

4.3.2024
Ct.35,sl 4
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WPA 30121 of 2017

Tamalika Das-vs-State of West Bengal & Ors..

Mr. Biswaroop Biswas
Mr. Kamal Mishra
Mr. Pratap Sanfui
Mr. Subhadeep Maitra

....for the petitioners.

Mr. Supriya Chattopadhyay
Ms. Tapati Samanta

...for the State.

Ms. Kamalesh Bhattacharya
Ms. Aninda Bhattacharya

...for the respondent nos. 6, 7 & 8.

The writ petitioner is the Assistant Teacher, who was appointed at a Minority Educational Institution i.e. C.N.I. Girls' Primary School, Budge Budge, District South-24 Parganas. She is aggrieved with the order of the District Inspector of Schools, Primary Education, South 24-Parganas, dated 6.5.2016 and has thus moved this case before the Court.

The writ petitioner was appointed on 23.2.2009 and joined on 24.2.2009 in the said School.

She has submitted written representation before the District Inspector of Schools, Primary Education on 5.10.2009 with her prayer for approval of her appointment. She submitted this representation along with other six similarly placed Assistant Teachers. The writ petitioner is aggrieved that her representation was never considered by the concerned respondent. She had

earlier moved the court by filing a previous Writ Petition No. WPA 25059(W) of 2015.

The court vide order dated 8.10.2015 had directed the School authority to submit required papers and documents before District Inspector of Schools, Primary Education, South 24-Parganas and that on consideration of the same the said concerned respondent, would grant approval of appointment to the writ petitioner.

However, since even after the said order, the writ petitioner did not get redressal of her grievance and the present writ petition was filed. The impugned order was passed on 6.5.2016 in which the District Inspector of Schools Primary Education, South 24-Parganas, had found, as extracted below:-

“Since the school authority did not submit aforesaid requisite papers till date the matter is processed with the papers as submitted by school authority on 07.12.2015. From the appointment letter dated 23.02.2009, as submitted by the school authority on 07.12.2015, I am not a position to ascertain whether the appointment in question is/was against a regular sanctioned vacant post against which salary in the form of basic pay along with other usual allowances have been allowed from Government Exchequer. In this situation the claim of the petitioner cannot be acceded to. The matter is processed in

accordance with law in compliance with the order passed by Hon'ble Justice Debangsu Basak dated 08.10.2015 and disposed off from this end. All concerned be informed accordingly".

Thus the writ petitioner is aggrieved, her prayer being turned down by the said authority.

Mr. Biswas appearing for the writ petitioner has stated that the writ petitioner being appointed as a Teacher in a Minority Institution which would be governed under Article 30(1) of the Constitution of India and the Special Rules framed vide the notification dated 23.5.1974, her case must be considered by the respondents, keeping in mind the said factor.

Mr. Biswas would also rely on the relevant provision of the Special Rules and an order passed by the School Education Department, Government of West Bengal dated 14.5.1996. Let the relevant portion of the said order be extracted as hereinbelow.

"The school in question in an institution enjoying protection of Article 30 of the Constitution. Special Rules have been framed for the management of such institutions and in accordance with Rule 11 of the said Special Rules.....the school committee is entitled to appoint teaching and non-teaching staff of the school, not only temporarily, but also on a permanent basis. Since the school authority enjoy grant-in-Aid it can at best be said

that number of teachers to be appointed of the School would have to be determined on the basis of the prescribed teacher pupil ratio. In the event the conditions of the special rules are satisfied, and an appointment is made by the managing committee of the school, the concerned authorities of the Education Department, both Secondary and Primary Branch, will have no option but to accept such appointment as made by the school authorities, in accordance with this Special Rules”.

Mr. Biswas would say that in case of an appointment having been made in a Minority Institution, its propriety and legality would abide by the National Commission for Minority Educational Institutions and in a case like this, such decision would be final.

He would show to the court, the decision of the said Commission dated 13.6.2012 as regards the present writ petitioner which may be quoted below:-

“Relying on the said unrebutted records of evidence and in view of the above said facts and also considering that the said teachers were serving the school without break of service, yet their salaries being withheld for want of necessary approval orders by the Government of the said appointments made by the School Management and also considering the fact that the Institution is a Minority Educational Institution which falls within the purview of Article 30 of the Constitution, this Commission

hereby directs the concerned Director of School Education, Government of West Bengal and the District Inspector of Schools (P.E.), South 24-Parganas, West Bengal to accord approval of appointments of the said teachers in question from the date of their appointments namely 24.2.2009. The respondents are also directed to ensure that the arrear salaries and other emoluments due to the said teachers are also paid without any further delay”.

He says that the Commission has upheld appointment of the writ petitioner as the Assistant Teacher in C.N.I. Girls’ Primary School with effect from her date of joining in the Institution and also held that the writ petitioner would be entitled to the arrears and other emoluments due to her. According to Mr. Biswas, after determination by the Commission regarding the entitlement of the writ petitioner, department of the respondents/State would not be entitled to sit as if in an appeal, over the matter and the same would not have any jurisdiction or authority to reconsider the question of approval of service or the entitlement, as regards the writ petitioner. To substantiate his such submission, Mr. Biswas has also referred to a letter of the Assistant Secretary of the School Education Department dated 25.7.2012, by dint of which the District Inspector of Schools(PE), South 24-Parganas was directed to comply

with the order of the Commission, as above, at an early date.

Thus, Mr. Biswas has argued that the District Inspector of Schools (PE), South 24-Parganas, in turn, vide its order dated 6.5.2016, could not sit in appeal, to the order of the Commission as well as the Assistant Secretary, School Education Department dated 25.7.2012. He says that the writ petitioner's claim, once decided by the Commission, as above, should have been allowed by the concerned respondent and that the impugned order of rejection is bad in law. He has sought for adequate relief of the writ petitioner in this case.

Mr. Bandopadhyay is appearing for the State respondent, he has however, vehemently contested as regards the prayer of the writ petitioner and supports the order as impugned in this writ petition, i.e., dated 6.5.2006. According to him, as per the settled law, the department of the State respondent would not have any day to day administrative control as regards the Minority Institutions. In this regard, he has conceded to submissions made on behalf of the writ petitioner. However, he argues that the State is responsible to maintain check and balance in case of a Minority Institution in order to ensure that there should not be maladministration therein.

Mr. Bandopadhyay has pointed out from the impugned order that the District Inspector of Schools, Primary Education, South 24-Parganas has sought for as many as twenty five documents from the concerned School. He says that none of those has been produced by the School authority, for the said respondent to be objectively satisfied regarding the propriety of appointment of the writ petitioner. He says that such satisfaction of the respondent authority would be the pre-condition and imperative for the respondent authority to grant approval of appointment as regards the writ petition. He has stated that in case of the writ petitioner, since the school authority has not been able to produce those documents, the concerned respondent is not in a position to decide regarding if the approval is to be granted or not to the writ petitioner. Hence, it has passed the order dated 6.5.2016, as impugned in this writ petition.

Mr. Bhattacharya is appearing for the school authorities.

He has, however, conceded regarding the fact that the school authority has not been able to produce any of the documents as required by the District Inspector of Schools, to produce before it, while considering the writ petitioner's representation regarding approval.

Mr. Bhattacharya is not instructed, as submitted, regarding the availability of the said documents in the records of the School.

Admittedly, the Institution in which the writ petitioner is engaged since 2009 and is working continuously and uninterruptedly is a Minority Institution and governed under the provisions of Article 30(1) of the Constitution of India.

The Special Rules would be applicable in case of management of such an Institution. In consideration of the order dated 14th May, 1996 as extracted hereinabove, it appears clearly that the School Committee would be entitled to appoint the teaching and non-teaching staff of the School, not only temporarily but also on a permanent basis.

The said notification has further clarified that in the event the conditions of Special Rules are satisfied and the appointment is made by the Managing Committee of the School, the concerned authority of the Education Department both Secondary and Primary Branch, will have no option but to accept such appointment as made by the school authorities, in accordance with the Special Rules.

The order of the National Commission for Minority Educational Institution dated 13.6.2012 as mentioned above in case of the present writ petition is passed only

in confirmation with the said Special Rules as well as the notification as mentioned above. The Commission took into consideration, the fact that the writ petitioner and other applicants served in the school without break of service and had maintained good records. Accordingly in terms of the settled law, the Commission directed the Directorate of School Education, Government of West Bengal and the District Inspector of Schools, to accord approval to all the teachers, including the writ petitioner, from the date of her appointment.

Through proper channel, by dint of an order passed by the Assistant Secretary, Government of West Bengal dated 25.7.2012, this order of the Commission was sent for due approval by the District Inspector of Schools, Primary Education.

In view of the facts as discussed above, the court considers that the District Inspector of Schools, Primary Education, South 24-Parganas thereafter had no authority to seek clarification as regards to the documents etc. for its objective satisfaction regarding appointment of the writ petitioner. Firstly, petitioner's appointment would be justified, in terms of government order dated 14th May, 1996. Also noted is that her such appointment has been considered to be sacrosanct, vide order of the National Commission for Minority Educational Institutions, dated 13th June, 2012. In terms

of the order dated 14th May, 1996, the approval of the writ petitioner would not thereafter depend upon the objective satisfaction of the District Inspector of Schools, as the District Inspector of Schools has only been directed to comply with the order of the National Commission for Minority Educational Institutions, which is the appropriate authority, for consideration of the issue in question. The issue has already been decided by the Commission, vide its order dated 13.6.2012.

On the premise as above, this court is of the opinion that impugned order dated 6.5.2016 passed by the respondent authority is without jurisdiction, issued un-authorizedly and thus illegal and liable to be set aside.

The impugned order dated 6.5.2016 passed by the District Inspector of Schools, Minority Education, South 24-Parganas, is set aside.

Let the District Inspector of Schools in terms of the order of the National Commission dated 13.6.2012 and the order of the Assistant Secretary dated 25.7.2012, issue an order of approval of the writ petitioner, within a period of two weeks from the date of service of a copy of this order to the office of the said respondent.

This writ petition being WPA 30121 of 2017 is disposed of, along with the connected pending applications, if any.

Urgent photostat certified copy of this order duly downloaded from the official website of this court upon compliance all legal formalities.

(Rai Chattopadhyay, J.)