

18-05-2018
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

A.S.T.No.21 of 2018
Md. Aktar Hossain & Ors.
-vs-
Union of India & Ors.
with
WP No.6356(W) of 2018
The West Bengal Board of Madrasah Education & Ors.
-vs-
The Union of India & Ors.
with
AST No.22 of 2018
Md. Asiq Billah
-vs-
Union of India & Ors.

Mr. Kamalesh Bhattacharya
Mr. Bidhan Biswas
Mr. Subhrangsu Panda ...for the petitioners
(in AST No.21 of 2018)

Mr. Sumit Kumar Panja
Mr. Taraprasad Halder
Ms. Pinki Halder ...for the petitioners (in WP
6356[W] of 2018) & for Madrasah Board (in ASTs 21 & 22 of 2018)

Mr. Bikash Ranjan Bhattacharya
Mr. Samim Ahammed
Mr. Arka Maiti
Mr. Utsav Dutta ...for the petitioner (in AST 22/2018)

Mr. D.N. Ray
Mr. Biswajit Konar ...for the Union of India

Mr. Tapan Kumar Mukherjee
Mr. Shamim ul-Bari ...for the State

Three writ petitions are before me today. They raise common questions of law and fact. One of them is at the instance of the West Bengal Board of Madrasah Education, a statutory board established under the provisions of the West Bengal Madrasah Education Board Act, 1994. It has thought fit to approach this Court under Article 226 of the Constitution of India since the degrees awarded by Madrasahs in West Bengal, which the State of West Bengal and the Union of India, till January, 2018 admittedly considered to be equivalent to the corresponding degrees of secondary, higher secondary education and of baccalaureate and post-graduate degrees, by an executive fiat of the Department of Posts of the Union of India, has

been held not to be so equivalent. The equivalence has been ordained by His Excellency the Governor of West Bengal and accepted until aforesaid by His Excellency the President of India.

I therefore find it convenient, in the presence of the writ petitioners in each case, and after recording the service on each of the respondents and the presence of the Learned Advocates for the Union of India in two these matters in the daily list, and after directing that the affidavit of service in each case be taken on record, to direct that the three writ petitions be consolidated and heard together. I request the Learned Additional Solicitor General to regularize the appointment of Mr. D.N. Ray, Learned senior government advocate for the respondent Union of India together with his Learned Junior, Mr. Biswajit Konar, Advocate, for the Union of India in the remaining writ petition also.

Mr D. N. Ray, learned senior advocate appearing for the Union of India in item nos. 5 and 6 of today's list, raised a preliminary question of maintainability. According to him, allowing the writ petition for any of the prayers shall amount to interference in the matter of recruitment in a civil post under the Union of India. He submits that by virtue of the decision rendered in **L. Chandrakumar v. Union of India and Others** reported in **AIR 1997 SC 1125** particularly paras. 80 to 95 this court cannot act as a court of the first instance in respect of any matter which is covered by Article 323A of the Constitution. He also submits that whatever grievance that the petitioners have can be adjudicated at the first instance only by the learned Central Administrative Tribunal which is functioning. According to him, at least one of the petitioners has disclosed in AST No.22 of 2018 that other people similarly circumstanced have already approached the Central Administrative Tribunal and got the relief of applying off-line. He therefore, submits that the writ court would be exceeding its jurisdiction by entertaining the matter.

Mr. Samim Ahammed, Learned Advocate on the other hand disputed this. He is led r by Mr. Bikash Ranjan

Bhattacharya, Learned Senior Advocate, who thereafter took over from Mr. Ahammed. Their contention is that in terms of The Departments of Posts, Gramin Dak Sevak (Conduct and Engagement) Rules, 2011 which, according to Rule 3A, framed by the Union of India, in terms of Clauses (5) and (5) of the said Rule, it is clear that a sevak shall be outside the civil service of the Union of India and shall also not claim to be at par the Central Government employees. He submits that since the recruitment affected by the said fiat of the Union of India is in respect of sevaks, this would not be recruitment, terms or conditions in respect of a civil post under the Union of India and therefore it would not be covered under either Section 14 of the Administrative Tribunals Act, 1985 nor under Article 323A of the Constitution of India. Therefore, Mr. Bhattacharya submits, this would not come within the ambit of the Learned Central Administrative Tribunal.

Mr. Panja, Learned Advocate appearing for the petitioner in WP No.6356(W) of 2018, apart from adopting the above submissions, also points out that nothing has been placed till now to show that these Rules are not in force.

The other writ petitioners through their learned Advocates, have adopted both the above submissions on the preliminary question as also the subsequent submissions on merits made Mr. Bhattacharya, Learned Senior Advocate and Mr. Samim Ahammed.

This submission on the preliminary question appeals to me. I therefore hold that the writ petition is maintainable before this Court since it does not involve recruitment or any relief relating to any civil post under the Union, and this is expressly provided for under statutory rules framed by the Union of India itself.

The present petition requires consideration on affidavits. Supplementary affidavit as sought for to be filed by Mr. Panja and in other writ petitions shall be filed within the course of June 6, 2018. A combined opposition to be filed by the Union of India and the other respondents to

both the writ petition and the supplementary affidavit, if any, shall be filed within four weeks thereafter. Reply, if any, shall be filed within three weeks thereafter. The matter shall appear in the monthly list of August 2018 for hearing.

In the meanwhile, I find prima facie case in favour of the writ petitioners. The preponderance of balance of convenience and inconvenience is in favour of the writ petitioners and the orders prayed for being passed. Until the reliefs which have been sought as interim measure are granted, thousands of students whose qualifications of Alim, Fazil, Kabil, MM granted after a regular and recognized course of studies in Senior and High Madrasahs have been held to be equivalent to Secondary, Higher Secondary, Baccalaureate and Master's degree and which have been accepted by the Government of West Bengal and accepted throughout India, would be in jeopardy.

It is needless to mention, that regardless of whether the Preamble to the Constitution of India was duly amended to introduce the word "secular" in it without amending the date on which we the people of India gave it to ourselves, and without indicating from when such amendment would take effect, Articles 29 and 30, which have been an integral part of Part III of the Constitution of India from the date that the Constitution was framed and commenced, sufficiently guarantee the right of a religious and linguistic minority to impart education including religious instructions, through educational institutions established by them. While retaining this character as an essential ingredient of the basic features of our Constitution of India it does not, prima facie, appear to be open to the Department of Posts of the Union of India to suddenly de-recognize the equivalence of such degrees as are awarded by such institutions, when compared to the degrees awarded by other institutions which do not even have that constitutional guarantee. It has not been placed before me, as yet, that the Articles 29 and/or 30 have been amended or repealed by exercise of the constituent powers of the Parliament and/or ratified by the requisite number of

state legislatures. It is trite, that when there are constitutional guarantees and a rule which governs the field excluding such “sevaks” from a civil post under the Union, by an executive fiat in the teeth of such statutory rules, such a decision as that dated January 2, 2018 appears to be wholly beyond the jurisdiction of the Union of India, if not ultra vires the Constitution of India.

Accordingly, there shall be stay of the decision of the Union of India, including the decision as in January 2, 2018 not to accord equivalence to the degrees/diplomas/equivalence which are issued by Junior Madrasahs, Senior Madrasahs, High Madrasahs or Madrasahs of any character which are operated under the West Bengal Board of Madrasahs Act, 1994 and all candidates seeking employment as Gramin Dak Sevaks shall be entitled to not only participate in the process of selection but also to be appointed, if found successful and the Union of India and its officers are directed to ensure that the present interim order is complied with both in the letter and the spirit.

I make it clear that till the disposal of the writ petition and subject to its result it should be deemed that certificate issued by the West Bengal Board of Madrasah Education in respect of any of the degrees which have been held to be equivalent by the Government of West Bengal to be equivalent to Secondary, Higher Secondary, Baccalaureate or by virtue of the circulars lastly issued in 2008, 2009 and 2010 shall be held to be equivalent for all purposes including that of recruitment.

The Chief Postmaster General, a respondent in each of the writ petitions, is directed to allow applications to be made both on-line and off-line by such candidates who were prevented by reason of the decision impugned in the writ petition from applying for the process of recruitment, regardless of whether the time for making such application has expired or not, provided that such applications are made offline within ten days from the uploading of this

order on the website, in case of online applications, ten days from when the authorities of the Union of India once again allow making of offline applications.

I make it clear that all observations hereinabove, except the finding as to jurisdiction of this Court to entertain this matter, are tentative, and subject to the ultimate result of the writ petition.

The Learned Advocates for the Union of India prayed for stay of operation of the present order, and after considering it, I have chosen to refuse it.

[Protik Prakash Banerjee, J]