliance with a thing which is not permissible in law.
32. It is absolutely clear that the regularisation of the appointment of the petitioner could not be made in the absence of sanctioned vacant posts in the school in the Social Science group. Admittedly, from the records available, it is clear that there were no such posts available for regularisation

of the petitioner to the post of Assistant Teacher. There were no sanctioned vacant posts in the Madrasah to which the petitioner could be regularized till 2005. The only post was that of a Bio Science teacher, the petitioner being a Social Science teacher, naturally could not be regularized to the said post.

33. The petitioner, had raised a feeble resistance to the memo issued by the District Inspector of School, transferring the three teachers along with the posts. This is beyond the scope of this contempt petition, especially, since the said order of 1995 could have been challenged in the Writ Petitions of 1997 as well as that of 1999. Such challenge has never been made by the petitioner. Thus, to presently urge (after 30 years) that the District Inspector had no authority to pass such an order under the aforesaid memo cannot be accepted.
34. It may not be out of place to mention that the alleged contemnors have not under any circumstances, willfully or deliberately violated the directions contained in the order dated 22nd December, 1999.
35. An act of commission and/or omission, to be construed as an act of contempt, has to be committed with an intention not to obey, that is to say, to deliberately and wilfully violate the directions of the order of the Court. Unless it is shown that the order has been deliberately and wilfully violated by the contemnors, it cannot be construed to be an act of contempt of an order of the Court. In the present case, there are no such acts of omission or

commission by the alleged contemnors, which can be said to be either deliberate or wilful. In fact, there are no acts of commission or omission which can be construed to be in violation of the directions of the order dated 22nd December, 1999. It is clear that the order directed the regularization of the petitioner's appointment as an Assistant Teacher of the Madrasah, subject to availability of vacant sanctioned posts. It has been shown from the records that there were no such sanctioned posts available for the petitioner's appointment to be regularised.

36. Post-2005 and 2007, in view of the promulgation of the two acts as aforesaid, the School Service Act 2005 and the West Bengal Madrasah Service Commission Act 2008, the regularization for the petitioner's appointment as an Assistant Teacher could not have been considered, as the same would have been impermissible in law. Clearly, the Court cannot insist upon compliance with such directions at a belated stage, after the passage of more than 25 years from the date of passing of the order.
37. The alleged contemnor has given satisfactory explanation as to why such directions could not be complied. Such explanation in the aforesaid enunciation of facts and from available records is accepted.
38. I hold the contemnors are not guilty of any act of commission or omission, whether willful or deliberate, insofar as compliance with the directions dated 22nd December, 1999 is concerned.



39. The Contempt Petition being No. WPCRC 18195 of 2000 is hereby dismissed.

40. There shall, however, be no order as to costs.

41. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Reetobroto Kumar Mitra, J.)