

OD-4

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/420/2019

SHIV KUMAR MISHRA
VS
THE STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date : 3rd December, 2024.

Appearance:

*Mr. Anjan Bhattacharya, Adv.
...for the petitioner*

*Mr. Sakti Pada Jana, Adv.
...for the school authority*

*Mr. Bhaskar Prasad Vaisya, Adv.
Mr. Nilay Baran Mandal, Adv.
...for the State*

The Court: In the present writ petition, the issue is whether the impugned order passed by the respondent District Inspector of Schools, Secondary Education, Kolkata, dated 13.11.2017 may be termed as improper and illegal in view of the provisions under Government order no. 1691-SE(S) dated 20.09.2001, or the decision of the said authority by dint of the said impugned order rejecting the approval of the writ petitioner would be termed as just, proper and legal.

Learned Advocate appearing for the petitioner would emphasise that the respondent school being a DA getting school and the writ petitioner having been appointed there and working for a considerable period of time as a contractual and unapproved teacher would be entitled to be benefitted under the G.O. No. 1691. Therefore, the petitioner has prayed for being accommodated in an approved sanctioned post of an Assistant Teacher in

the said school and approval of his service to obtain the DA component from the Government.

The respondent District Inspector of School, Secondary Education, Kolkata would state in his order dated 13th November, 2017 that the petitioner would not be entitled for an approval in view of two Government orders, i.e., No. 1079-L dated 05.05.1976 and no. 346-TW/EC dated 13.07.1994, issued by the Scheduled Castes and Tribes Welfare Department and also no. 101-EMP dated 25.07.2008, issued by the Chief Secretary of the Government of West Bengal. He would also say there that the staff pattern of the school would not permit grant of approval to any other teacher in the language group.

According to the petitioner, none of the Government orders, as have been relied on by the said respondent in the impugned order, would be applicable in this case, insofar as No. 1079 and No. 346 are meant for being applicable in case of Scheduled Castes and Scheduled Tribes candidates. Also the other memorandum, i.e., no. 101, issued by the Labour Department would not be applicable in case of a school teacher.

According to the petitioner, the staff pattern has not been provided to be a restricting factor under the provisions of memorandum no. 1691, to restrain the writ petitioner, to get the benefit thereunder.

So far as the memorandum no. 1691 dated 20.09.2001 is concerned, it has provided for absorption of the teachers working beyond the sanctioned strength, in place of any vacancy which arises within the sanctioned strength. Needless is to mention that the said memorandum categorically mentions about the necessity for strict adherence to the norms of the staff

pattern, in case of such absorption of teachers working beyond the sanctioned strength.

In the impugned order dated 13th November, 2017, the respondent District Inspector of Schools, has founded its decision on the basis of the Government orders which may not be considered as applicable in case of the present petitioner for the reasons, as stated above. During argument, it is learnt that over the period of time, the student strength in the school has decreased considerably and at present, the pupil-student ratio, would not support approval of teacher within the sanctioned strength.

However, according to No. 1691, there would be two criterion for consideration of approval of a contractual/ unapproved teacher, firstly vacancy should arise into the sanctioned strength and the person should be eligible in terms of qualification, age etc.

Regarding the present petitioner, his overage would also be an issue in dispute in this case. To defend the same, Mr. Bhattacharya would rely on previous orders of this Court, as follows:-

- (i) WPO 205 of 2021 (Rekha Agarwal vs. The State of West Bengal & Ors.), dated August 8, 2023;
- (ii) WPO 163 of 2021 (Manju Pandey & Anr. Vs. The State of West Bengal & Ors.), dated January 25, 2024.

In such situation and in view of the provisions as discussed above of the memorandum no. 1691, the Court is of considered opinion that the impugned order passed by the District Inspector of Schools dated 13th November, 2017 should be set aside being founded on erroneous logic. Hence, the same is hereby set aside.

Let this matter be relegated to the Principal Secretary, Education Department, Government of West Bengal/the respondent no. 1, to take decision afresh on the issues involved in this writ petition.

Let him allow opportunity of hearing to the writ petitioner and consider the judicial verdicts or other relevant documents, as the petitioner would like to place before the said office.

Let the respondent no. 1 consider and dispose of the petitioner's prayer as has been made in the present writ petition by dint of a reasoned order and positively within a period of four weeks from the date of communication of a copy of this order.

With the direction as above, WPO/420/2019 is disposed of.

(RAI CHATTOPADHYAY, J.)

sg.