

OD-10

ORDER SHEET

WPO/181/2021

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MALOY KUMAR DUTTA AND ANR.
VS
THE STATE OF WEST BENGAL AND ORS.

BEFORE:
The Hon'ble JUSTICE RAI CHATTOPADHYAY
Date : 6th February, 2024

Appearance:
Mr. Anjan Bhattacharya, Adv.
Ms. Anita Shaw, Adv.
..for the petitioner

The Court:- In this writ petition, the petitioners who are the contractual non-teaching staff of Shree Jain Swetamber Terapanthi Vidyalaya, are aggrieved with an order dated 04.03.2021 passed by the District Inspector of Schools, Secondary Education, Kolkata, thereby rejecting their prayer for approval.

The writ petitioners say that they have been appointed in the said D.A. getting school on 15.10.2004 and 01.04.2003, respectively. Since then they have been discharging duties continuously and without any blemish. The proposal of the school authority was forwarded to the concerned respondent vide letter dated 07.12.2009 seeking approval of the said two writ

petitioners/non-teaching staff of the school. Since the respondent sat tight over the matter regarding such recommendation of the school authority, this Court was moved initially, by dint of a writ petition being WPO/411/2020 (Maloy Kumar Dutta & Anr. vs. The State of West Bengal & Ors.). An order was passed directing the concerned respondent to consider the proposal for approval of the writ petitioners. The resultant order is dated 04.03.2021, which is impugned in this case.

Two grounds are being relied on by the concerned respondent to decline the writ petitioners' approval in the said school. Firstly, that the selection procedure of their appointment, as was adopted by the school management, was not in accordance with the recruitment norms and rules prevailing at the material point of time. According to the respondent authority, the well-defined posts of Group D and Peon cannot be filled up by the persons who have been inducted in the school through an improperly introduced selection process. Secondly, it has been stated that the State policy pertaining to the approval of the non-teaching staff in case of a D.A getting school being not there in vogue, the writ petitioners' prayer cannot be granted.

Hence, the prayer of the writ petitioners' approval was declined vide the said order dated 04.03.2021.

Mr. Bhattacharya challenges the said order on behalf of his clients on many-fold grounds. He says firstly that regarding the objection of the concerned respondent authority of a recruitment procedure, which is allegedly in derogation of the rules, is only illusory and not maintainable. He has pointed out to the advertisement published in the newspapers and submits

that after due consideration of the eligibility with respect to the educational qualification as well as working capacity of the concerned persons, they have been appointed in the school, back in the year 2003 and 2004 respectively. It is submitted further that on the basis of their satisfactory performance, their service with the school has also been confirmed by the school authority as against the two sanctioned posts, upon retirement of the staff thereof.

As such, according to Mr. Bhattacharya, there should not be any impediment for approval of the present two writ petitioners.

Mr. Bhattacharya has thereafter submitted that though the respondent authority, in the impugned order has stated about the non-existence of a State policy, at the concerned period of time pertaining to the approval of appointment of non-teaching staff in case of a D.A getting school, it has been a vague statement. In absence of any specific contention as regards the relevant provisions under which such policy decision as above, has been taken, according to Mr. Bhattacharya, the statement made by the respondent authority in the impugned order is only unsubstantiated.

For the reasons and grounds as above, he has sought for setting aside of the impugned order and necessary further orders in favour of his clients.

In spite of service of several notices, no one is appearing for the respondent authorities in this case. There has not been any affidavit-in-opposition filed by the respondent authorities in spite of directions of this Court. Hence, it is understood that the respondents are not interested to

contest in the case. As such, the matter is taken up for final adjudication in absence of the respondent authorities.

The appointment of the writ petitioners in the school as named above as contractual non-teaching staff and their continuous service therein is undisputed in this case. Recognition as regards the satisfactory service of the writ petitioners, by the school authority, is also found to be on record in view of their confirmation order, as well as school authorities recommending the writ petitioners for approval, by dint of a letter dated 07.12.2009.

The impugned order is in effect to reject the petitioners' prayer for approval in the said school. Unfortunately, the Court finds the reasons stated therein to be not tenable in the eye of law. So far as the facts of this case are concerned, the appointment procedure of the writ petitioners are found to be based on a well-defined selection process, starting from publication of advertisement in a well-circulated newspaper. As such, there would not be any justifiable ground for the respondent authority to come to a conclusion that the appointment procedure of the concerned respondents were not in terms of the settled norms.

The other contention of the concerned respondent regarding non-existence of any State policy pertaining to the approval of appointment of non-teaching staff of a D.A getting school would only lead to an anarchical situation when a school would be required to function in that case, without any non-teaching staff, at its service. The respondent authority has not been able to indicate the specific Government Order/Rules or Regulations to justify existence of any such State policy.

On the grounds as above, the impugned order appears to be based on surmises only. The said order is unreasoned and arbitrary.

This Court finds it proper to set aside the impugned order dated 04.03.2021 passed by the District Inspector of School, Secondary Education, Kolkata.

Let the concerned authority revisit the prayer of the writ petitioners for approval on proper consideration of the facts and laws and in the light of observations and directions of this Court as made above.

This writ petition is disposed of with the directions as above.

(RAI CHATTOPADHYAY, J.)

bp.