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13.08.
2021
Ct. No.17

WPA 6378 of 2016

Smt. Barnali Purkait (Mondal)
Vs
The State of West Bengal & Ors.

Mr. Pankaj Halder
.....**For the Petitioner**
Sk. Rezaul Alam
....**For the Respondent No.6**
Mr. Tapash Kr. Mondal
.....**For South 24 Pgs. Zilla Parishad**
Mr. Jahar Lal Dey
Mr. Rezaul Hossain
.....**For the State**
Md. Sarwar Jahan
.....**For the Respondent No.2**

The petitioner has challenged in this writ application a letter dated 04.01.2011 of the Executive Officer of Mathurapur, 1 Block, District South 24 Parganas (i.e. the Block Development Officer) where under the following order has been passed.

The letter dated 04.01.2011 was written to the Secretary of Ramchandrapur Sishu Siksha Kendra which is as follows:

*“ Sub: Withdrawal of approval of engagement of
Sahayika*

It has come to the notice of the undersigned that several irregularities were detected from their submitted documents and inspection on of the said S.S.K on 20.09.2010 as regards engagement of Smt. Barnali Purkait (Mondal) as Sahayika which was done in violation of certain

rules of Sishu Siksha Karmasuchi as well as by suppression of facts.

Hence the order of approval of engagement of above Sahayika as per resolution of Siksha Sthyye Samitee meeting held on 09.02.2010, Vide T.O. No.489/Math-I/10 dated 04/03/2010 is here by withdrawn and the execution of the resolution of the said approval is kept in abeyance."

The petitioner has challenged another letter of the Executive Officer of the concerned Panchayat Samity dated 04.01.2012 which is as follows:

"Sub:- Cancellation of 4th Sayahayika

In compliance of the Order No.2854/ZP/SSK-MSK/PS-XXII/11, Dated 22.12.2011 of Additional District Magistrate & Additional Executive Officer, South 24 Parganas regarding the illegal engagement of 4th Sahayika in Ramchandrapur SSK, you are hereby asked to take all necessary measures to desist 4th Sahayika, Smt. Barnali Purkait (Mondal) from any institutional work. You are also asked to restrain her from signing in daily attendance register. You are also instructed to report to the undersigned within 3 (Three) days of receipt of the order, informing the measures you have taken in this regard. "

In this matter the State of West Bengal has

filed one affidavit-in-opposition annexing an enquiry report (Annexure X-5 thereto) as to engagement of the 4th Sahayika (the petitioner herein) which is as follows:

“Sir,

In response to your above referred Memo No. this is to inform you that Sri Subal Paik and five others of domicile of Ramchandrapur village under Abad Bhagabanpur Gram Panchayat submitted a complain letter for the third time against the engagement of Sahayika in Ramchandrapur S. S. K. They complained that 1) the said SSK shows 87 no. of pupils upto November 2009. 2) They also show the students of Ramchandrapur I.C.D.S. centre and Harindanga Vivekananda Pathobhaban in their admission and attendance register and they demands 4th Sahayika falsely.

On the basis of the said complain the undersigned probes all the documents submitted so far till date by the above SSK to the SSK section of this office and also inspect the SSK on 20.09.2010. The reference Memo and complain letters are annexed as ‘A’ and ‘B’. From the submitted documents and through inspection to the SSK it comes to the light as follows:-

- 1. Another complain was lodged by Sri Braja Ballav Bhandari and twenty nine others on 06.11.2009 stating that no advertisement for engagement of Sahayika was handed up to 31.10.2009 at Mathurapur-1 Panchayat Samity, Abad Bhagawanpur Gram Panchayat and Ramchandrapur SSK. Even the applicants get no reply of such engagement up to 31.10.2010 from the Mukhya Sahayika. Anima Moule.*

The said complaint is annexed as 'C'.

2. *The Secretary of the said SSK for the first time informs on 21.10.2010 that a new Sahayika will be engaged and the notice for the same was issued. No information was submitted as regards eligibility of the SSK to create the post of 4th Sahayika.*

The copy of the application of Secretary and Advertisement annexed as 'D' and 'E'.

3. *On 06.11.2010 the Secretary of the said SSK submitted another application with due recommendation of Pradhan, Abad Bhagabanpur Gram Panchayat along with resolution of managing committee meeting on 30.09.2009, 15.10.2010, 28.10.2010 advertisement dated 19.10.2010, advertisement dated 29.10.2010 oral score sheet of Sahayika dated 06.11.2010, application of Jharna Mondal, application of Barnali Purkait, Panchumi Mondal, resolution of managing committee dated 06.11.2010 and a certificate of Secretary regarding total student of the SSK informed for the first time.*

The letter of Secretary and enclosure are annexed as F (one) and F(two).

4. *Another letter was received from the Prodhan, Abad Bhaganpur Gram Panchayat on 11.10.2009 stating that there is no Madhyamik Pass candidate at the age of above 40 in that samsad.*

The copy of the said letter is annexed as 'G'.

5. The under signed inspected the SSk on 20.09.2010 and goes through the admission register and attendance registered of the SSk. The photocoy of attendance register of 2009-10 and 2010-11 is received and annexed as H-1 to H-4 & I -1 to I -2.

On review of the received document and inspection, it is lightened that the following Rules relating to Sishu Sikha Karmasuchi were violated around the said engagement of above Sahayika.

- a) All on a sudden the SSK enhanced the Roll Strength of Class I – 28, Class II - 2, Class III – I and Class IV – 3 in the month of September, 2009 for the Academic Sessions 2009-10 without any intimation to this office.
- b) The Secretary and Mukha Sahayika showed 121 Roll strength and starts the process of engagement of 4th Sahika during enquiry in several day, the above mentioned students were not found in the classes. The Mukha and other Sahayikas put absent student's attendance blank and make them present two and three days later.
- c) The proposal for engagement was not submitted as per no.5087/(36)/PN/0/1/36/2003 dt. 27.10.2006.

(i) *The Date creating vacancy was not reported.*

(ii) *The copy of notice seeking application was submitted but from that submission it is not traced that the notices were serviced in various places.*

The copy of the above memo no is enclosed here with annexed as "J".

(d) *Inspite of that the SSK violate the order no.3721(19).LN/0/1/36-340/04 Dt. 08.11.2004.*

These are as follows:-

(i) *Sahayika was selected the age of 35 years instead of 40 years. But that not informed in any office. This office is also quite in the dark that they are not getting the Sahayika of 40 age.*

(ii) *The Sahayika was selected out of the gram sansad without informing any corner.*

(iii) *The Secretary submits the interview notice showing the date on 21.10.2009 seeking the age of Sahayika as 40 years. But the*

Pradhan shows in a letter that 40 year candidate are not available in the locality.

The letter was written on 11.10.2009.

Which is prior to interview date.

The copy of the said memo is enclosed and annexed as "K".

Hence on the basis of the above facts the total process of engagement is anomalous and all were done in violation of Sishu Sikha Karmasuchi. These facts do not come to the notice of undersigned before. As a result no objection was raised by the undersigned during the meeting of Sikha Sanskriti Krira and Tathya Sthyee Samity, hence the said engagement was approved.

The copy of withdrawal of approve is annexed as "L".

For this reason the withdraw approval as per order No. 14/BDO/M-Pur/2011 dated 04.01.2011 the copy which is enclosed herewith.

The copy of withdrawal of approval is annexed as "M".

Hence it is decided the total engagement process of 4th Sahayika of Ram Chandrapur SSK of Abad Bhagabanpur Gram Panchayat malafide and to the contrary of Sishu Sikha Karmasuchi and so it needs to be disapproved.

This is for your kind information and taking action."

In the said enquiry report some serious illegalities and irregularities in engagement of the 4th Sahayika who is the petitioner before this court has been mentioned. On the basis of that enquiry report the letter of withdrawal of approval of engagement of Sahayika dated 04.01.2011 and letter of cancellation of the 4th Sahayika have been issued. The petitioner has challenged only those two letters dated 04.01.2011 and 04.01.2012.

The petitioner today has filed one affidavit-in-reply affirmed on 12th August, 2021 where he has not challenged the said enquiry report as has been annexed to the Affidavit-in-Opposition as Annexure – 'X5' at pages 45 and 46 of the said Opposition.

I find that the petitioner has only challenged the result of the enquiry report and not the enquiry

report itself. Some statements have been made in the affidavit-in-reply by the petitioner in respect of the enquiry report which are all of technical nature and not at all on merit. Merit of the enquiry report shows the shocking illegality in appointment of the 4th Sahayika in respect of which the petitioner has maintained complete silence. The enquiry report cannot be interfered with this court. The enquiry report stands and, therefore, the two letters dated 04.01.2011 and 04.01.2012 also stand. Those letters are based on an enquiry report unchallenged in the affidavit-in-reply on merit.

On the basis of the enquiry report and on the basis of the pleadings made by the parties, I find that there is no merit in the writ application and the writ application is liable to be dismissed.

The petitioner has submitted time and again that in issuing withdrawal of the petitioner from the said Sishu Siksha Kendra, no procedure has been followed.

I am not agreeable to that objection as because there is a detailed enquiry report depicting shocking illegalities in engagement of 4th Sahayika and the enquiry report is sufficient when it remains unchallenged on merit by the petitioner for dismissal of this writ application.

Further, writ of Mandamus can never be issued

for continuation or perpetuity of illegality.

Technical question, in view of the exposure of the shown illegality in the enquiry report cannot override the merit.

The writ application is dismissed.

No costs.

(Abhijit Gangopadhyay, J.)