

S/L 28
10.11.2021
Court. No. 19
GB

WPA 14522 of 2021

Sabitri Rani Mandal (Ghosh)
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

*Mr. Kamalesh Bhattacharya,
Mr. Bidhan Biswas.*

...for the Petitioner.

*Mr. Jahar Lal De,
Mr. Jahar Dutta.*

...for the State.

*Md. Sarwar Jahan,
Mr. Maidul Islam.*

...for the Respondent No.2.

The petitioner was engaged as a Sahayika by the managing committee of Kumirmundi Shishu Shiksha Kendra on June 3, 2003. Thereafter, the petitioner was engaged as a Mukhkhoya Sahayika on March 14, 2012. After the Shishu Shiksha Kendras had been brought under the purview of the School Education Department, option had been taken from such Sahayikas as to whether they would prefer to retire at the age of 60 with the status of para-teacher. Those who wanted to continue beyond 60 years, i.e., upto 65 years were not required to file any option.

The contention of the petitioner is that the petitioner filled in an option as an Annexure-B supplied by the District Nodal Officer indicating that the petitioner was not interested to retire at the age of 60 but wanted to continue up

to the age of 65 years. Upon receipt of the said option form the petitioner was asked to discontinue at the age of 60.

The writ petition was filed prior to such superannuation. This Court was of the opinion that passing any interim order at that stage would amount to grant of the final relief and as such the matter was made returnable after the vacation to enable the respondents to respond to the allegations in the writ petition.

Today it is fairly submitted by Mr. De, learned advocate for the State respondents and Mr. Jahan for the Mission Director that the authorities have not treated the petitioner fairly. The petitioner was not required to submit an option, as the petitioner wanted to continue beyond the age of 60. Due to some miscommunication or fault of the Nodal Officer or his department, a form was given to the petitioner, which was filled in and furnished to the authority.

Upon seeing that there was an option form, the authorities stopped the petitioner from continuing beyond the age of 60 years but they did not ascertain that the option was given to the effect that the petitioner wanted to continue beyond the age of 60 years up to 65 years. Otherwise also, the petitioner would have been eligible under the policy of the government to continue upto 65 years if such option was not filed. The filing of option was an exercise in futility and redundant.

Having considered the rival contentions of the parties, this Court does not hesitate to hold that filing the resultant

form which was supplied to the petitioner as an Annexure-B by some authority cannot be used as a sword against the petitioner, who filled in the form in good faith indicating that she wanted to work beyond 60 years and up to the age of 65 years.

Under such circumstances, the writ petition is disposed of with a direction upon the Mission Director, the respondent no.2 to consider the case of the petitioner in terms of the representation dated August 16, 2021 and issue necessary orders in consonance with the observations made by this Court hereinabove and ensure that the bona fide mistake of filling in an extra form which was not required, cannot be used as a method for curtailing the right of the petitioner who was otherwise entitled under the law to continue beyond the 60 years and had exercised such an option, although not required to do so. Moreover the form was actually supplied to the petitioner by some authority and the petitioner filled in the same in good faith.

The said authority shall dispose of the issue by issuing appropriate orders within a period of six weeks from date of communication of this order. In the meantime the petitioner shall continue in the position that she was holding with usual remuneration.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)