

18.12.2020.
Item no. 2.
Court No.13
ap

W.P.A. No. 3161 of 2020
With
I.A. CAN 1 of 2020 (Old CAN 2732 of 2020)
(Through Video Conference)

Iqbal Hossain Gazi
Versus
The State of West Bengal & Ors.

Mr. Debabrata Saha Roy,
Mr. Lakshminath Bhattacharya.
...For the petitioner.

Mr. Bhaskar Prasad Vaisya, AGP,
Mr. Suman Dey.
...For the State.

In Re: CAN 1 of 2020 (Old 2732 of 2020)

This is an application for recalling of the order dated 5th March, 2020 passed by me in the instant writ petition.

Considering the submissions made therein, the order dated 5th March, 2020 is recalled and writ petition taken up for hearing.

CAN 1 of 2020 (Old CAN 2732 of 2020) is disposed of.

In Re: W.P.A. No. 3161 of 2020

The writ petitioner is similarly situated as the petitioner in W.P. No. 2056 (W) of 2019 which was disposed of by my order dated 7th January, 2020.

While passing the said order dated 7th January, 2020, this Court noted a decision of a Co-ordinate Bench of this Court dated 17th August, 2017 passed in

W.P. No. 21353 (W) of 2016 which considered in detail and held that the petitioner therein was entitled to continue in the post of Para Teacher until the age of 60 years on the basis of a Memorandum of the Department of School Education dated 16th November, 2010.

This Court thereupon ordered that the petitioner therein, namely, Uttam Kumar Naskar, was entitled to continue and discharge his duties as Para Teacher in the School concerned.

It is submitted by the Counsel for the petitioner that an appeal is pending against the order and the petitioner therein was appointed in the School, namely, Muldia Chaitanyapur Deshgourav Vidyamandir subject to the result of the appeal.

Since the writ petitioner herein was also appointed after being empanelled on 31st August, 2010 in the subject of Pure Science, the said order dated 7th January, 2020 passed in W.P. No. 2056 (W) of 2019 shall also govern the instant writ application.

Counsel for the State prayed for time to file affidavit-in-opposition and place a Circular dated 9th June, 2010 issued by the Secretary to the Government of West Bengal, School Education Department whereunder it was mentioned that no new engagement of Para Teacher or any other category of employees can be made after issuance of this order.

Counsel for the petitioner, however, referred to a Circular No.886-SE dated 16th November, 2010 which is at paragraph 4, referred to the aforesaid order dated 9th June, 2010 and clarified that the Para Teachers now continuing to work under the PBSSM will continue to remain engaged till attainment of the age of 60 years albeit on contractual basis. The petitioner claims that he was engaged on 23rd September, 2010.

This Court is of the view that the order dated 9th June, 2010 referred to by the Counsel for the State will not affect the writ petitioner and hence no affidavit is called from the State.

Counsel for the State also submitted that irrespective of any Circular permitting the petitioner to work until the age of 60 years, the contract of employment is required to be renewed and the petitioner is required to be re-engaged every year. He, therefore, submits that such being the nature of employment and the petitioner not having been engaged after 26th February, 2016, he cannot claim the benefit of continuous engagement till 60 years.

This Court by reference to this order dated 7th January, 2020 and the order dated 17th August, 2017 passed in W.P. No. 21353 (W) of 2016, holds that such contention of the State has since been rejected.

The petitioner would, therefore, be entitled to be re-engaged at the aforesaid School being Muldia Chaitanyapur Deshgourav Vidyamandir.

As already submitted by the Counsel for the State that M.A.T. No.425 of 2020 is pending before a Division Bench of this Court in respect of two other writ petitions, it is made clear that the petitioner's engagement pursuant to this order shall also abide by the result of the said appeal.

It is also made clear that the petitioner shall not be entitled to any remuneration from 2016 till the date of is re-engagement in the School.

The petitioner shall be allowed to join the service as a para teacher the said School within ten days from date.

With the aforesaid observations, the instant writ application shall stand disposed of.

There will be no order as to costs.

All parties are directed to act on a server copy of this order on usual undertakings.

(Rajasekhar Mantha, J.)