

Court No. 24

04.10.2021

(Item No. 36)

(AB)

W.P.A 23220 of 2018
(Via Video Conference)

Mohiuddin Molla

vs

The State of West Bengal & Ors.

Mr. Narayan Chandra Mandal

Mr. Bhaskar Mandal

Mr. C. Chakraborty

..... For the petitioner

Mr. Bibek Jyoti Basu

Mr. Uttam Kumar De

..... for the State

The petitioner was initially appointed in the post of Night Watchman on probation for one year on 12th April, 1988 by the Principal/Secretary of Mahestala College. The service of the petitioner was confirmed with effect from 20th April, 1988 by the Governing Body of the College in its meeting held on 9th December, 1989.

The Education Directorate, Government of West Bengal by a memo dated 8th September, 2010 re-designated the post of Night Watchman as Guard with effect from 3rd November, 2009.

The grievance of the petitioner is that he is being made to work 365 days a year without granting any leave. The petitioner submits that he is liable to be paid compensation on account of the extra duty rendered by him.

None appears on behalf of the College.

The learned advocate representing the State respondents submits, upon instructions, that the

Director of Public Instruction on receipt of complaint made by the petitioner against the College requested the Principal of the College to submit a refuted detailed report. The College submitted a report and the complaint made by the petitioner with documentary evidences showing his leave requisition statement where leave has been approved in his favour.

Regarding the payment on account of the extra work conducted by him, it has been submitted that the Night Guards/Darwans and Night Watchmen category of employees are not entitled to weekly holidays but may be entitled to extra duty allowance if his normal duties exceed forty hours a week in non-Government Colleges subject to the condition that during their absence from duty on any day there will be pro-rata reduction of the said allowance and equivalent amount will be paid to the substitute for performing the duty.

The petitioner's complaint regarding non-payment of the extra duty allowance was taken up by the Directorate and a report with relevant documents was sought for from the College vide memo No. ED-10/2019/1C-485L/2019 dated 13th May, 2019. The College was asked to submit the proposal of extra duty allowance, if any, in favour of the petitioner. The College is yet to submit the proposal as directed. In

the absence of any proposal from the College, the Director of Public Instruction is not able to proceed with the matter any further.

It appears from the submissions made on behalf of the parties that the petitioner's prayer for payment of extra duty allowance could not be processed any further in view of non-submission of relevant documents from the end of the College to the Director of Public Instruction.

In view of the above, the instant writ petition is disposed of by directing the respondent Nos. 3 and 4 to immediately transmit the records of the petitioner relating to his duty hours to the Director of Public Instruction so that the Director may take steps for calculation of the extra duty allowance, if any, to be paid in favour of the petitioner.

The College authority is directed to transmit the necessary documents at the earliest, but positively within a period of six weeks from the date of communication of a copy of this order.

The Director of Public Instruction shall pass a reasoned order in the matter within a period of six weeks from the date of receipt of all documents from the College authority.

The Director of Public Instruction shall communicate the reasoned order to the petitioner immediately thereafter.

The instruction given by the Director of Public Instruction to the learned advocate be retained with the records.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(Amrita Sinha, J.)