

19.02.2024
Item No. ml. 150
Crt.No.22
b.r.

WPA 21424 of 2015
with
IA No. CAN 2 of 2021

Md. Abdul Mannan Gazi
-vs-
The State of West Bengal & Ors.

Mr. Sukumar Ghosh
Ms. Moumita Ghosh
.... For the petitioner.

Mr. Pinaki Dhole
Mr. Avishek Prasad
..... for the State.

Dr. Sutanu Kumar Patra
Ms. Supriya Dubey
.... For the WBCSSC.

This is a hearing matter upon affidavits.

Affidavit of service filed in Court today, is taken on record.

This is the fourth round of writ litigation.

The father of the petitioner, Md. Daud Ali since deceased was a **primary teacher** under the relevant District Primary School Council. The father of the petitioner died on **January 21, 1997**. The mother of the petitioner died on **February 11, 2001**. Then the petitioner almost after **eight years** applied for compassionate appointment.

The petitioner previously had thrice travelled this Court. In the second round of writ petition claiming

compassionate appointment, the issue ultimately travelled up to the Hon'ble Division Bench. The Hon'ble Division Bench by its order dated **May 19, 2010, annexure p-12 at page-63** to the writ petition directed the appointment of the petitioner at **Group-D post**. The petitioner received appointment and has been working as such without any remuneration.

In the third round of writ petition, the petitioner claimed approval of his employment. A co-ordinate Bench by its order dated **March 19, 2015, annexure p-18 at page-77** to the writ petition directed the **respondent no.2** to consider the issue and pass a reasoned order. Pursuant to the said direction, the respondent no.2 passed its reasoned order dated **May 21, 2015, annexure p-19 at page 83** to the writ petition. The said reasoned order is impugned in this writ petition.

Mr. Sukumar Ghosh, learned advocate appearing for the petitioner submits that the pleas shown in the reasoned order rejecting the claim of the petitioner for his approval of employment were all bad and beyond the actual facts. He submits that, the said impugned order is totally perverse and the factual finding therein are not correct at all. He submits that though the petitioner has been working after receiving the compassionate appointment but is not being paid as his service is not

approved. He prays for quashing of the said impugned order and approval of his service.

Mr. Pinaki Dhole, learned State counsel being ably assisted by Mr. Avishek Prasad, learned counsel for the State appearing for respondent nos. 1 to 4 referring to the statements made in **paragraph-4** to the **affidavit in opposition** filed on behalf of the respondent no.2, submits that there was no sanctioned post for **Group-D** in the primary section, though the petitioner received an appointment following the recommendation made by the **respondent no.8** at the post of a **non-teaching Group-D staff**. The petitioner has not been receiving any salary as the approval of his appointment was not accorded by the respondent no.2. Learned State counsel submits that the name of the petitioner was not appearing in the Admission Register of the relevant school, namely, **Kulpi Kalika Vidyapith**, wherein the petitioner studied till Class-VIII. The duplicate progress report was issued on **October 18, 2001**, but the said was written as **July 30, 1997**. The date of birth as appearing in the Admission Register did not match with the transfer certificate. The petitioner said to have taken admission in the high school on **January 5, 1979**, namely, **Kulpi Kalika Vidyapith**, but in the transfer certificate, the date of his birth was recorded as **March**

12, 1979. The relevant transfer certificate is annexed and available **at page-18** to the affidavit in opposition.

In the light of the above, learned State Counsel submits that all these facts were duly noticed upon verification of all the relevant materials and records relating to the petitioner and then the respondent no.2 passed the impugned order rejecting the claim for approval of service of the petitioner.

Mr. Sukumar Ghosh, learned counsel appearing for the petitioner, *per contra*, submits that all these factual aspects are denied by the petitioner. He submits that the appointment was made pursuant to the direction of the Division Bench, hence an approval is automatic and ought to have been granted to the petitioner. He further submits that in absence of any affidavit in opposition from the school authority with regard to the authenticity of the transfer certificate at **page-18** to the affidavit in opposition, no conclusive finding can be arrived at. The State authority cannot take a stand on the basis of the said purported transfer certificate.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that the petitioner has filed its affidavit in reply. The statements made in **paragraph 4** of the affidavit in opposition, on the strength of which

the learned State counsel made his submissions as recorded above, are not denied as it is required to be done in accordance with law, in **paragraph 2** to the affidavit in reply, save and except, the petitioner has contended that the date of birth recorded in the transfer certificate being **March 12, 1979** was not true and correct. The school authority had not filed any affidavit in support thereof and no denial was there. In so far as the documents at **pages 16 to 18** to the affidavit in opposition are concerned, the State respondents has pleaded his case in **paragraph 16** to the affidavit in opposition. The petitioner dealt with the same in **paragraph 13** to its affidavit in reply. The contention of the State respondents in **paragraph 16** to the affidavit in opposition were not denied by the petitioner as it required to be done in law. The petitioner only contended that since the school authority had not filed any affidavit, no credence can be placed on the documents at **pages 16 to 18** to the affidavit in opposition and as such, no reliance can be placed thereon. However, the said documents or the existence or the authenticity thereof were not denied by the petitioner. The petitioner only contended that the date of birth recorded on the document at **page 18** to the writ petition being **March 12, 1979**, is not correct.

The law is well settled that an evasive denial is no denial.

It is true that despite notice, the school authority chose not to be represented before this Court.

Upon a careful scrutiny of the impugned order dated **May 21, 2015**, it appears to this Court that the relevant school authorities were duly represented before the **respondent no.2** during the hearing when the impugned order was passed. The school authorities were granted opportunity of hearing along with the petitioner. The school authority during the hearing never raised any disputes or objected to the relevant materials placed before the respondent no.2 including the said documents at **pages 16 to 18** to the affidavit in opposition. The existence, purport or authenticity of all these documents were never questioned or denied by the school authorities before the respondent no.2.

From the impugned order, it appears that while passing the same, the respondent no.2 had duly considered all the relevant materials required to be considered and on appreciation thereof and after giving opportunity of hearing to the interested parties, the impugned order was passed. The impugned order is otherwise very well reasoned, versed and founded.

Therefore, the plea of the petitioner that in absence of the school authority before this Court, no

reliance can be placed on those documents at pages 16 to 18 to the affidavit in opposition are not acceptable in law and fact and accordingly stands rejected by this Court.

In view of the foregoing reasons and discussions, this Court is of the considered view that the order passed by the **respondent no.2** dated **May 21, 2015**, **annexure p-19 at page 83** to the writ petition does not suffer from any infirmity and call for any interference at all. The decision of the respondent no.2 dated **May 21, 2015**, accordingly, stands **affirmed**.

Resultantly, this writ petition being **WPA 21424 of 2015** being devoid of any merit stands **dismissed**, without any order as to costs.

In view of the above, the connected interlocutory application being **IA No. CAN 2 of 2021** also fails and stands **dismissed**.

(Aniruddha Roy, J.)