

Ct. 05
Item Nos.20-23
14.12.2021
(suvendu)

WPA 3934 of 2021
Tapas Kumar Sarkar
Vs.
The State of West Bengal & Ors.

With
WPA 3937 of 2021
Snigdha Basu Barui
Vs.
The State of West Bengal & Ors.

With
WPA 6352 of 2017
Tapas Kumar Sarkar
Vs.
The State of West Bengal & Ors.

With
WPA 6359 of 2017
Snigdha Basu Barui
Vs.
The State of West Bengal & Ors.

[Via Video Conference]

Mr. Sabyasachi Chatterjee
Mr. Akashdeep Mukherjee
Mr. Pritam Chatterjee
.....for the petitioners

Mr. Joytosh Majumder
.....for the respondent nos. 3 & 4

Ms. Tapati Samanta
.....for the respondent nos. 3 & 4
(In WPA 6352/17 & WPA 6359/17) &
.....for the State
(In WPA 3934/21 & WPA 3937/21)

In Re. WPA 3934 of 2021 & WPA 6352 of 2017

The petitioner seeks setting aside of an
order dated 22nd November, 2016 passed by the

Director of Library Services by which the petitioner's prayer for being given the benefit of a Memorandum dated 7th March, 1990 was rejected.

From the submissions of learned counsel appearing for the petitioner, it is evident that the petitioner seeks the benefit not only of the Memorandum 33 -Edn (B) dated 7th March, 1990 but of judgment of the Supreme Court passed in Sibnath Koley & Ors. Vs. State of West Bengal & Ors. by which certain benefits were given to librarians in terms of a revised scale of pay. Counsel refers to a judgment of a Division Bench of this Court reported in 2018 (4) CHN 131 (Pradip Kumar Karak Vs. State of West Bengal). Counsel submits that although the petitioner was appointed after the cut off date laid down in the Division Bench judgment that is 21st July, 1990, the petitioner enhanced his qualification prior to the cut off date and would hence be covered by Pradip Kumar Karak. Counsel also seeks to withdraw an earlier writ petition, being WPA 6352 of 2017, on the ground that the said writ petition was filed before the Division Bench judgment of Pradip Kumar Karak was pronounced.

Learned counsel appearing for the Department objects to both the prayers for withdrawal as well as the prayer of the writ

petitioner seeking the benefits of Sibnath Koley, the Memorandum of 7th March, 1990 and Pradip Kumar Karak. According to the counsel, there is a material suppression in WP 3934 of 2021 where the petitioner has failed to disclose the fact of the earlier writ petition filed and pending before the Court. Counsel relies on K. Jayaram & Ors. Vs. Bangalore Development Authority & Ors. reported in 2021 SCC OnLine SC 1194 in this regard.

On merits, it is submitted that the petitioner cannot take advantage of Sibnath Koley since that was not a decision in rem as noticed in Pradip Kumar Karak and second, that the petitioner did not fall within the specific clause which was given the benefit under the Memorandum of 7th March, 1990.

I have heard learned counsel appearing for the parties.

First, the question of suppression. It is clear from the averments made in WPA 3934 of 2021 that the petitioner has not disclosed the fact of WPA 6352 of 2017 pending before the Court at the time of filing of the second writ petition. Whether the suppression is deliberate or was made for any ulterior purpose is not relevant to be considered at this point. What is material is that the petitioner should have brought the existence of

the earlier writ petition to the notice of the Court and included an appropriate averment in that respect. The petitioner evidently did not do this. K. Jayaram & Ors. lays down regarding coming before the Court with unclean hands. The underlying necessity is to preserve the purity of the justice delivery system and to guard against multiplicity of proceedings. K. Jayaram did not involve facts which are similar to the case before this Court namely failure on the part of litigant to disclose the pending writ petition.

The decisions shown on behalf of the petitioner namely, Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior & Ors. reported in (1987) 1 SCC 5 and Visveshwaran Suresh Kumar & Anr. Vs. The State of West Bengal & Ors., proceed on the principles of withdrawal of writ petitions under Order XXIII of The Code of Civil Procedure.

Upon considering these decisions, this Court is of the view that the scale of powers of a writ court can persuade the Court to pass an appropriate order for the larger question of public policy. In the facts of the present case, the petitioner fails to disclose the earlier writ petition and now seeks to have the said writ petition withdraw. The earlier writ petition admittedly has

lost its force by reason of a subsequent judgment pronounced by the Division Bench and hence is no longer required to be considered by the Court. The petitioner can hence be permitted to withdraw WPA 6352 (W) of 2017 without any further dilation of the law on that aspect.

With regard to the merits, on the date when the petitioner enhanced his qualification, the petitioner was a "Cycle Peon". Without any disrespect to the concerned post, it is correct to state that the petitioner did not belong to the category of librarians or serving librarians who were given the benefit of the Memorandum dated 7th March, 1990. This would be evident from Clause 16(3) of the said Memorandum which provides that all teachers and librarians of secondary schools who have improved or will improve their qualifications or who were appointed with higher qualification in the relevant subject shall get higher scale of pay appropriate to their qualifications with effect from 1st January, 1986 or the date of improving qualification whichever is later. The clause makes it clear that the benefit would only cover those teachers and librarians who were already in such posts and improved or were in the process of improving their qualifications or were appointed with higher

qualification in the relevant subject as on the date of their appointments. This also finds support from paragraphs 137 to 139 of Pradip Kumar Karak which indicates that the cut off date of 21st July, 1990 and the benefit of the librarians being treated at par with the librarians in Sibnath Koley would only apply to those librarians who have acquired higher qualifications before the cut off date. The relevant paragraphs indicate that persons seeking to take benefit of Sibnath Koley or the relevant Memorandum must already be in the position of a librarian before 21st July, 1990.

The petitioner was admittedly appointed in October, 2009 which is much after the mentioned cut-off date in Pradip Kumar Karak. A communication dated 10th June, 2014 from the Directorate of Library Services to the District Library Officer also makes it clear that the judgment of the Supreme Court in Sibnath Koley cannot be treated as a decision in rem which was also reiterated in Pradip Kumar Karak.

In view of the above reasons, this Court finds no merit in the writ petition which is accordingly dismissed.

WPA 6352 of 2017 is dismissed as withdrawn as indicated above.

In Re. WPA 3937 of 2021 & WPA 6359 of 2017

WPA 3937 of 2021 is disposed of in terms of the above and WPA 6359 of 2017 is dismissed as withdrawn accordingly.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)