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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Via Video Conference)

WPA 11630 of 2021

Atiyar Rahaman Molla & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharya Sr. Advocate,
Md. Mosiar Rahaman
Ms. Tanuja Biswas
... For the petitioners.

Mr. Sk. Md. Galib,
Mr. Anubrata Santra
... For the State.

The supplementary affidavit affirmed by the petitioners on 16th September, 2021, filed in Court today is taken on record.

The petitioners claim to be Prkalpa Sahayaks under the Bengal Swanirbhar Karmasansthan Prkalpa (in short, BSKP), introduced in the Financial Year 2000-2001. The said Scheme was amended with effect from 23rd March 2012 and is now known as Swami Vivekananda Swanirvar Karmasansthan Prkalpa (in short, SVSKP). Even after the amendment, the petitioners continued to be engaged as Prkalpa Sahayaks. The petitioners had certain grievances, which were ventilated by an advocate's letter dated 21st August, 2019. In the said letter, the advocate concerned had referred to eleven out of twenty-one petitioners as his clients. The other petitioners, being respectively petitioners no.4, 5 7, 9, 11, 12, 13, 14, 16, 18

and 20, whose names did not figure in the advocate's letter dated 21st August, 2019 as clients, are also Prakaalpa Sahayaks like the rest of the petitioners and have the same grievances. A different set of Prakaalpa Sahayaks had filed a writ petition for almost identical grievances, being WPA 5778 of 2021 (Sudipta Karmakar & Ors. Vs. The State of West Bengal & Ors.). The said writ petition was disposed of by an order dated 28th April, 2021, directing the Principal Secretary, Department of Self-help Group, State of West Bengal, to consider the representation made by the petitioners in the said writ petition which is also dated 21st August, 2019.

Pursuant to the said order dated 28th April, 2021, the Secretary has disposed of the representation by an order dated 6th August, 2021 (appearing at page 13 of the supplementary affidavit).

The petitioners say that being Prakaalpa Sahayaks and placed in the same position, with almost identical grievances to the subject matter of the said writ petition, will be redressed if the respondents are directed to act in terms of the order dated 6th August, 2021, passed by the Secretary SHG&SE Department, in respect of the petitioners within a specified time-frame.

On perusal of the order dated 6th August, 2021, I find the following observations have been made by the concerned Secretary, SHG&SE, Department:-

“In line with the representation dated 21st August, 2019 made by Prakalpa Sahayaks, the petitioners have demanded that:

The entire scheme ought to be reviewed and the Prakalpa Sahayaks entitled to get their engagement by way of permanent salaried employment with necessary pay scale on the principle of equal pay for equal work and until such engagement all Prakalpa Sahayaks be allowed allowances and incentives at higher rates commensurate with the market price.

In considering the appeal made by the Prakalpa Sahayaks, it is observed that in terms of Government of West Bengal, Department of Self-Help Group and Self Employment Notification No.222-SH/2P-49/07 dated 23.05.2007. ‘Motivator’ means a person or a group of persons or an organization not being prospective entrepreneur under the schemes and is engaged as such to motivate and assist the prospective entrepreneurs to avail of the Scheme, provide guidance for appropriate implementation of the project and play decisive role in motivating the beneficiaries to repay the loan. The engagement of the applicants, in terms of para 11 of the Notification No.222-SH/2P-49/07 dated 23.05.2007 are ad hoc and temporary in nature. The engagement may be renewed from time to time at the discretion of the Society for Self Employment of Unemployed Youth (SSEUY). Such engagement shall not entitle the Motivators to any claim/right for any kind of employment under the Society/State Government in any manner whatsoever. The engagement of Motivators may be terminated at any time without assigning any reason whatsoever. The Motivators shall be entitled

to only performance-related incentive, as may be decided by the Department of Self Help Group and Self Employment. These conditions of engagement were clearly mentioned in the engagement letters issued by the Society as can be found from a copy of the engagement letter adduced by the petitioners as Annexure P-2 to the Writ Petition. The petitioners accepted the engagement letter knowing full well that their engagement was purely ad hoc and temporary in nature. Secondly, the petitioners, Motivators (Prakalpa Sahayaks) are paid Performance-based Incentive.

The conditions of engagement of the petitioners nowhere leave any room of doubt that such engagement is not at all akin to any Government Employment, where the employees are paid a fixed periodical remuneration. The principle of equal pay for equal work may be said to have applicability in case of a Government Employee on a fixed remuneration. However, the petitioners are entitled to incentive, implying that the better the performance, the better the incentive (i.e., the earning). It is a quite fair system but one in which the principle of equal pay for equal work can never be applicable.

It is then quite clear that the demand for permanent salaried employment with necessary pay-structure made by the petitioners has no logical basis and is wholly unjustified.

It is also noted in passing that proposals for (i) enhancement of the rates of Incentives and Travelling Allowance payable to the Prakalpa Sahayaks and (ii) allowing appropriate emoluments, security of tenure and certain terminal benefits to the Prakalpa Sahayaks as per Government of West Bengal, Finance Department, Audit Branch

Memorandum No.1107-F(P) dated the 25th February, 2016 were sent earlier to the Finance Department, Government of West Bengal. In regard to the first proposal for enhancement of the rates of Incentives and Travelling Allowance payable to the Prakaalpa Sahayaks, the Finance Department decided that the original provisions would remain unaltered. The second proposal for allowing appropriate emoluments, security of tenure and certain terminal benefits to the Prakaalpa Sahayaks (as per Government of West Bengal, Finance Department, Audit Branch Memorandum No.1107-F(P) dated the 25th February, 2016) was turned down by the Finance Department with regret.

However, after hearing the petitioners and taking into account all the demands made by the Prakaalpa Sahayaks in their representation dated 21st August, 2019 and taking into consideration the fact that the petitioners have faced certain financial hardships due to the prevailing pandemic situation, the undersigned is of the opinion that the appeal made by the Prakaalpa Sahayaks in the representation for enhancement of the Rates of Incentive and Travelling Allowance payable to them may be forwarded to the Finance Department once again for consideration. Needless to say, the final decision of the Finance Department shall be binding on all concerned. Accordingly, the undersigned orders that the appeal made by the petitioners for enhancement of the Rates of Incentive and Travelling Allowance payable to them be sent to the Finance Department, Government of West Bengal for review and consideration.

Let all concerned be informed accordingly.”

On behalf of the respondents it is submitted that

they have no objection if steps are directed to be taken in terms of the order of the Secretary, SHG&SE Department dated 6th August, 2021. However, the respondents say that the letter dated 21st August, 2019 written by the advocate was on behalf of eleven petitioners and as such relief should be restricted only in respect of those petitioners.

I find no substance in the submission made by the respondents to the effect that the reliefs should be restricted only to eleven petitioners whose names figured as clients in the advocate's letter dated 21st August, 2021, described as demand for justice in the writ petition. All the twenty-one writ petitioners are similarly placed and by restricting the order only in respect of eleven there is every likelihood of another set of litigation being filed on the selfsame issue which will again consume further judicial time. The grievances of all petitioners when can be redressed in the instant writ petition. There is no justification in restricting the reliefs to only eleven out of twenty one writ petitioners.

The Secretary, SHG&SE Department, Government of West Bengal, is directed to forward the proposal for enhancement of the Rates of Incentives and Travelling Allowance payable to the petitioners as Prakaalpa Sahayaks to the Finance Department by 8th October, 2021, if not already sent. The Finance Department shall decide on the issue within a period of two (2) months from

8th October, 2021. The Finance Department and the Secretary SHG& SE Department shall communicate to the petitioners the decision taken by the Finance Department within a fortnight from the date of the decision so taken.

Nothing further remains to be adjudicated in the writ petition and the same is accordingly disposed of without any order as to costs.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon compliance with the necessary formalities.

(Arindam Mukherjee, J.)