
(2018) 05 CAL CK 0217
In the Calcutta High Court
Case No : Writ Petition5772(W) of 2018

Champak Nag

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 16-05-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2018) 05 CAL CK 0217

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Mousumi Mitra, Sarwar Jahan, Firoze Hassan, N. C. Behani, Nilotpal Chatterjee

Judgement

The writ petition is moved on service. Let the affidavit of service be kept on record. Despite service, none appears for anyone except the State of

West Bengal. The present writ petition under Article 226 of the Constitution of India reflects a sad state of affairs in the functioning of the Danga

High Madrasah (HS). The admitted position is that the headmaster of the said madrasah retired on December 30, 2017. The academic council of the

Madrasah thought that in view of the several illegalities prevailing in the madrasah during the tenure of the said erstwhile headmaster, the best person

to be the teacher-in-charge was the writ petitioner, and thus appointed him to that position and sought approval from the respondent no.3.

The erstwhile headmaster admittedly did not hand over charge to the writ petitioner but first tried to hold on to the office even after superannuation

and then, when the respondent no. 3 directed him to hand over possession and management to the teacher-in-charge, the headmaster, instead of

handing over charge to the writ petitioner, without any jurisdiction, purported to

appoint some other person as a teacher-in-charge. This created an administrative hiatus and there was a drawing and disbursing officer already. The writ petitioner, claiming to be the teacher-in-charge by virtue of his appointment as such by the academic council, and being an approved assistant teacher, wrote to the respondent no.3, seeking an administrator.

Unfortunately, when an administrator was appointed, initially the so called teacher-in-charge appointed by the erstwhile headmaster â?" without

jurisdiction â?" refused to hand over charge. The administrator assumed office with the cooperation of the writ petitioner as teacher in charge, as

submitted from the Bar. However, on assuming office, on the same date, by an order dated March 20, 2018 one of the first things he held was that the

appointments of both the other teacher-in-charge (the one appointed by the headmaster) and the writ petitioner (appointed by the â?"staff councilâ?"

according to the administrator) were both without jurisdiction and non-effective, and thereupon directed that the private respondent no.5 be appointed

as Teacher-in-charge and directed him to act in that capacity.

The staff/academic council as also the writ petitioner through his learned advocate represented to the respondents no.2 and 3 against what they

contended was the illegal removal of the writ petitioner from the position of the teacher-in-charge of the concerned madrasah. One of the clear

allegations made against this action was that there were allegations against the private respondent is that due to physical problems and disability, he

will not be able to discharge his duties, particularly when the other assistant teachers involved, who are of the camp of the erstwhile headmaster, are

facing criminal prosecution for selling rice of mid-day meal, bicycle, computer and text book without maintaining register and of misappropriation of

government funds.

A hearing was apparently held in respect of the said representation on April 5, 2018 as notified by the rn1 2 on March 28, 2018. Without showing how

the grievances of the writ petitioner and the assistant teachers/academic council/ staff council relating to his removal were dealt with, particularly in

respect of the private respondent no.5, the administrator (respondent no.4) has directed by his order dated April 7, 2018 that the petitioner to hand over

charge to the respondent no.4 within 3 days from the receipt of that order. This was done, without disclosing the fate of the hearing held before the

respondent no.2 into the representations made by the writ petitioner as aforesaid, or that of the academic council/staff council/other assistant teachers.

The respondent no.4 is not the respondent no.2. The respondent no.4 cannot, prima facie, usurp the jurisdiction of the respondent no.2, particularly

when the allegations against the private respondent no.5 are yet to be dealt with. Accordingly, I find a strong prima facie case on the face of the

records and that the preponderance of balance of convenience is in favour of the petitioner and the orders prayed for being granted. There is great

urgency in the matter.

Thus the operation of the impugned order dated April 7, 2018 is stayed for the time being and the madrasah in question will function on the signature

of the writ petitioner as teacher-in-charge and salary will be duly disbursed by the respondent authorities and for the present the respondent no.5 shall

not function as the teacher-incharge. This interim order will continue for a period of three months from after reopening after summer vacation or

further orders, whichever is earlier. Let this matter appear for further consideration on June 11, 2018 when, in case any of the respondents do not

appear, the matter will be heard without his presence on merits.