
Alauddin Vs The State of West Bengal and Others

Writ Petition No. 4127 (W) of 2013

Court: Calcutta High Court

Date of Decision: Feb. 25, 2013

Acts Referred:

West Bengal Board of Secondary Education Act, 1963 " Section 22(3)

Citation: (2013) 3 WBLR 315

Hon'ble Judges: Debasish Kar Gupta, J

Bench: Single Bench

Advocate: Ekramul Bari, Shamim UI Bari, S.M. Ali, K.M. Hossain and T. Basak, for the Appellant; Manas Kumar Sadhu for the State, Rabi Sankar Chattopadhyay and Imteaz Ahmed for the Respondent Nos. 5 and 6 and Arindam Sen for the Respondent No. 15, for the Respondent

Judgement

Debasish Kar Gupta, J.

Let the affidavit-of-service and supplementary affidavit to this writ application filed by the petitioner be kept on

record. This writ application is filed by the petitioner assailing a resolution dated January 28, 2013 adopted in the meeting of the Managing

Committee of Toryal High School, P.O. Toryal District-Uttar Dinajpur, for appointment of the respondent No. 15 as Teacher-in-charge of the

above school as also the steps taken on the basis of the above resolution.

2. The petitioner was appointed as Assistant Headmaster of the school under reference with effect from January 24, 2006 as also was

subsequently approved by the respondent No. 3 under his Memo No. 107 dated February 15, 2006. Recently the post of Headmaster of the

school in question became vacant due to the retirement of the Headmaster of the institution with effect from January 31, 2013. By virtue of the

impugned resolution the Managing Committee of the school under reference decided to appoint the respondent No. 15 as Teacher-in-Charge of

the above school.

3. A preliminary objection is raised by Mr. Rabi Sankar Chattopadhyay, learned Advocate appearing on behalf of the respondent Nos. 5 and 6,

with regard to maintainability of this writ application. According to Mr. Chattopadhyay, the appeal committee created under the provisions of the

West Bengal Secondary Education Act 1963 is the forum for approaching at the first instance in this case in accordance with the provisions of sub-

section (3) of Section 22 of the above Act.

4. It is submitted by Mr. Ekramul Bari, appearing on behalf of the petitioner, that a point of law has decided in the matter on the basis of the law

declared by this High Court on this issue. Therefore, the Writ Court is the appropriate forum for interpretation of law to decide the validity of the

action taken by the Managing Committee of the school in question.

5. I have heard the learned Counsel appearing for the respective parties at length with regard to maintainable writ application.

6. Admittedly, the point of law which has to be decided in this matter is the legally enforceable right of the writ petitioner to discharge the function of

Teacher-in-Charge of the school in question till the appointment of regular Headmaster. It is to be decided on the basis of the law declared by this

High Court in another case. Further, the respondent No. 3 directed the Secretary of the Managing Committee of the school under reference to

appoint the writ petitioner as Teacher-in-charge after filing of this writ application. Therefore, the legally enforceable right of the petitioner vis-a-vis

that of the respondent No. 15 is to be examined on the basis of the settled principles of law. This Court is inclined to admit this writ application

instead of relegating the issue involved in this matter to the appeal committee. Since there is no scope of deciding the issue involved in the matter on

the basis of the disputed questions of fact, the preliminary objection is, therefore, rejected.

7. So far as the merits of the case are concerned, I find that after filing of the writ application the respondent No. 3 directed the school authority to

appoint the writ petitioner in the post of Teacher-in-charge of the school in question adjudication of the issue involved in this communication is set

out below:

Govt. of West Bengal

Office of the District Inspector of Schools (S.E.), Uttar Dinajpur

Memo No. 304

Date 8/2/13

To

The Secretary

Tory High School

As per Telephonic discussion with the Joint Director of School Education, West Bengal on 6.2.2013 at about 2.30 P.M. and as per Telephonic

direction of the Commission of School Education, West Bengal on the same date at about 4.45 P.M. and as per ruling of the Hon"ble Supreme

Court and order of the Hon"ble High Court Calcutta. In the ref matter No. CALLT 370 HD date 29.11.2001 (enclosed). You are hereby

informed to handed over the Charge of T.I.C. to the Assistant Headmaster of your institution with immediate effect.

District Inspector of Schools (SE)

Uttar Dinajpur

Memo No. 304/1 (2)

Copy forwarded to:--

1. The Commission of School Education, West Bengal, Bikash Bhaban, Salt Lake City, Kol-91.

2. The Joint Commissioner of School Education, West Bengal

District Inspector of Schools (SE)

Uttar Dinajpur

8. It further appears from the materials on record that the petitioner was appointed as Assistant Headmaster of the school in question. He has been

discharging his function in the above post with effect from January 24, 2006. On the basis of the settled principles of law as decided in the matter

of Smt. Kanak Pal Vs. The State of West Bengal and Others, , the petitioner has the legally enforceable right to be appointed as Teacher-in-

charge of the school under reference. The relevant portions of the above decision are set out below:

3. According to me, the post of Assistant Headmaster Assistant Head Mistress cannot be equal with the post of Assistant Teacher. The post of

Assistant Headmaster/Assistant Headmistress is a post in association with the administration vis-a-vis the teaching of the institution like the post of

Headmaster/Head-mistress but unlike the post of Assistant Teacher. If the Headmaster/Headmistress absented himself/herself from attending the

School due to ill health or for any other contingency then obviously such Assistant Headmaster/Assistant Headmistress will discharge the functions

of the Institution on his/her behalf. Therefore, it can be construed on the basis of such illustration that Assistant Headmaster/Assistant Headmistress

has a right to run the administration for a temporary period in absence of the Headmaster/Headmistress and for the same such post has been

created under the statute. If it is created by the statute then it definitely has meaning and purpose. It is a separate identity not only by nomenclature

but also by creating a statutory post with a different head under ROPA (Revision of Pay and Allowances). It is also desirable for the sake of

administrative exigencies that in absence of Headmaster/Headmistress he/she will run the administration. This has been made for the specific

purpose as above. Otherwise the Court would have been flooded with the litigation"s for filling of the post of Teacher-in-charge in absence of the

Headmaster/Headmistress. This is a discouragable thing and definitely for such reason a post has been created in the form of hierarchy under the

statute by the name of Assistant Headmaster/Assistant Headmistress in between Headmaster/Headmistress and Assistant Teacher. It is true that

the Managing Committee has a right to appoint a Teacher-in-charge for a temporary period till such post is filled up by the regular

Headmaster/Headmistress provided that there is no such Assistant Headmaster/Assistant Headmistress for the purpose of officiation till the post of

regularly filled up. As and when Assistant Headmaster/Assistant Headmistress is available in an Institution there is no scope of the Managing

Committee to take a resolution contrary to the interest of the administration which ultimately affects imparting of education to the students unless

very exceptional circumstances arise for which the Assistant Headmaster/Assistant Headmistress is also prevented from officiating as

Headmaster/Headmistress.

9. There is a direction of the respondent No. 3 to follow the above principles of law for stop gap arrangement till the appointment of regular

Headmaster of the school under reference.

10. In view of the above observations the impugned resolution and the action taken on the basis of the above resolution by appointing the

respondent No. 15 as Teacher-in-Charge of the school in question are quashed and set aside. The authority of the school under reference is

directed to appoint the petitioner in the post of Teacher-in-charge of the school in question till the appointment of regular Headmaster of the above

school.

11. Since no affidavit-in-opposition is filed by the respondent Nos. 4 and 5 the allegations made against them in this petition are not treated to have

been admitted by them.

12. This writ application is, thus, disposed of.

13. There will be, however, no order as to costs. Urgent photostat certified copy of this order be supplied to the parties, if applied for, subject to

compliance with all necessary formalities.