

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side**

WPA 2578 of 2023

**Prabir Debnath
Versus
The State of West Bengal and Ors.**

Mr. Arnab Saha, Adv.

... for the petitioner

Mr. Subir Kr. Saha, Adv.

Mr. Sumit Kumar, Adv.

... for the respondent no. 1 and 5

Mr. Nabankur Paul, Adv.

Ms. Bedashruti Bose, Adv.

Ms. Sutapa Sen Paul, Adv.

... for the respondent nos. 7 & 8

Mr. Anirban Banerjee, Adv.

... for the respondent no.2 and 3

Being aggrieved and dissatisfied with the order passed by the Head Master, Salsalabari Model High School, Alipurduar dated 23rd August, 2023, the petitioner has filed the present writ application.

In the previous round of litigation, by the order dated 3rd August, 2023 this Court has disposed of the writ petition directing the respondent nos.7 and 8 to take reasoned decision in terms of the letter issued by the Deputy Secretary (Academic), West Bengal Board of Secondary Education to the District

Inspector of School, Cooch Behar on 21st November, 2022. In compliance of the order dated 3rd August, 2023, the Head Master and the President of Salsalabari Model High School passed the impugned order dated 23rd August, 2023 and held as follows :-

“i) As per Control of Expenditure Act 2005, no teacher shall be allowed to acquire any higher qualification on regular mode other than the qualifications specified for the post.

ii) Since the appointing authority right now is WBBSE, the SMC does not enjoy any power to give permission for higher study on regular mode when normal schooling will be hampered. In this content, the Board is the final authority to instruct the school what they should do.

Finally Gazette notification No.214-SE/S/10M-01/18 dated Kolkata 8th March 2018 subpara 23 of para 4 GO No.593 SE(B) dated 27.11.2007 are not adhere to your case, SMC can wait for the clarification from the WBBSE in connection with the Ph.D Course in regular mode, salary on regular basis from the school before instructing to issue you No objection Certificate from our end.”

In the impugned order it is of the view of the Head Master that since the appointing authority is WBBSE and the SMC does not enjoy any power to give permission for higher study on regular mode when normal school will be hampered and in this context the Board is the final authority to instruct the School what they should do.

The Head Master had the knowledge about the authority but instead of referring the said matter to the concerned authority i.e. WBBSE, has passed the impugned order without taking any decision.

In view of the above, this Court finds that the impugned order dated 23rd August, 2023 is liable to be set aside and accordingly, the same is set aside.

The President, West Bengal Board of Secondary Education is directed to consider the request of the petitioner, in accordance with law and to pass a reasoned and speaking order within a period of three weeks from the date of receipt of this order and to communicate the same to the petitioner.

WPA No. 2578 of 2023 is disposed of.

(Krishna Rao, J.)