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21.12.2016.  
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**W. P. No.26229 (W) of 2016**

**Rajya Parshwa Shikshak Samanway Samity & Ors.  
Vs.  
State of West Bengal & Ors.**

Mr. Debabrata Saha Roy,  
Mr. Indranath Mitra  
..... For the Petitioners.

Mr. Jaharlal De,  
Mr. Srikanta Paul  
..... For the State.

Mr. Subir Sanyal,  
Mr. Ratul Biswas  
..... For the Board.

This writ petition has been filed by the Rajya Parshwa Shikshak Samanway Samity through K. M. Shameem Akhter, who claims to be the General Secretary of the petitioner no.1 Samity. The said K. M. Shameem Akhter is also petitioner no.3 and a Para-Teacher of Upper Primary Section of Charmakturpur Modern High Madrasah. It appears that petitioner nos.2 and 3 are the same person. The preliminary objection has been taken on behalf of the State respondents as also the Board of Primary Education on the question of maintainability of the writ petition at the instance of a society registered under the Societies Registration Act.

Mr. De, learned Counsel, appearing on behalf of the State, and Mr. Sanyal, learned Counsel, appearing on behalf of the Board, however, submit that although the petitioner no.1 has no

*locus standi* to file the writ petition, but, at the same time, the writ petition can be accepted on behalf of the petitioner no.3, subject to the pleading made in the writ petition and its acceptability.

In order to overcome the point of maintainability, the petitioner has submitted that the Association is nothing but an Association of Para-Teachers having common causes. In the petition, it has been mentioned that the petitioner no.1 is a registered Association of Para-Teachers (Primary and Upper Primary) throughout West Bengal. Therefore, according to the petitioner, whoever has been enrolled as a member of the association, are entitled to take a benefit of the order, which may be passed in this writ petition.

On perusal of the writ petition, it appears that in some places, especially in paragraph 10, averments have been made to the extent that the members and the petitioner no.1 respectively applied before the District Project Officer, S. S. M. of their respective districts for upgradation of their requisite qualification in prescribed form. It is the basic rule that if a relief is to be made available to an aggrieved person, the aggrieved person must bring on record the person against whom writ of mandamus is to be issued. In the cause title, it appears that only Nadia District Primary School Council has been made party respondent. Therefore, if a person belongs to a particular district and that district authorities are not brought on record, no specific order can be passed against such respondents and the order which will be passed by this Court will be infructuous.

Again in paragraph 11, it has been stated that respective District Project Officers of almost all districts, on receipt of such application from the existing Para-Teachers, forwarded the same to the State Project Director, Paschim Banga Sarva Siksha Mission. Such averment is also not specific. In paragraph 14, the petitioner has made an averment that the District Primary School Council of different districts have already taken up the matter with different institutions. The pleading is also not definite. Therefore, considering this aspect of the matter, it is also not justifiable to pass any order against any State authorities who are not brought on record. Simply an allegation, levelled against a particular authority, cannot be taken note of to give a relief to an unincorporated association. Therefore, on this point, the writ petition cannot be accepted on behalf of the society registered under the Societies Registration Act allegedly formed by its members those who are para-teachers. In order to circumvent the hurdle of maintainability point, the petitioner has sought to rely upon Section 19 of the Societies Registration Act, 1961 and referring to such section, he submits that suits and proceedings by and against a society is maintainable. He submits that every society may sue or be sued in the name of the President, the Secretary or any office bearer authorized by the Governing Body in that behalf.

Mr. Saha Roy, learned Counsel, appearing on behalf of the petitioners, relies upon a decision in the case of D. N. De Homoeopathic Medical College & Hospital Employees' Union Vs. State of West Bengal, reported in 2014 (5) CHN (CAL) 277 to show that a registered association has every power to ventilate the grievance of its members.

Mr. Sanyal, learned Counsel, appearing on behalf of the Board, submits that as per Section 13 of the Trade Union Act, the rules of the trade union must provide, *inter alia*, the object of the trade union, the applicability of the general funds of the trade union, the maintenance of the list of members, payment of minimum subscription by members. As per Section 13 of the said Act, a trade union is a body corporate having perpetual common seal and succession with the power to acquire and hold moveable and immoveable property and it can sue or be sued by the name of the trade union. Therefore, according to him, the trade union is a juristic and artificial person in law.

Mr. Sanyal further submits that Section 36 of the Industrial Disputes Act, 1947 entitles a workmen to be represented in any proceeding under the Act by any member or office bearer of the trade union of which he is a member and even for the worker who is not a member of the trade union. Therefore, the cited decision, according to Mr. Sanyal, has no bearing in the present case to show that the petitioner no.1 has a *locus standi* to file a writ petition complaining of any action of the West Bengal Primary Education Board or the State authorities. He further submits that a society registered under Section 7 of the Act of 1961 is not a juristic and artificial person for the simple reason that a registered society is not a body corporate created by the Act having perpetual common seal and succession.

The decision which has been placed by Mr. Saha Roy itself shows that there is some difference between the society registered under the Societies Registration Act and the registered union under the Trade Union Act, 1926. However, the said decision does not, in any way, help the petitioner no.1 to maintain

the writ petition at the instance of the registered society. The submission of Mr. Saha Roy that a society registered under the Societies Registration Act can sue or be sued in its own name. That may be true. But the same does not authorize him to prefer a writ petition before this Court under Article 226 of the Constitution of India or for enforcement of any of the legal or fundamental rights guaranteed by the Constitution of India. A writ proceeding cannot be equated with the principles underlying the filing of a suit in the representative capacity within the scope of Order I Rule 8 of the Code of Civil Procedure and if the petitioner relies upon such provision, then he ought to have taken leave of the Court for filing the writ petition in its representative capacity which element is very much absent in the present case and no averments have also been made in the present petition. This Court is not unmindful of the provisions of Rule 53 of the Writ Rules framed by this Hon'ble Court, which is set out hereinbelow for convenience:

“ Save and except as provided by these Rules and subject thereto, the provisions of the Code of Civil Procedure (Act V of 1908) in regard to suits shall be followed, as far as it can be made applicable, in all proceedings under Article 226 and nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of this Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. ”

Strictly speaking, there is no application of Civil Procedure Code in a writ proceeding by virtue of the explanation appended to Section 141 of the Code of Civil Procedure which says that procedure provided in the Code of Civil Procedure in regard to

suits shall be followed as far as it can be made applicable in all proceedings in any court of civil jurisdiction. But, explanation under Section 141 has made it specific that expression 'proceedings' includes proceedings under order IX, but does not include any proceeding under Article 226 of the Constitution. However, in this case, the principles underlying the provisions of Order I Rule 8 of the Civil Procedure Code, have also been complied with by the petitioner. Therefore, on this score, the writ petition also cannot be maintained at the instance of the unincorporated association.

On a true analysis of the aforesaid facts and circumstances, this Court has no hesitation to hold that the writ petition at the instance of registered society is not permissible in law. Such associations or societies are not legal persons as such, and at its instance, the writ petitions are not maintainable. Although an association could be formed to bring the interest of consumers, tenants and other groups with the common interest but such group cannot move writ application to have an order of mandamus for protecting their right guaranteed by the Constitution. The said association is not a person aggrieved or such association cannot move a writ petition "for the enforcement of any of the rights conferred by Part-III and for any other purpose as mentioned in Article 226 of the Constitution of India".

The petitioner has formulated his grievance that his right to education, which also necessarily forms part of Article 21 of the Constitution and is part of the fundamental right guaranteed under Part-III of the Constitution, is infringed and, therefore, at the instance of the registered society, the said enforcement under Article 226 is not permissible in law.

Since I have held that the writ petition is not maintainable at the instance of the Association of Para-Teachers but the same is maintainable at the instance of the petitioner no.3, I take up the hearing of the writ petition on merits on the case made out by the writ petitioner no.3 alone.

In this writ petition, it has been stated that School Education, Government of West Bengal, in concurrence with Finance Department, issued a Government Order on 16<sup>th</sup> November, 2010, thereby continuing the service of all para-teachers throughout West Bengal (Primary and Upper-Primary Level) till attaining their respective age of 60 years. On the strength of the said memo dated 16<sup>th</sup> November, 2010, the petitioner was engaged as a para-teacher and has been discharging his duties. A notification dated 28<sup>th</sup> March, 2012 was issued on the face of the provisions of Right to Children to Free and Compulsory Education Act, 2009. The said notification fixed the requisite qualification of primary teachers those who are already in service. According to the said notification, minimum qualification of primary teachers appointed from 3<sup>rd</sup> September, 2011 to 26<sup>th</sup> December, 2005, would have Senior Secondary Certificate or intermediate or its equivalent and diploma or certificate in Basic Teacher's Training of a duration not less than two years or bachelor of Elementary Education (D.El.Ed.). In the said notification, it has also been stated that minimum qualification, of the primary teachers appointed from 27<sup>th</sup> December, 2005 to 9<sup>th</sup> December, 2007 would have at least 45% marks in the Senior Secondary Examination (+2) or its equivalent and diploma or certificate in Basic Teachers' Training of a

duration not less than 2 years or Bachelor of Elementary Education (D.El.Ed.).

It has further been mentioned in the said Notification that minimum qualification of the primary teachers appointed from 10<sup>th</sup> December, 2007 to 22<sup>nd</sup> August, 2010, would be at least 50% marks in Senior Secondary Examination (+2) or its equivalent and diploma or certificate in Basic Teachers' Training of a duration not less than two years or Bachelor of Elementary Education (D.El.Ed.). It has also been mentioned that the existing teachers having not such qualification, had to acquire such academic qualification as well as Teacher's Training qualification from NCTE recognized institution by 31<sup>st</sup> March, 2015. The said notification mentioned that all primary teachers have to possess requisite qualification as per NCTE Regulation. It has been stated that the teachers, who do not possess the required qualification, will have to apply for admission to Bachelor of Elementary Education (D.El.Ed.) course through Open and Distance Learning (ODL) mode and the State Government has already arranged with NCTE for conduct of such Bachelor of Elementary Education (D.El.Ed.) course by the West Bengal Primary Education. The notification further mentions that if the existing teacher failed to acquire required minimum qualification as prescribed in the notification, he may face severe consequences after 31<sup>st</sup> March, 2015 and primary teachers, who do not possess such qualification, have been called up to upgrade their qualification or obtain required training qualification as specified in the said circular. The notification says that these facilities for upgradation of educational qualification for training will also be available to para-teachers, Sarbo Siksha Mission and other contractual teachers, who would like to upgrade their



qualifications and training and it has been mentioned that they may register themselves with District Project Officer in prescribed format annexed to the said notification.

In pursuance of the aforesaid notification, State Project Director, Paschim Banga Sarbo Siksha Mission, vide Memo dated 12<sup>th</sup> June, 2012, informed all the District Project Officers all over West Bengal to register the name of willing para-teachers and other contractual teachers for upgradation of their academic and training qualifications as per NCTE norms. The petitioner having not the requisite qualification in terms of the aforesaid notification, applied before the District Project Officer, Sarbo Siksha Mission, for upgradation of his requisite qualification in the prescribed form. On receipt of the duly filled in applications from the petitioner, who sought to acquire required qualifications in terms of the aforesaid notification, District Primary School Council concerned prepared a list fixing the Institutions of different candidates. It is alleged that since no steps were taken despite receipt of the applications from para-teachers, a writ petition was moved being W.P No.539(W) of 2013 (Rajya Parsha Sikshak Somonnoy Samity & Ors. – Vs. – State of West Bengal & Ors.) before this Hon'ble Court. The said writ petition was disposed of by an order dated 16<sup>th</sup> January, 2013 with a direction upon the State Project Officer, Paschim Banga Sarbo Siksha Mission, to take all necessary steps for registration of the names of the petitioners for acquiring diploma in Elementary Education through Open and Distance Learning (ODL) method from the Institutions/Institutions recognized by the National Council for Teachers' Education forthwith so that all the petitioners can obtain the above qualification within the cutoff date prescribed by the notification no.277-SE(P)/12-6/09 (Pt-I) dated 28<sup>th</sup> March,

2012, i.e., within 31<sup>st</sup> March, 2015 provided they were eligible for fulfillment of eligibility criteria as also subject to fulfillment of all formalities. However, on perusal of the said order, it appears that the name of the Association was expunged from the writ petition and the writ petition proceeded on the basis of three other petitioners. However, nothing appears either from the averments made in this petition, nor from the said order as to why the petitioner made the prayer for expunging the name of the petitioner no.1. It has been stated that through an order passed in a contempt proceeding registration of the petitioner's name for admission in Bachelor of Elementary Education (D.El. Ed.) course has been done.

It is the case of the petitioner that although, his name has been registered under registration no.0819210057 of 2015/2017 and registration certificate has been issued which has been annexed as Annexure P-14 to this writ petition at page 62, he has not been informed for his study centre in his District. The petitioner has drawn the attention of Annexure P-9 at page 57 which is a Memo issued by the Secretary of the West Bengal Board of Primary Education on the subject 'Registration of in-service teachers recruited in 2014 for 20year D.El.Ed. course'. Said Memo was addressed to the Chairman/Chairperson/District Inspector of Schools, P.E./District/Primary School Council of all districts including Siliguri. In the said Memo it has been mentioned that if the filled-in registration forms of the candidates are submitted, the Board will forward list of Study Centers for the District of allotment of 100 candidates in each study centre. A subsequent Memo dated 29<sup>th</sup> December, 2015 has been issued by the West Bengal Board of Primary Education wherefrom it appears that the eligible untrained in-service para-teachers were

requested to register themselves online for 2-year D.El.Ed. course (through ODL mode) – 2015-17. The said Memo also shows that registered para-teachers will be informed of their study centre through DI/SI of schools of the respective Districts, by the West Bengal Board of Primary Education. It is the grievance of the petitioner that although, Board in its Memo dated 29<sup>th</sup> December, 2015 has categorically mentioned that registered para-teachers will be informed of their study centers but he has not heard anything from the Board. The Board of Primary Education lastly issued a Memo on 25<sup>th</sup> February, 2016 whereby the para-teachers who did not download their registration certificate till that date, were requested to download their registration certificate from the website within 2<sup>nd</sup> March, 2016. It has been mentioned that the para-teachers who would download their registration certificates, only they would be allotted study centers for personal contact programmes after distribution of the printed study materials. Since nothing positive was taken by the concerned authority, the petitioner caused a demand of justice dated 1<sup>st</sup> August, 2016 to be served through his learned advocate. Ultimately, the petitioner was not communicated anything but he has procured a copy of a letter dated 5<sup>th</sup> October, 2016 issued by the State Project Director, Paschim Banga Sarbo Siksha Mission addressing it to the District Project Officers, Sarbo Siksha Mission wherefrom it appears that the State Project Director, being directed by the Secretary, School Education Department, requested the District Project Officer, Sarbo Siksha Mission to permit those para-teachers who are willing to undergo D.El.Ed. training through ODL mode for attaining the course in the North-East centers. It was further mentioned that priorities may be given to female para-teachers with disability. It was mentioned that the para-teachers who would opt for the centers outside her/his district, the respective

DPO, SSM may co-ordinate the issue with the corresponding DPO, SSM of the district where the study centre is located. The petitioner has stated that, although, session for the year 2015-17 for D.El.Ed. course is going on but nothing has been intimated to the petitioners for admission in the respective centers as such, there has been remote chance to complete the said course within 31<sup>st</sup> March, 2017. The petitioner has stated that initially cut-off date for acquiring the Degree of D. El. Ed. Was fixed by 31<sup>st</sup> March, 2015, however, the cut-off date has been extended till 31<sup>st</sup> March, 2017, but, due to the negligent attitude on the part of the respondents more particularly, on the part of the State Project Director, Paschim Banga Sarbo Siksha Mission, and Secretary, West Bengal Board of Education, admission to the said course for para-teachers is not completed and for such act on the part of the said Project Director and West Bengal Board of Primary Education the petitioner has become a worse sufferer. The petitioner, therefore, prays for a writ in the nature of mandamus commanding the respondents, particularly the State Project Director, West Bengal, S.S.M, to take step for admission of the petitioner and other para-teachers in-service in the centers suitable for them to complete D.El.Ed. course forthwith. The petitioner has also prayed for a writ of mandamus commanding the respondents, particularly the State Project Director, P.S.S.M. and the District Project Officer, S.S.M. of the district concerned, to issue notice for admission in D.El.Ed. course forthwith.

Mr. Debabrata Saha Roy, appearing for the petitioners, in support of his submissions made a prayer for a writ in the nature of mandamus commanding the respondents, particularly the State Project Director, West Bengal, S.S.M, to take step for admission of the petitioner and other para-teachers in-service in

the centers suitable for them to complete D.El.Ed. course forthwith.

Mr. Jaharlal De, appearing for the State, submitted earlier that writ is not maintainable, however, if the writ is held to be maintainable at the instance of the petitioner no.3, he has no objection but the State has nothing to do in the matter because the implementing authority is the West Bengal Board of Secondary Education and the Sasrbo Siksha mission.

Appearing to oppose the contention of the petitioner, Mr. Sanyal fairly submitted that there are practical difficulties in implementing the circulars which has been referred to in the writ petition because of insufficiency recognized study centers compared to the number of para-teachers in the State. However, the para-teachers are being gradually communicated. He submitted that Board is under obligation to supply study material as has been indicated in the Memo dated 25<sup>th</sup> February, 2016 but the respondent no.7, District project Officer, S.S.M., however, has to allot study centers for the petitioners.

I have heard the parties and the materials available on record. This Court is of the clear view that the West Bengal Board of Primary Education has failed to act in terms of its own memorandum dated 29<sup>th</sup> December, 2015 (annexure "P-10" at page 58) by not informing the petitioner of the study centers through which he will be able to upgrade his qualification by 31<sup>st</sup> March, 2017. In the memorandum dated 29<sup>th</sup> December, 2015 (annexure "P-10" to this writ petition), it has been mentioned as follows:

" This is further to inform all concerned that

- i. The Two year D.El.Ed. course (through ODL - Mode)-2015-17 for the in-service Para-teachers is being conducted by West Bengal Board of Primary Education in accordance with the approval order of the NCTE mentioned herein above.
- ii. A para teacher undergoing the Two year D.El.Ed. Course through ODL mode may simultaneously upgrade his/her academic qualification for the course or percentage of marks in the H.S. or its equivalent examination through either WBCROS or NIOS. But she/he will not be declared to have passed the training course, unless and until she/he attains the minimum academic qualifications through such upgradation.
- iii. The registered para-teachers will be informed of their study centres through the D.I./S.I.s of Schools of the respective districts.
- iv. Such registered para-teachers will be provided with the printed study materials and details of the course from their respective study centres. "

From the aforesaid memo, it appears that the Board itself made a commitment that the para-teachers will be informed of study centre through District Inspector of Schools or Sub-Inspector of Schools of the respective district and having failed to act in terms of its own commitment, the action of the Board warrants interference by this Court. It also appears that by a memo dated 25<sup>th</sup> February, 2016, being annexure "P-15" at page 63, the Board again issued a notice whereby it was mentioned that para-teachers who would download their registration certificates, only they would be allotted study centers for personal

contact programmes after distribution of the printed study materials. Although, it is apparent on the face of the record that the petitioner got himself registered and has downloaded his registration certificate which is annexed as Annexure “P-14” at page 62 and by his demand of justice dated 1<sup>st</sup> August, 2016, he has disclosed everything but even then the concerned respondents remained indifferent and, therefore, this is a fit case where this Court should issue a writ of mandamus commanding the respondents to act in terms of the aforesaid memoranda. It further appears from the memorandum dated 5<sup>th</sup> October, 2016 issued by the State Project Director addressing it to the District Project Officer, S. S. M. on the subject of D.El.Ed. training for para-teachers it appears that the State Project Director as per direction of the Secretary, School Education Department, requested the State Project Officer, S.S.M. that para-teachers who are willing to undergo D.El.Ed. training through ODL mode may be permitted for attaining the said course in the centers with certain priorities mentioned in the said memo. Therefore, the State Project Officer appears to have done his duty but the District Project Officer is yet to fulfill the direction of the Secretary, School Education Department communicated through the State Project Director.

Therefore, this writ petition is disposed of by directing the District Project Officer, S.S.M., Nadia, respondent no.7, to communicate the petitioner no.3 the name of the recognized study center where he could be admitted to upgrade his qualification of D.El.Ed. training through ODL mode positively within a period of four weeks from the date of communication of this order and he will do so in implementation of memo dated 5<sup>th</sup> October, 2016 addressed to the District Project Officer, S. S. M. The West

Bengal Board of Primary Education, respondent no.3, is also directed to supply the study materials to the petitioner after his admission to the recognized study center within two weeks from the date of allotment of the study center.

There will, however, be no order as to costs.

**( Sahidullah Munshi, J. )**