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Ct-08

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FMA 4416 of 2016

**The State of West Bengal & Ors.
Vs.
Khabiruddin Ahmed & Ors.**

with

MAT 888 of 2014

**The State of West Bengal & Ors.
Vs.
Md. Asraf Ali & Ors.**

Mr. Tapan Kumar Mukherjee, Ld. AGP
Mr. Samirul Bari
Mr. Somnath Naskar
... For the Appellants/State

Mr. Sobhan Majumder

... For the Respondents/
Writ Petitioners

1. By consent of the parties both the appeals are taken up together and disposed of by this common order.
2. The writ petitioners claim to be the Assistant Teachers and their names were reflected in the DLIET report of 1992. The Junior Madrasah was upgraded as High madrasah. It was alleged that in spite of such upgradation and recognition the writ petitioners who are still serving in schools have not been absorbed and/or approved as Assistant Teachers.
3. Learned counsel for the writ petitioners has relied upon the **Government Memorandum dated**

24th February, 1995 bearing No. 117-Se(S)/4A-50/93. Before the learned Single Judge it was submitted that in support of the aforesaid Memorandum they are required to be allowed and they should be given approval in terms of the aforesaid Memorandum.

4. It appears that learned counsel for the State prayed for time to obtain necessary instruction. Learned Single Judge without giving any opportunity to file an affidavit or to produce instruction proceeded on the basis of submission made in the petition as if they are true and correct and relying upon the Circular dated 24th February, 1995 passed the impugned order. As a consequence to the said order a second writ petition was filed for disbursement of the salary of the teachers. It is submitted that in the mean time they have superannuated.

5. Mr. Tapan Mukherjee, learned A.G.P appearing on behalf of the appellants, has submitted that after the School Service Commission Act has come into force the organizing teacher cannot claim any right. In any event, having regard to Section 5 of the West Bengal Schools (Control of Expenditure) Act, 2005 read with Section 20 of the said Act such

Appointment, if any, has become void ab initio. It is further submitted that the application for approval for upgradation was filed in the year 2007 and the teachers, if any, appointed prior thereto cannot be considered to be an approved teacher of the Institution.

6. We feel that an opportunity should be given to the State to file affidavit to bring on record the factual aspect of the matter for consideration by the learned Single Judge.

7. In view of the above, we set aside the order under appeal on the ground that the matter is required to be heard on affidavits.

8. The appellants/State are directed to file affidavit-in-opposition to the writ petitions peremptorily within 10 days from date. Affidavit-in-reply thereto, if any, be filed within 10 days thereafter.

9. Upon completion of affidavits, learned advocate on record for the writ petitioners shall be at liberty to mention the matter before the learned Single Judge having determination for early hearing of the writ petitions.

10. The impugned order is set aside subject to filing of affidavit-in-opposition by the State within the stipulated time.

11. In the event, the affidavit-in-opposition is not filed, as directed, the order impugned shall revive.

12. It is made clear that we have not gone into the merits of the matter.

13. On such consideration, the appeal being FMA 4416 of 2016 stands disposed of along with MAT 888 of 2014.

14. Urgent photostat copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Smita Das De, J.)

