

S/L 5
10.02.2021
Court No.26
SD

**WPA 3329 of 2021
(Via Video Conference)**

Sourav Karmakar & Ors.
Vs.
Union of India & Ors.

Mr. Dilip Kumar Samanta

...for the Petitioners.

*Mr. Samrat Sen
Ms. Amrita Panja Moulick*

...for the State.

Mr. Bimbisar Dash

...for the Respondent Nos.7 & 8.

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioners are aggrieved by a bid dated January 18, 2021 issued by the Government of West Bengal for the selection of Private Training Providers for Implementing Vocational Education in Government/Government Aided/Government Sponsored Schools in West Bengal.

2. The case of the petitioners is that there are presently contract employees working as vocational trainers in certain schools that act as private training providers as defined in Notification being No. 8/6/2013-Invt. dated December 27, 2013.

3. Mr. Samrat Sen, counsel appearing on behalf of the State respondent, submits that the petitioners are all contractual employees of the training providers who have been engaged for a certain limited period. He further submits that there is no privity of contract between the

Government of West Bengal and these petitioners. He submits that the salaries/wages are also not paid by the State of West Bengal to these petitioners.

4. He further submits that the period of contract between the private training providers and the State is coming to an end and therefore, this bid has been taken out. He submits that the training providers who are earlier having contract with the State are also eligible to participate in the same. He further submits that the petitioners being contractual employees of the private training providers they do not have legal and statutory right to approach this Court for an order stalling and quashing this tender bid.

5. Mr. Dilip Kumar Samanta, counsel appearing on behalf of the petitioners, relies upon a judgment rendered by a learned Single Judge of the Rajasthan High Court in S.B. Civil Writ Petition No.10843 of 2019 to buttress his argument that in a similar case of vocational trainers, the High Court had passed an order protecting the interest of the trainers.

6. Upon a perusal of the judgment of the Rajasthan High Court, it appears that the same is based on certain categorical submissions made on behalf of the State Government which stated that the tender process was not going to affect the writ petitioners in that particular case in any manner. Furthermore, the Hon'ble Judge has categorically stated that he has not gone into the merits of the order passed in relation to fresh competitive bid of the

private training providers. In fact, in that case, the competitive bid was for choosing private training providers in addition to the already existing private training providers. This is not the case in the present matter. Furthermore, no principle or ratio has been enunciated in the order passed by the Rajasthan High Court, and therefore, it does not have any precedential value.

7. Upon a perusal of the documents annexed to the writ petition, I find that the petitioners have neither annexed their appointment letters nor the proof of payment, that is, proof as to the particular employer who is making payments to them. This was a condition precedent which was required to be complied by the writ petitioners during the course of the filing of this writ petition, as has been held by the Supreme Court in the case of ***Bharat Singh –v- State of Haryana*** reported in **(1988) 4 SCC 534**. Relevant portion of the above judgment is extracted below:

“13.In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.”

8. Given the lack of evidence that was not forthcoming as annexures in the writ petition, it clearly appears that the petitioners are contract employees under the private training providers and therefore, have no contractual relationship with the State Government.

9. In my view, the writ court is to intervene only in the situation where a statutory right and/or a fundamental right of the petitioner is being affected. Passing orders merely upon one's asking cannot be the right course of action. In certain cases when the State Government is willing to consider the representations of the petitioners, the High Court allows such writ petitions directing the State Government to consider such representations. However, it is upon the petitioners to indicate the extent of prejudicial impact of a particular action of the State upon their statutory rights/fundamental rights. In the present case, the petitioners who are contractual employees, have failed on this count.

10. Furthermore, this writ petition is premature, as one cannot prejudge the result of the selection process that has been initiated by the State Government, through the invitation of the new tender dated January 18, 2021.

11. In light of the above observations, I dismiss this writ petition.

12. I would like to thank the learned counsels appearing on behalf of the parties for their valuable assistance in the matter.

13. Since, no affidavit-in-opposition has been called for the allegations made in the writ petition are deemed to have not been admitted by the respondents.
14. There will be no order as to costs.
15. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shekhar B. Saraf, J.)