

SI No.02
17.03.2021.
AKG

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction
(Via Video Conference)**

WPA 226 of 2021

Debalina Arpan Mukherjee @ Debalina Mukherjee
(Chakraborty)

-versus-

The State of West Bengal & Ors.

Mr. Jagriti Mishra,
Mr. Subham Gupta

...for the Petitioner.

Mr. Hirak Barman,
Ms. Bedashruti Bose

...for the State.

The writ petitioner was appointed as an Assistant Teacher in Paresh Nagar Primary School on February 23, 2010, by the Chairman, District Primary Council, Jalpaiguri.

Petitioner was on unauthorised absence from duty from July 11, 2012 and inspite of such prolonged absence no disciplinary proceedings or any steps whatsoever was taken against her.

On January 7, 2016, she made a request before the Chairman, District Primary School Council, Jalpaiguri to allow her to join duty again.

Since she was not allowed to join, she filed a civil suit being Title Suit No. 209 of 2016 before the Civil Judge (Junior Division), Jalpaiguri

praying, inter alia, for a decree declaring that she could not be terminated from service violating the principle of natural justice. She also prayed for an injunction directing the defendants to allow her to join school. Release of her salary was also prayed for.

The Chairman, District Primary School Council and the concerned Sub-Inspector of School was impleaded as defendant nos. 1 and 2 respectively in the said suit. The defendants sought to resist the claim of the petitioner on the ground that as per the relevant service rules, the petitioner could be given extra-ordinary leave without pay for a maximum period of 24 months and as such the petitioner's absence in service could not be regularised.

The learned Civil Judge after contested hearing decreed the suit by allowing the petitioner to join her service on and from January 2, 2018. Petitioner's absence of 3 years 5 months 26 days as also the absence during the pendency of the suit till January 2, 2018, was condoned by the learned Judge by treating the same as extra-ordinary leave without pay "for the ends of natural justice and considering the social aspects."

The present writ petition relates to another relief granted to the petitioner in the said decree which runs as follows:

“iv. the defendants is directed to record the 3rd/4th increment (as case may be) of the plaintiff with effect from 01/07/2016 payable with effect from 02/01/2018, as the plaintiff relinquished all financial benefits during her absence including her entitlement on increment on 01/07/13, 01/07/14 and 01/07/15.”

In compliance with the aforesaid decree the petitioner was allowed to join her service on January 02, 2018 as Assistant Teacher of Dakshin Khagrabari S.P. Primary School under the District Primary School Council, Jalpaiguri.

It appears that the petitioner by a letter dated April 04, 2018, addressed to the Chairman, District Primary School Council, Jalpaiguri gave an undertaking that she shall not claim any incremental benefit as directed by the learned Civil Judge (Junior Division) in his aforesaid decree.

On November 24, 2020, the petitioner, however, again made a representation before the respondent no. 1 for release of the said incremental benefits along with arrears and also prayed for supply of her updated service book.

The petitioner made another representation dated July 6, 2018 before the Secretary of West Bengal Board of Primary Education for allowing her to participate in a two year diploma course, namely Diploma in Elementary Education. It has been submitted by the petitioner that the Chairman, District Primary School Council, respondent no. 1 is competent to consider the said representation also.

This writ petition is disposed of with a direction upon the Chairman, District Primary School Council, the respondent no. 2 to consider and dispose of the representation dated November 24, 2020, by passing a reasoned order within a period of four weeks from date. The reasoned order will be communicated to the petitioner within a period of seven days from the date of passing of the order.

The petitioner will be at liberty to make a fresh prayer before the respondent no. 2 for allowing her to participate in the Diploma in Elementary Education course. If such representation is made the respondent no. 2 shall consider the same in accordance with law.

Accordingly, W.P.A. 226 of 2021 is disposed of.

(Kausik Chanda, J.)