

Court No. 2
08.4.2024
(Item No. 36)
(AB)

IN THE HIGH COURT AT CALCUTTA
Circuit Bench At Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 662 of 2024

St. Xavier's High School (H.S.) & Ors
VS
The State of West Bengal & Ors.

Mr. Sandip Kumar Das
Mr. Hillol Saha Poddar
Ms. Mousumi Das
..... for the petitioners
Mr. Pretom Das
Mr. Sandip Guha Ray
.... For the State

On the prayer of Mr. Sandip Kumar De, learned counsel appearing for the petitioners, leave is granted to the petitioners to file supplementary affidavit affirmed on April 3, 2024. Copy of the supplementary affidavit filed in Court today is taken on record. Copy has already been served upon the learned State counsel appearing in the matter.

Referring to a **Government Memo dated June 8, 2007, Annexure P-5** at **page 36** to the writ petition learned counsel for the petitioners submits that, this is an existing Government Order prevailing on the issue. The petitioners claimed three posts as mentioned in **Annexure P-8** at **page 43** to the writ petition.

In the first round the petitioners submitted a representation. In the first round of writ litigation and in a connected contempt application ultimately the

respondent No. 2 took a decision on **June 7, 2023, Annexure P-10** at **page 46 onwards to page 49** to the writ petition. Learned counsel for the petitioners submits that, on the face of the said decision it appears that, the same was not in adherence of the said **Government Memo dated June 8, 2007**. The petitioners then submitted its second representation dated **September 25, 2023, Annexure P-12** at **page 52** to the writ petition.

Learned counsel for the petitioners submits that, the said decision of the respondent No. 2 dated **June 7, 2023** cannot sustain in law in view of the said Government Order dated **June 8, 2007**. Hence, he prays for quashing of the said decision of the impugned decision of the respondent No. 2 **dated June 7, 2023** and a direction for further consideration of the issue on the representation dated **September 25, 2023, Annexure P-12** at **page 52** to the writ petition.

Mr. Pretom Das, learned State counsel appearing for the respondents referring to the said document dated **June 7, 2023** issued under the signature of the respondent No. 2 at **page 47** to the writ petition, submits that, it was not a decision taken by the respondent No. 2 but merely a report of compliance submitted by the respondent No. 2 in the earlier contempt proceeding. Learned State counsel

submits that, this report is not required to be set aside but the representation of the petitioner dated **September 25, 2023** may be directed to be considered by the **Principal Secretary, School Education Department, Government of West Bengal**.

Considering the submissions made on behalf of the parties and upon perusal of the materials on record, it appears to this Court that, the said **Government Order dated June 8, 2007, Annexure P-5 at page 36** to the writ petition still holds good on the field and is a material policy decision of the State on the issue. As submitted on behalf of the State respondents the document being dated **June 7, 2023** issued under the signature of the respondent No. 2, merely being a compliance report, is not required to be quashed, this Court is of the view that, the same is not required to be quashed at this stage but the same shall not have any bearing or effect while deciding the representation of the petitioners dated **September 25, 2023, Annexure P-12 at page 52** to the writ petition by the **Principal Secretary, School Education Department, Government of West Bengal**.

In view of the above, the Principal Secretary, School Education Department, Government of West Bengal upon issuing a prior hearing notice of at least seven days upon the petitioners and the respondent

No. 3 and after giving them an opportunity of hearing shall decide the representation of the petitioners dated **September 25, 2023, annexure P-17** at **page 52** to the writ petition by passing a reasoned order in accordance with law.

While considering the said representation, the Principal Secretary shall also take into account the said **Government Order dated June 8, 2007, annexure P-5** at **page 36** to the writ petition and the document showing the strength of students of the school **Annexure P-7** at **page 42** to the writ petition.

The entire exercise as directed above, shall be carried out and completed by the concerned Principal Secretary positively within a period of **six weeks** from the date of communication of this order. The Principal Secretary then shall communicate its reasoned order to the petitioners and the respondent No. 3 and/or other authority required in law positively within a **further period of two weeks** from the date of the said reasoned order to be passed.

It is made clear that, this court has not gone into the merits of the claim or the submissions made on behalf of the parties before this Court.

The parties attending the hearing before the Principal Secretary, shall be at liberty to take all points whatever they wish to urge by relying upon whatever documents, records, notifications,

Government orders and law prevailing on the issue before the Principal Secretary.

In the event, the reasoned decision goes in favour of the petitioners, then an immediate effect shall be given thereto by the respondent No. 2 and/or respondent No. 3 positively within a period of **two weeks** from the date of communication of the said reasoned order.

It is made clear that, this order shall not create any right or equity in favour of the petitioners if the petitioners are not otherwise eligible to receive their claim strictly in accordance with law.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

On the above terms, this writ petition being **WPA 662 of 2024** stands disposed of without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)