

04-09-2019
Court No.1
Sh/10.

**CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI
WRIT APPELLATE JURISDICTION
APPELLATE SIDE**

W.P.A. 400 OF 2019

**Binita Jha. Petitioner.
Vs.
State of West Bengal & Ors. . . Respondents.**

Mr. Ekramul Bari,
Syed Mansur Ali.
. . . For the Petitioner.

Mr. Debabrata Dhar,
Mr. subir Kumar Saha,
Mr. Momenur Rahaman.
. . . For the State Respondent.

The petitioner has filed the instant writ petition assailing the impugned order dated 20th May, 2019, passed by the Deputy Secretary, Government of West Bengal, thereby rejecting the petitioner's prayer for notional fixation from the date of counseling in the School, that is, 02-02-2017.

Mr. Bari, learned counsel appearing for the petitioner submits that pursuant to the selection process the petitioner was selected by the Board. Accordingly, the petitioner was called by the Council for choice of her School. Accordingly, the petitioner appeared on 2nd February, 2017 for counseling before the concerned Chairman, District Primary School Council. The petitioner was empanelled but with the remarks "withdheld".

Accordingly, without finding any alternative the petitioner approached earlier before this Hon'ble Court

thereby filing a writ petition being WP 14130(W) of 2017, which was disposed of on February 5, 2018 with the following directions;

“ That being the scenario, I direct the Secretary, School Education Department (Primary) to take a decision in respect of the petitioner’s claim for giving appointment to the post of Assistant Teacher in any Primary School under the district Jalpaiguri after considering her qualification certificate within eight weeks from the date of communication of this order after giving an opportunity of hearing to the petitioner or her authorized representative.

Needless to mention that if it is found that the petitioner’s qualification certificate is equivalent to the Madhyamick examination then the respondent no.1, Secretary, School Education Department (Primary) West Bengal to take steps in accordance with law.

It is further needless to mention that if the decision is otherwise, then as per the direction the respondent no.1 shall communicate the decision upon the petitioner.

With these directions this writ petition is disposed of without any order as to costs.”

Pursuant to the said order the petitioner was ultimately given appointment on 11th September, 2018 by the Chairman, District Primary School Council, Alipurduar.

Accordingly, she joined on 12th September, 2018. After joining the petitioner made representation before the Secretary, School Education Department on 4th April, 2019, thereby praying, interalia, to treat the petitioner’s date of appointment from February 2, 2017, thus granting notional with effect from the date when the petitioner was allowed to appear for counseling for choice of School. Unfortunately, the petitioner was actually given appointment pursuant to the order of the Court on 11th September, 2018, thereby losing one year and seven months approximately.

Unfortunately that prayer was rejected without giving any opportunity of hearing to the petitioner and also without assigning any reason.

Mr. Bari, learned counsel appearing for the petitioner further submits that this impugned order dated 20th May, 2019 is a cryptic one and that should be quashed and set aside by this Hon'ble Court.

Mr. Dhar, learned advocate appearing for the State submits that question of giving hearing to the petitioner or any of his authorized representative, by the concerned Deputy Secretary on the basis of his representation does not arise because the petitioner's representation dated 4th April, 2019 is self-explanatory and no further hearing is required.

Mr. Dhar further contends that there is no ambiguity, illegality or infirmity in the order impugned order dated 20th May, 2018, which deserves interference by this Court.

Considering the submission advanced by the learned counsel appearing for the parties and after perusing the record, I find that the petitioner admittedly submitted a representation on 4th April, 2019 before the Authority. Therefore the authority is under obligation to give an opportunity of hearing before rejecting the petitioner's claim.

Since no natural justice, that is, opportunity of hearing has been given to the petitioner, therefore, in my considered view, the impugned order dated 20th May, 2019 should be quashed and set aside.

This Court also cannot ignore the fact that no reason, save and except "delay was procedural one" has been assigned in the impugned order of rejection dated

20th May, 2019, by the Deputy Secretary to the Government of West Bengal.

It is also not out of place to mention that if any delay is a procedural one for that a litigant should not suffer.

Considering the observations made above, and after perusing the record, in my considered view, the impugned order dated 20th May, 2019 cannot be sustained in the eye of law, as well as in the facts and circumstances of this case, resultantly the impugned order dated May 20th, 2019 is hereby quashed and set aside.

Accordingly, I direct the Deputy Secretary, Government of West Bengal being the respondent no.9 herein to revisit the issue and take a decision in accordance with law within a period of six weeks from the date of communication of this order after giving an opportunity of hearing to the petitioner or his authorized representative and thereby communicate the reasoned order to the petitioner within a week thereafter.

With these directions the instant writ petition being WPA 400 of 2019 is disposed of without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the learned advocates appearing for the parties expeditiously on compliance of all requisite formalities.

(SAMPTI CHATTERJEE,J)

