

ORDER SHEET

WPO 394 of 2018
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MS. BINA ACHARYA & ORS.
Versus
STATE OF WEST BENGAL & ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
Date : 2nd December, 2020.

(Via Video Conference)

Mr. Saktipada Jana, Adv.
...for the petitioners

The Court : The subject matter of challenge in this writ petition is a memo dated 28th June, 2018 issued by the Commissioner of School Education, West Bengal. Such memo pertains to fixation of DA of Assistant Teachers in DA getting primary schools. The petitioners are such teachers.

Earlier, the petitioners and others had approached this Court by filing WP 17691(W) of 2016 with certain grievances regarding payment of dearness allowance. It was contended that the petitioners were receiving less on account of dearness allowance than they were entitled to on the basis of the applicable Government Circular. By an order dated 3rd January, 2017 this Court had granted liberty to the petitioners in that case to make a

comprehensive representation to the Commissioner of School Education, West Bengal, who was directed to dispose of the same by a reasoned order within a stipulated time period.

It is submitted that pursuant to such order, the then Commissioner of School Education, one Mr. Avanindra Nath Singh, gave a hearing to the petitioners in that case on 18th April, 2017. However no order was passed by the Commissioner of School Education. From the month of January, 2018 Dr. Soumitra Mohan took charge as Commissioner of School Education. The petitioners say that without holding any hearing the said new Commissioner of School Education issued the impugned memo. The petitioners say that law of the land does not countenance one officer giving the hearing and his successor-in-interest passing the requisite order without giving a fresh hearing. This is contrary to the principles of natural justice, submitted Mr. Saktipada Jana, learned advocate for the petitioners.

Repeated opportunity was given to the State to file the affidavit-in-opposition. No such affidavit has been filed. The State is also not represented today.

The matter is pending for a long time. Since one Commissioner of School Education afforded hearing to the petitioners and another Commissioner of School Education passed

the requisite order, the order is clearly not sustainable in law. In effect, this amounted to the impugned order being passed without hearing the petitioners since the Commissioner who passed the order did not grant an opportunity of hearing to the petitioners.

On the limited ground indicated above, the order impugned is set aside. It is elementary that an order passed in breach of the principles of natural justice is void ab initio. The matter is remanded back to the Commissioner of School Education for consideration afresh. The said officer shall grant an opportunity of hearing to the petitioners and shall pass a reasoned order in accordance with the applicable rules/regulations/circulars within a period of six weeks from receipt of a copy of this order.

I have not gone into the merits of the case. The respondent no. 2 (Commissioner of School Education, West Bengal) shall take an informed decision in accordance with law. The decision so taken shall be communicated to the petitioners within a week from the date of the decision.

WPO 394 of 2018 is accordingly disposed of.

(ARIJIT BANERJEE, J.)

