
(2018) 07 CAL CK 0060
In the Calcutta High Court
Case No : Writ Petition 9568 (W) of 2018

Abdus Sattar & Ors.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

West Bengal Schools (Control of Expenditure) Act, 2005 — Section 3, 9

Citation : (2018) 07 CAL CK 0060

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Golam Mustafa, T. S. Samanta, Tapan Kumar Mukherjee, Saheli Mukherjee Chakraborty

Final Decision : Allowed

Judgement

This is a writ petition where the challenge levelled is against the impugned order dated April 25, 2016 passed by the respondent no.3 which appears at

page 78 of the writ petition. This order was passed purportedly in compliance with the judgment dated February 11, 2016 passed by a coordinate

Bench in W.P. no. 24846 (W) of 2014. The said order is at page 70 of the writ petition (Annexure P-8). At page 76 the coordinate Bench directed as

follows:

â??Clearly the said respondent No. 3 has not referred to any particular Rule or Order nor mentioned how the applications are barred in view of any

such Rules or Orders. The impugned order is, therefore, manifestly untenable and stands quashed. The respondent No.3 is now directed to pass a

fresh order specifying the Rules and Orders under which the applications of the petitioners were barred or liable to be rejected. Such specifying order

shall be passed by the respondent No. 3 after giving an opportunity of hearing to

the petitioners or their representatives within six weeks from the date of communication of this order. Needless to add, the applications of the petitioners will have to be dealt with appropriately if the respondent do not find them to be barred by any specifying Rules and Orders.â??

This order achieved finality. None of the respondents, in the earlier writ petition, carried it in appeal. Instead the third respondent gave a hearing to the writ petitioners. Thus, he purported to comply with the said order. However, the said order impugned does not specify any rule or government order or any statutory provision, but as appears from its face has rejected the representations on the issue of approval of appointment in favour of the eleven writ petitioners on the following allegations:

â??In this respect no permission has been accorded by the District Inspector of Schools, (S.E.), Uttar Dinajpur Golam Mortuja passed B.A. in the year 2012 but he joined as Asstt. Teacher in the year, 2008 Badiur Rahaman passed B.A. in the year 2009 but he joined as Asstt. Teacher 24.2.2009, Md. Raihanul Islam passed B.A. in 2012 but he joined as Asstt. Teacher as 2.8.2013, Saddam Hossain passed M.P. 2008. But he joined as Clerk 24.2.2009 below age as 18 years, Abul Kalam Azad passed B.A. in the year 2009 but he joined as Asstt. Teacher on 24.2.2009. Marufa Khatun passed M.P. in the year, 2009 as non-teaching staff but she joined on 24.2.2009 below as 18 years. As per statements reflected in the W.P. the above organize recruitment is false.

The Madrasah Recognized by the West Bengal Board of Madrasah Education vide memo no.5047-A, dated 22.2.2011 as New set up Jr. High

Madrasah. As per Notification by the Government of West Bengal in terms of G.O. No.125-SE (s)/Es/S/35-47/2006 dated 15.2.2007 And whereas

teachers for the set up schools have to be appointed only on recommendation of the West Bengal School Service Commission And whereas non-

teaching staff are to be recruited as per the existing rules under the West Bengal Schools (Control of Expenditure) Act, 2005. The undersigned

verified the relevant papers and documents by the Madrasah and as per rules and orders the approval of Service as organising teaching and non-

teaching staff of the Ampara Jr. High Madrasah cannot be considered and thus the matter is disposed of.â??

As I understand it, the respondent no.3 was required to pass a fresh order â??

specifying the rules and orders under which the applications of the petitioners were barred or liable to be rejected. Without such a finding approval could not have been refused. While Ms. Saheli Mukherjee Chakraborty learned advocate for the State of West Bengal led by Mr. Tapan Kumar Mukherjee, learned senior advocate and learned A.G.P. submitted strenuously that reference has been made in the order impugned to the provisions of the West Bengal Schools (Control of Expenditure) Act, 2005 and on the face of the said statute, Sections 3 and 9 bar the approval sought by the writ petitioners as organising teaching and non-teaching staff and further that in view of the matters of record that the West Bengal Madrasah School Service Commission Act, 2008 was in force as on February 22, 2011 when recognition was granted to the Madrasah provisionally as a newly set up Junior High Madrasah from Classes V to VIII and in the recognition memo at page 51 (Annexure P-2) clearly provides that the appointment of non-teaching staff shall be made in accordance with Government's acts and rules in force, it is not possible to dispute that none of these Rules or Sections were specified, as directed by the coordinate Bench. Even though, I appreciate that (2006) 4 SCC page 1 being the case of State of Karnataka vs. Uma Debi as followed recently in the case of State of Jammu & Kashmir vs. District Bar Association Bandipara reported in (2017) 3 SCC page 410, inter-alia, at page 13 clearly condemned issuance of directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc unless the recruitment itself was made regularly in terms of the constitutional scheme except where it amounts unfair labour practice, none of these fall for decision at the present stage since the State had allowed the order of the coordinate Bench to achieve finality between these parties and, therefore, the said decision of the coordinate Bench is binding on these parties and sitting in a coordinate Bench I cannot indirectly sit in appeal over a decision of the other learned single Bench inter-partes and thereby create judicial anarchy by reopening that which has become final between the parties.

In such view of the matter, the judgment cited by Mr. Mostafa in the case of Sheo Narain Nagar & ors. vs. State of Uttar Pradesh & ors. reported in

AIR 2018 (SC) page 233 at paragraphs 8 and 9 seems more apposite. With some grief the Honâ??ble Supreme Court has noticed that Uma

Deviâ??s case (supra) has been used to exploit employees so that the livelihood is available only on exploitative terms of contractual or daily rated

labour who are made to work for years on end with cosmetic breaks in service without deputing permanent staff in their places while getting them to

work under a constant threat of termination and the shadow of starvation. They, poor souls, cannot even seek regularisation because in the case of

Uma Devi (supra) thirty years of Labour Law was set on its head without, as the Honâ??ble Supreme Court, has held in the case of Sheo Narain

Nagar (supra), envisaging how that principle would be abused.

In such view of the matter, without going into the merits of the present case and also whether the respondents were justified in not approving the

appointments of the writ petitioners, I feel that for the violation of the order of the coordinate Bench inter-partes the impugned order at page 78 dated

April 25, 2016 must be set aside and quashed and the respondent no.3 must decide the matter afresh strictly in terms of the order of the coordinate

Bench dated February 11, 2016 by specifying the statutory rules, Sections and government orders and also demonstrating how they apply to the facts

of the cases in respect of each of the writ petitioners on the basis of the facts alleged by both the parties as also as are available from the records

within a period of eight weeks from the date of communication of this order. Such exercise shall be done only after giving the writ petitioners or their

representatives an effective opportunity of being heard in respect of the provisions and/or records specified by the respondent no.3 on which he would

rely to the prejudice of the writ petitioners or any of them.

Such decision shall naturally be taken in accordance with law including the Laws, which were in force as on the date when recognition was granted.

The order shall be communicated to the writ petitioners individually by the third respondent within a period of ten days from the date of the decision.

Since I have not called for any affidavit, the allegations contained in the writ petition are deemed not to be admitted. I have decided nothing on merits

and therefore, the respondent no.3 is free to decide it in lawful exercise of his discretion. The writ petition is allowed to the above extent. There shall

be no order as to costs.