

DL. February
14. 10, 2021

Through Video Conference

F.M..A. 189 of 2021

Mr. Anindya Bose,
Mr. Aninda Bhattacharya,
Mr. Diptendu Mondal,
...for the appellant.

Mr. Md. Sarwar Jahan,
Mr. Mostafijur Rahaman,
...for the respondent no. 3.

Re: CAN 1 of 2020 (stay)
filed on January 15, 2021.

Although the matter is appearing under the heading “application”, by consent of the parties, the appeal itself is taken up for consideration.

This appeal is arising out of an order dated February 10, 2020 passed by a learned Single Judge of this court in connection with a writ petition filed by the appellant for payment of interest towards her honorarium and for inaction on the part of the authorities concerned to initiate a fresh recruitment process for appointment to the post of Sahayika in Chaksimultala Sishu Siksha Kendra. The learned Single Judge rejected both the claims of the writ petitioner/appellant.

The learned Single Judge in dealing with the contention that the writ petitioner/appellant is entitled to interest on arrear honorarium has observed that in the previous writ petition, which was filed for realisation of arrear honorarium, no prayer was made for payment of interest and, as such, the contention of the writ

petitioner/appellant with regard to payment of interest is not maintainable. In fact, the second writ petition would be barred by constructive res judicata in view of the fact that in the earlier writ petition no such prayer was made.

In so far as the second grievance of the writ petitioner/appellant is concerned, the learned Single Judge after taking into consideration the submission made on behalf of the Paschim Banga Rajya Sishu Siksha Mission, that engagement of Sahayika had already been suspended on the basis of the government directives, had observed that no direction could be issued for conducting any fresh selection process for such post and, accordingly, disposed of the present writ petition.

This order is under challenge in this appeal.

The learned advocate appearing on behalf of the appellant draws our attention to an order passed by a co-ordinate bench of this court on November 22, 2016 in an appeal preferred by the present appellant wherein the District Nodal Officer, SSK/MSK Cell, Purba Medinipur, was directed to initiate a fresh recruitment process and submits that it is incumbent upon the said authority to initiate such process. Our attention is also drawn to the recommendation of the District Nodal Officer dated August 23, 2012 whereby the said Nodal Officer has recommended that a fresh recruitment process to be initiated for the post of Sahayika.

Md. Sarwar Jahan, learned advocate appearing on behalf of the Paschim Banga Rajya Sishu Siksha Mission, being the respondent no. 3, has drawn our attention to the Government Memo being No. 7079/PNO/I/O-6/2003(Pt. II) dated December 4, 2012 to

emphasize that the engagement of Sahayika/Sahayak and Samprasarak/Samprasarika in SSKs/MSKs has been suspended.

For better and proper appreciation of the said submission of Mr. Jahan, it is necessary to reproduce the said Memo as under :-

No. 7079/PNO/I/O-6/2003(Pt. II) Dated: 4.12.2012

From: OSD & Ex-Officio Dy. Secy.
To the Govt. of West Bengal

To: The Additional Executive Officer,
Murshidabad Zilla parishad

Sub: Engagement of Sahayika/Sahayak and
Samprasarak/Samprasarika in
SSKs/MSKs – instruction thereof

Sir,

I am directed to refer to a letter No. 507/SSK/eng-1/5 dated 22.8.12 from your end which is received recent on the above and to state that the matter of affiliation of all the SSKs and MSKs by School Education Department is in very active consideration of Govt. now. The SSKs and MSKs may get affiliation from School Education Department as per guideline of RTE Act 2009. After then, engagement of Sahayika/Sahayak and Samprasarak/Samprasarika will be started following the guideline of RTE Act. So now engagement by a MC of Recruitment Committee will remain suspended at this stage.

Procedure in this respect will be informed soon.

Yours faithfully,

Sd/-
OSK & Ex-Officio Dy. Secy.
to the Govt. of West Bengal.

It appears that when the prayer of the writ petitioner/appellant was considered along with others in a previously instituted proceeding which was resulted in an order dated March 28, 2014, which, in turn, had given rise to the appeal being FMA 3338 of 2015 (Sikha Maji vs. Ruma Adak & ors.), the

learned Judges were not informed of the aforesaid circular which clearly shows that all recruitment for the said post would remain suspended.

Mr. Jahan has informed us that the said Circular is still in force and the suspension order has not yet been withdrawn.

In view of the aforesaid circular and taking into consideration the submission made on behalf of the Mission that the said recruitment process is suspended and has not been revived, we feel that the learned Single Judge was justified in not granting any relief to the writ petitioner/appellant.

With the aforesaid observation, the appeal stands disposed of.

In view of disposal of the appeal, the application for stay also stands disposed of.

There will be no order as to costs.

(Soumen Sen, J.)

dns

(Saugata Bhattacharyya, J.)