

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Jay Sengupta

**WPA 717 of 2024
Barmeshwar Nath Gupta
Vs.
The State of West Bengal and Ors.**

For the petitioners : Mr. Aniruddha Singh
Ms. Anjana Mehebub
Ms. Susmita Ghorai ...
.....Advocates

For the State : Mr. Gourav Das
Mr. Hemanta Kumar Das
.....Advocates

For the respondent no.7 : Ms. Joyita Ray
.....Advocate

Heard lastly on : 13.11.2024

Judgment on : 28.01.2025

Jay Sengupta, J:

1. The petitioner has preferred WPA No. 717 of 2024 praying for issuing writ of Mandamus commanding the respondents, particularly the respondent no. 5, 6 and 7, to rescind, revoke, cancel quash and/or withdraw the impugned resolution dated 19.08.2023 taken by the Governing Body of Memari College, Purba Bardhaman and further directing them to appoint/engage the petitioner as ANO of NCC unit of said College and to reinstate the petitioner as Part Time Trainer of Memari College, Purba Burdwan and pay the arrear salary in favour of the petitioner.

2. Learned counsel representing the petitioner submitted as follows. The petitioner was working as Trainer of NCC Unit at the respondent college. The petitioner was appointed as Caretaker w.e.f. 18.08.2010 in respect of the NCC unit of the respondent college. The Commanding Officer requested the Principal of the respondent college to forward necessary documents of the petitioner for appointment as ANO. The Principal of the respondent college arbitrarily did not forward the documents of the petitioner holding that the petitioner did not possess M. Com Degree. It was needless to mention that such conditions were not required to be appointed as ANO. Lastly, when the respondent college authorities passed a reasoned order in compliance with the directions of the High Court, the petitioner came to learn that one Tapas Pradhan was appointed as a Caretaker w.e.f. 12.12.2012 by a GB resolution. The said Tapas Pradhan was appointed as Caretaker when the petitioner was already working

in the same post. It was pertinent to mention herein that the respondent no.7, being the Principal of the respondent college in the affidavit in opposition had specifically stated that at present the said Tapas Pradhan was acting as a Caretaker since 12.12.2012 vide GB resolution. Chapter 3 of the ANO Hand Book dealt with Associate NCC Officers (ANOs). Serial no. 8 specifically stated that a Caretaker could be appointed for an interim period of maximum two years. In the instant case the said Tapas Pradhan had been working as the Caretaker since 2012, which was illegal.

3. Learned counsel for the respondent no.2 submitted as follows. The petitioner Barmeshwar Nath Gupta was appointed as a Part Time Trainer in Memari College purely on temporary basis for a period of two years with effect from 05.03.2010 with an honorarium of Rs. 1000/- and a special pay of Rs. 150/-. He was appointed as Caretaker of NCC Unit of Memari College with effect from 18.08.2010. Through a letter dated 26.03.2012 the Commanding Officer, 4 Bengal Battalion NCC sought for applications for selection of Associate NCC Officer (ANO)/Caretaker. With the letter another communication being the letter from NCC Gp HQs, Burdwan dated 21.02.2012 was also forwarded regarding the qualifications required for being appointed as ANOs. In the letter of NCC Gp HQs, Burdwan, dated 21.02.2012 it was clearly mentioned that the Associate NCC Officer (ANO) should be a Teaching Staff of the College. Though in terms of the letter dated 21.02.2012 issued by the NCC Group Headquarter, Burdwan only a teaching faculty of an Institution/College could be recommended by the Head of the Institution/College for appointment of

CTO/ANO, but there was no evidence to prove that the petitioner Barmeshwar Nath Gupta had been a teaching faculty of Memari College at any point of time. Through a letter from Principal, Memari College dated December, 2012 it was requested not to extend the contract of Barmeshwar Nath Gupta beyond 31.06.2013. The petitioner's long absence was cited as the reason. This was based on the resolution taken at the meeting of the Governing Board of Memari College dated 21.12.2012. Through the same letter the name of Shri Tapas Pradhan was recommended as the caretaker. The sanction of the Officiating ADG, NCC (WB) was accorded for the appointment of Tapas Pradhan as caretaker w.e.f. 14.02.2013 to 13.02.2014. In the meeting of Board of Officers held on 18.06.2013 Tapas Pradhan was approved for selection for grant of commission as an Associate NCC Officer (ANO). Tapas Pradhan had been officiating as ANO of 4 Bengal BN NCC in Memari College since then till date.

4. Learned counsel for the respondent no.7 submitted as follows. At the very outset, the instant writ petition was not maintainable in respect of the prayer sought for. The petitioner had preferred WPA 9399 of 2023 before the High Court at Calcutta with prayer for direction upon the college authority to appoint him as ANO and this Court was pleased to direct the Principal, Memari College to consider the representation of the petitioner appearing and to pass reasoned order. But, as per instructions received from the respondent no. 7, no such representation was submitted before the college ever. The College had no knowledge about such said representation, but to comply with the order dated 18.07.2023 passed by the High Court at Calcutta, the respondent no. 7 heard

the petitioner, discussed the matter in General Body Meeting, considered the case and unanimously the college authority took the decision that reappointment or reengagement of the petitioner was not possible as Caretaker NCC Officer for reasons discussed herein. ANO (Associate NCC Officer) was a designated person who must be a teaching staff of the college and was entrusted with the duty to manage the affairs of NCC in the college. The qualification for appointment of an ANO was fixed as per the NCC Act, 1948. But, when an ANO resigned or relinquished his duty or superannuated then to manage the affairs of NCC a Caretaker NCC Officer was appointed to manage the NCC affairs of the college for a temporary period and till the appointment of new ANO Officer. It was a convention that college authority would take initiative to appoint a designated ANO at the earliest. In Memari College, the post of ANO was vacant since 1994 when the previous ANO relinquished his duty. In 2010 as there was no such designated ANO in the said college, the petitioner was appointed as Caretaker NCC Officer for a small period of time. But, the Commanding Officer of NCC issued a letter vide Memo. No. 1288/A/CT/4 BN dated 26.05.2012 and asked the petitioner as well as the college authority to submit all the required documents for the appointment of an ANO of the college. Otherwise, they would withdraw the NCC program from the college. The petitioner, the then Caretaker NCC Officer was personally requested to submit all the relevant documents as enshrined in the letter dated 21.02.2012 issued by the Commanding Officer for regularisation of his appointment from Caretaker to ANO. But, the petitioner failed to submit that

relevant documents as he did not possess a Master degree qualification which was pre requisite qualification to be a teaching staff of a college. But, the college authority was sympathetic to the petitioner and the then Principal wrote a letter to the Commanding Officer requesting to consider the candidature of the petitioner for the next selection test to be held on December, 2012. Unfortunately, the petitioner did not complete his Master Degree in 2012. As he had failed to obtain Masters Degree which was requisite qualification to be a College teacher as per UGC Rules, therefore he had essentially failed to fulfil the requisite qualification to be an ANO. So, the college authority did not have a vindictive attitude towards the petitioner, as the Principal himself requested the Commanding Officer to give him another chance to fulfil the criteria to be a college teacher as well as an ANO. The petitioner been appointed as Caretaker NCC Officer in good faith, for a stopgap period, assuming that he would achieve the requisite qualification to become a college teacher as well as ANO in the meantime. But, he had failed to do that. If the petitioner was a college teacher and had the capacity or qualification to become a college teacher as well as to become an ANO, then he would have the right to question the appointment of Tapas Pradhan who was a college teacher and fulfilled all the conditions to become an ANO. As he had no such qualification to become ANO, he had certainly lost the right to question the appointment of Tapas Pradhan who was competent to become an ANO in all respect. As the petitioner himself was aware that he did not have the requisite qualification to become an ANO, he was very irregular in his duty. Therefore, the college authority had no option to

regularise or to continue his appointment, but to terminate his engagement and the college authority was compelled to appoint an ANO to continue NCC Program in the College. The petitioner stated in the writ petition that he had annexed documents relating to Master Degree examination as Annexure P1, but nowhere he had annexed any such document in the writ petition.

5. I heard the learned counsel for the parties and perused the writ petition, the affidavits and the written notes of submissions.

6. Admittedly, the petitioner was appointed as part time trainer in Memari College purely on temporary basis for a period of two years with effect from 05.03.2010 with an honorarium of Rs. 1000/- and a special pay of Rs. 150/-. He was appointed as Caretaker of NCC Unit of Memari College only with effect from 18.08.2010.

7. However, it is a requirement, as would be evident from the letter of the NCC Gp HQs, Burdwan dated 21.02.2012, that the Associate NCC Officer (ANO) should be a teaching staff of the College. At least, the candidate should be qualified to be a teaching staff of the College. But, the present petitioner was not holding a Masters Degree, which would have qualified him to become a teacher of the College.

8. It further appears that by a letter from the Principal of the Memari College written in December, 2012, it was requested not to extend the contract of the petitioner beyond 31.06.2013. This was based on the resolution taken at the Governing Board of the Memari College on 21.12.2012. Through the same letter the name of one Tapas Pradhan was recommended as Caretaker. The

sanction of Officiating ADG, NCC (WB) was accorded for the appointment of the said incumbent as Caretaker with effect from 14.02.2013 to 13.02.2014. In a meeting of Board of Officers held on 18.06.2013, the said Tapas Pradhan was approved for selection for grant of commission as ANO. Since then he has been working in such capacity.

9. It is the further contention of the respondent no. 7 that although by an order passed in WPA 9399 of 2023, this Court had earlier directed the Principal of the Memari College to consider the representation of the petitioner and passed a reasoned order, no such representation was purportedly submitted before the College ever. However, in order to comply with the order dated 18.07.2023 passed by this Court, the respondent no. 7 heard the petitioner, discussed the matter in General Body Meeting, considered the case and unanimously took the decision that reappointment or reengagement was not possible as Caretaker NCC Officer for the reasons recorded therein.

10. First, the petitioner had taken up the entire issue before this Court much after the appointment of another person to such post.

11. Secondly, the petitioner was admittedly not a teaching staff of the College and did not even have the qualification to be a teacher in the said College. In fact, as per the respondent no. 7, he was granted ample opportunity to obtain necessary qualification i.e., a Masters Degree, but failed to do so. Therefore, he was not eligible to continue, as per the NCC norms.

12. According to the said respondent, the petitioner was only taking advantage of the extra privilege granted to him by the college authority.

13. It is, thus, quite abundantly clear that the engagement of the petitioner was for a temporary period and was a stop-gap arrangement till a proper candidate was found out. As such, the petitioner cannot take advantage of the privilege that was accorded to him in trying to ascribe a status to his engagement, which was non-existent from the very inception.

14. In view of the above, this Court does not find any merit in this application. Accordingly, the same is dismissed, however, without any order as to costs.

15. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)