
(2022) 08 CAL CK 0050
In the Calcutta High Court
Case No : Writ Petition No. 6277 Of 2018

Khabir Mondal & Ors.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 10-08-2022

Acts Referred:

Citation : (2022) 08 CAL CK 0050

Hon'ble Judges : Hiranmay Bhattacharyya, J

Bench : Single Bench

Advocate : Debjani Sengupta, Shreya Bhattacharjee, Shahina Haque, Koyel Bag, Abhijit Chatterjee, Supriyo Chattapadhyay, Tapati Samanta

Final Decision : Disposed Of

Judgement

Hiranmay Bhattacharya J

This writ petition has been filed praying for issuance of writ of mandamus to grant approval of appointment of petitioners and to place them in appropriate scale of pay attached to the respective posts.

The writ petitioners claim to have been appointed by the then Managing Committee of the school as organizing teachers. The Secretary of the school sent a proposal for sponsorship of the said school and the concerned District Mass Education Extension Officer caused an inspection and forwarded a proposal for approval of the appointment of the petitioners before the appropriate authority. The petitioners claim that the Deputy Secretary, Government of West Bengal accorded sanction of academic recognition to the school and thereafter the sponsorship was also sanctioned by the competent authority. The further case of the petitioners is that the proposal for approval of the appointment of teaching and non-teaching staff of the said school is pending consideration before the competent authority.

The grievance of the petitioners is that the respondent authorities have not taken any step to grant approval of appointment to the petitioners for which they are

suffering as they are yet to be placed in the regular scale of pay.

Mrs. Sengupta, learned advocate for the petitioners submits that a coordinate Bench of this Court passed an order in WP 11488 (W) of 2018 (Lila Bardhan vs. State of West Bengal & Ors.) whereby a direction was passed upon the concerned respondents to accord approval of the Cabinet in respect of the petitioners' appointment. She further contends that the petitioners therein had to take out an application for contempt for alleged violation of the order passed in WPA 11488 of 2017 and in course of hearing of the said contempt application, the alleged contemner submitted before the Court that the order passed by the Coordinate Bench in that writ petition has been complied with. She further submits that the petitioners are similarly placed with that of the writ petitioners in Lila Bardhan (supra) and as such the petitioners are entitled to approval of their appointment in respective posts.

Mr. Chattopadhyay, learned senior Government Advocate appears for the State and submits that the GO dated November 16, 2020 was issued in violation of the GO dated July 17, 2003 and, therefore, the GO dated November 16, 2010 cannot be given any effect to. He draws attention of this Court to the GO dated July 17, 2003 and submits that all appointments in the Mass Education Extension Department has to be made on contract basis and, therefore, the petitioners cannot be absorbed to the regular posts with required scale of pay. Mr. Chattopadhyay, learned Senior Government Advocate submits by referring to the expression contained in the letter dated March 30, 2001 "without any financial involvement on the part of the State Government" that the same implies that the Government cannot be fastened with any financial involvement with regard to the appointment of the petitioners.

Heard the learned advocates for the parties. Perused the materials placed.

Records reveal that the Deputy Secretary, Government of West Bengal by memo dated March 30, 2001 stated that the Governor has been pleased to sanction academic recognition to the school concerned with effect from the next financial year. The expression "without any financial involvement on the part of the State Government" contained in the letter dated March 30, 2001 is with regard to academic recognition which has nothing to do with the appointment of teaching and non-teaching staffs. The Officer on Special Duty and Ex-officio Joint Secretary, Government of West Bengal issued a memo no.1078-MEE/Sectt dated November 16, 2010 wherefrom it appears that the Governor has been pleased to accord sponsorship in favour of the school. 17 teaching and non-teaching posts were created as would be evident from the list annexed to the said memo. It further appears therefrom that eligible organizing teaching and non-teaching regular staff of the institution will be absorbed against the respective posts as sanctioned therein and will be placed in the respective scales of pay in terms of memo no.531-Edn (MEE) dated March 30, 1999 read with memo no.472/MEE/Sectt dated 13.04.2009. It further appears therefrom that the said order was issued with the concurrence of the Finance Department and with the approval of

Cabinet dated October 27, 2010.

The issue in this writ petition is absorption of organising teaching and non-teaching staffs. It would be evident from the memo dated November 16, 2010 that the Governor has been pleased to accord sponsorship in favour of the Institution subject to the condition that eligible organising teaching and non-teaching staff would be absorbed against the sanctioned posts and would be placed in the respective scales of pay in terms of the Memo no.531-Edn (MEE) dated 30.03.1999 read with Memo no.472/MEE/Sectt dated 13.04.2009. It was further mentioned in the Memo dated November 16, 2010 that vacancies of sanctioned posts, if any, must be filled up with due observance of procedure and Recruitment Rules.

Upon reading the said Memo dated November 16, 2010 as a whole, this Court is of the considered view that remaining vacancies in the sanctioned posts after absorption of the eligible organising teaching and non-teaching staff shall be filled up in terms of the Recruitment Rules.

The Memo dated July 17, 2003 empowers the authority to make appointment on contract basis in addition to the regular appointments in sanctioned posts. The said Memo dated July 17, 2003 neither takes away the right of the authorities to make regular appointment in sanctioned posts nor does it affect the right to absorb organising teaching and non-teaching posts in sanctioned posts. Moreover grant of sponsorship to the Institution was subject to absorption of organising teaching and non-teaching staffs in respective sanctioned posts in the scales of pay as indicated in the Memo dated November 16, 2010. After granting sponsorship, it does not lie in the mouth of the authorities to contend that the organising teaching and non-teaching staffs would not be absorbed.

This Court therefore holds that the G.O. dated 17.07/2003 does not have any manner of application to the facts of this case.

It further appears from the record that the Additional Chief Secretary, Finance Department passed an order on 14.09.2018 pursuant to an order dated 18.07.2018 passed by the Court wherein it was held that the spirit of G.O. dated 17.07.2003 has been violated while issuing the later G.O. and the Administrative Department was directed to examine the case under reference in the light of the 2003 G.O. No other ground was cited by the respondents for not according sanction to the proposal sent for approval of appointment of the petitioners.

In view of the finding recorded hereinbefore that the G.O. dated 17.07.2003 does not have any manner of application, the order dated 14.09.2018 passed by the Additional Chief Secretary, Finance Department is set aside and quashed.

Record reveals that the proposal for approval of the appointment of the petitioners was forwarded to the Director of Mass Education Extension Directorate, West Bengal but such approval is yet to be accorded.

Mr. Chattopadhyay, in his usual fairness, did not dispute the fact that in an

identical matter the coordinate Bench directed the concerned authority to accord approval to the appointment of the petitioner and the same has, in fact, been granted in favour of the writ petitioners in Lila Bardhan case (supra).

The writ petitioners in the instant case are similarly situated with Lila Bardhan (supra) and there is no reason why the appointment of writ petitioners should be approved.

For the aforesaid reasons, the Director of Mass Education, being the respondent no.3, is directed to grant approval of appointment to the petitioners in their respective teaching and non-teaching posts of the institution within a period of three weeks from the date of communication of a copy of this order downloaded from the official website of this Hon'ble Court and shall forward necessary papers to the Principal Secretary, Finance Department, Government of West Bengal, being the respondent no.2 herein, who shall immediately upon receipt of the papers accord approval to such appointment within a period of six weeks from the date of receipt of papers from the respondent no.3

Needless to mention that final approval shall be communicated to the petitioners and the school immediately thereafter.

WPA 6277 of 2018 is, thus, disposed of with the aforesaid directions. There shall be, however, no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.