

07.12.2020

Item No.51
Court No.25
Avijit Mitra

W.P.A. No. 9023 of 2020 (Via Video Conference)

**In re: Debasish Chakraborty
- Versus -
State of West Bengal & Ors.**

Mr. Sajal Kumar Ghosh,
Mr. Manoj Chakraborty
For the Petitioner
Mr. Wasef Ali Mondal
For the Respondent nos. 2 to 4

The present writ petition has been preferred
primarily praying for the following relief:

“A writ of or in the nature of Mandamus may be issued directing the respondent authority for absorbed your petitioner as permanent teacher and to pay the salary to the petitioner as full salary since the appointment dated 01.07.2011 to till date”.

Mr. Ghosh, learned advocate appearing for the petitioner submits that the petitioner was appointed as a part time teacher by the managing committee of Sahid Rameswar Vidyamandir (H.S.) School on 1st July, 2011. He was allotted 25 classes per week similar to that of a permanent teacher. In support of such contention he has drawn the attention of this Court to the documents annexed at pages 13 to 42 of the writ petition.

He submits that the petitioner was appointed under the exigencies and in the interest of the students at large. Such service of the petitioner has been extracted by the school authorities till date. In view thereof, the petitioner should be given the status and

pay of a permanent teacher with effect from 1st July, 2011. Representations submitted to that effect were also not considered by the concerned authorities and as such, the petitioner was constrained to issue letters through his learned advocate to the Secretary, Department of Higher Education, Government of West Bengal and to the respondent nos. 2 and 5 on 26th September, 2020 but in vain.

Drawing the attention of this Court to the document annexed at page 43 of the writ petition, Mr. Ghosh submits that from the said letter it is explicit that there is a continuing need towards a permanent teacher in the said school.

No one appears today on behalf of the State respondents.

Mr. Mondal, learned advocate appearing for the school denies and disputes the contention of the petitioner and submits that the petitioner was not appointed in any sanctioned vacancy, in accordance with the Rules.

It is well settled that the direction for permanent appointment should not be granted by the Court in exercise of the authority under Article 226 of the Constitution of India unless the employee claiming regularisation or absorption has been appointed in accordance with the recruitment rules against a sanctioned post.

The petitioner is claiming appointment to the post of a permanent teacher on the basis of the service

rendered as a part time teacher since the year 2011. Mere continuance of service on *ad hoc* basis does not entitle the petitioner to permanent appointment. In the event such direction is passed it would simply reinvigorate a class of claim which has been shut out permanently by the judgment delivered in the case of State of Karnataka vs. Uma Devi (3) reported in (2006) 4 SCC 1.

For the reasons discussed above, this Court is unable to grant the relief as prayed for by the petitioner and the writ petition, is accordingly, dismissed.

There shall however be no order as to costs.

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

(Tapabrata Chakraborty, J.)