

15.01.2021  
DL-58  
ssd

WPA 9702 of 2020

Nuruzzaman Laskar  
Vs.  
The State of West Bengal and ors.

Mr. Lakshmi Nath Bhattacharya  
...for the petitioner.

Mr. Gourav Das  
...for the State.

By the instant writ petition, the writ petitioner has challenged the alleged inaction on the part of the seventh respondent in not considering and disposing of the representation of the writ petitioner dated October 11, 2018 being Annexure-“P-8” to the said writ petition.

The writ petitioner was initially appointed as an Assistant Teacher in 2010 and his post was approved and confirmed in September, 2012.

From records it appears that from time to time the writ petitioner applied before the constitutional writ jurisdiction of this court on different counts. Lastly in 2017 the writ petitioner filed a writ petition being W.P. 29152 (W) of 2017 wherein his grievance was that his unauthorised absence as alleged by the respondent authorities should be regularised by granting him leave for such period in respect whereof the allegation of unauthorised absence was made. The writ petitioner claimed that he was entitled for such regularisation. The said writ petition of 2017 was disposed of by directing the D.I. of Schools (P.E.), 24 Parganas (South) to take a decision in accordance with law whether the period of the alleged unauthorised absence from his duty as alleged in the said writ petition could be

regularised. Such exercise was directed to be carried out within six weeks as mentioned in the said order.

Pursuant to and in terms of the said direction of the coordinate Bench dated February 6, 2018 the concerned District Inspector of Schools by his reasoned order dated September 19, 2018 had taken a decision on the cause of the writ petitioner and communicated the same to him. From the said decision of the concerned District Inspector of Schools it appears that he had no power to sanction of leave as prayed for, to primary school teachers and the Chairman, District Primary School Council, South 24 Parganas is the competent authority for sanctioning of leave of primary school teachers in the facts of the case. The writ petitioner, accordingly, was requested to submit a fresh application before the Chairman, District Primary School Council, South 24 Parganas including all documents.

Pursuant to and in terms of the said decision of the concerned District Inspector of Schools dated September 19, 2017 the writ petitioner made the necessary representation dated October 11, 2018 being Annexure-“P-8”to the present writ petition.

Mr. Gourav Das, learned Advocate representing the State respondents submitted that the relevant Rules of West Bengal Primary Education (Leave of Teachers of Primary Schools) Rules, 1999, inter alia, provides that the power and authority of the Chairman, District Primary School Council to consider whether the unauthorised absence of a primary teacher can be regularised upto a period of 24 months and not beyond as in the instant case. The period beyond such 24 months to be considered by the Commissioner of School Education, State of West Bengal, the third respondent herein.

Mr. Lakshmi Nath Bhattacharya, the learned Advocate for the petitioner submitted that the said representation of the writ petitioner dated October 11, 2018 is still pending. However, by a communication dated March 1, 2019 the respondent no.7 informed the writ petitioner that his application should have been in a prescribed statutory format.

From the record it also appears that by communication dated March 29, 2019 the Sub-Inspector of Schools, Kulpi-1 Circle, South 24 Parganas requested the Sub-Inspector of Schools, Mathurapur North Circle, South 24 Parganas, where the petitioner was a teacher during the relevant period of alleged unauthorised absence, to send necessary papers and informations for considering the prayer of the petitioner.

The writ petitioner then on or about April 2, 2019 submitted his representation through the prescribed format which are appearing at pages 64 to 73 with the necessary documents. It is submitted that, such representations are pending for considerable period and as such need to be disposed of in accordance with law.

After hearing the parties and considering the material on record, this court is of the view that, substantial justice will be subserved by directing the appropriate authorities to dispose of the applications filed by the writ petitioner in accordance with law. Accordingly, the following directions are made.

- a) The seventh respondent shall consider and dispose of the representation of the writ petitioner dated October 11, 2018 being Annexure-“P-8” to the said writ petition along with the applications filed by the writ petitioner in the prescribed format at pages 64 to 73 of the writ petition in accordance with law and in the light of the applicable legal

provisions, after giving hearing to the writ petitioner either by himself or through his authorised representative upon giving adequate notice of hearing. The seventh respondent then pass a reasoned order and communicate the same to the writ petitioner forthwith. The entire exercise has to be carried out by the seventh respondent within a period of four weeks from the date of communication of this order.

- b) In the event the seventh respondent is satisfied with regard to the first 24 months of unauthorised absence on the part of the writ petitioner and finds that the same could be condoned and converted into an authorised leave then, within a period of two weeks from passing his reasoned order as mentioned, shall refer the matter to the third respondent for consideration of the additional period over and above the said period of 24 months. Such fact of reference to be informed to the writ petitioner immediately.
- c) The third respondent in the event receives such reference from the seventh respondent, he shall consider the same in accordance with law and in the light of the applicable legal provisions, after giving an opportunity of hearing to the writ petitioner either by himself or through his authorised representative upon adequate notice of hearing to him. The third respondent then will pass a reasoned order and communicate the same to the writ petitioner forthwith. Such exercise will have to be carried out by the third respondent within a period of four weeks from the date of receipt of

reference, if any, from the seventh respondent for the said additional period.

With the aforesaid directions and on the above terms the present writ petition being WPA 9702 of 2020 stands disposed of.

There will, however, be no order as to costs.

(Aniruddha Roy, J.)