

10.01.2023
Item No. 14
Crt.No.11
b.r.

MAT 1576 of 2019
with
ASTA 193 of 2012
Johoraton Nesha
-vs-
The State of West Bengal & Ors.

Mr. Sobhan Majumdar
Ms. Kalpita Paul
..... for the appellant.

Mr. Rezaul Hossain
..... for the State.

Md. Sarwar Jahan
Ms. Mousumi Mitra
Mr. Maidul Islam Kayal
..... for the Respondent No.4.

Party/parties is/are represented in the order their name/names as printed above in the cause title.

Mr. Majumdar, Learned Counsel, appears for the appellant and, submits that injustice has been done to the appellant/who was the writ petitioner before the Hon'ble Single Bench by operation of the order impugned in this appeal dated 24th September, 2012 passed in the writ petition being WP 20387(W) 2012.

Mr. Majumdar submits that the Hon'ble Single Bench failed to appreciate the fact that the present appellant/the writ petitioner was the beneficiary of the Government Order (GO) dated 23rd March, 2010, subsequently superseded by the Memorandum dated 23rd April, 2010, both issued by the Department of

Panchayats and Rural Development (DPRD). It is submitted that the Hon'ble Single Bench ought to have appreciated the factual scenario that the present appellant/the writ petitioner continued in service of Bandhpara Sishu Siksha Kendra, District-Malda as 'Sahayika' till September, 2010, that is even after her renewed contractual tenure ended on 30th April, 2010.

Mr. Mazumdar, therefore, clarifies that since the present appellant/the writ petitioner was in service on the date of the Memorandum dated 23rd April, 2010 (*supra*), the benefits flowing out of such Memorandum ought to have been extended to her.

Mr. Jahan, Learned Counsel appearing for the Respondent No.4 in this appeal, that is the Mission Director, Paschim Banga Rajya Sarba Siksha Mission submits that the illegality done against the present appellant/the writ petitioner by some vested interests at a time when the writ petitioner/the appellant had already been continuing in contractual employment between 2005 to 2010 was only for the purpose of denying the appellant/the writ petitioner, the benefit of the Memorandum dated 23rd April, 2020 (*supra*).

Mr. Jahan, therefore submits that the Hon'ble Single Bench was correct in not noticing the allegation of illegality in the appointment of the appellant/the writ petitioner to the post of Sahayika since from the

background factual scenario leading to such appointment. It is found that the appointment was given to the appellant/the writ petitioner in view of the fact that she was a nominee of the family which donated a portion of their land for setting up the said Sishu Siksha Kendra.

Mr. Hossain, Learned Counsel, appears for the State-Respondents.

Having heard the parties and examining the materials placed, this Court finds that the appellant/the writ petitioner is entitled to claim consideration under the Memo dated 23rd April, 2020, since it is not disputed before this Court that the appellant/the writ petitioner continued to be in service as Sahayika till September, 2010 without any objection from any of the parties and admittedly during the period when her last contract was subsisting that is May 1, 2009 to April 30, 2010 the G.O. dated 23rd April, 2010(*supra*) had come into effect.

Since Mr. Hossain submitted that the administrative control of the Sishu Siksha Kendra headed by Mission Directors stands vested with the Department of Secretary, School Education Department from 1st December, 2012 in the light of the observations (*supra*), this Court remands the matter to the Secretary, School Education Department for taking a reasoned decision in accordance with law on the applicability of

the G.O. dated 23rd April, 2010 to the appellant/the writ petitioner.

Let a reasoned decision be taken in this regard within a period of eight weeks from the date of communication of this order. The Secretary, School Education Department shall be entitled to afford an opportunity of hearing to the appellant/the writ petitioner or her authorised representative and as also to any other person or persons who is required to be heard. The reasoned decision shall be communicated to the parties.

MAT 1576 of 2019 with its connected application being **ASTA 193 of 2012** stand accordingly **disposed of.**

Since Affidavits are not invited, allegations to the contrary are deemed to be denied and disputed.

Leave is granted to the appellant to amend the cause title.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all necessary formalities.

(Supratim Bhattacharya, J.) (Subrata Talukdar, J.)