

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

**WPA 488 of 2021
with
I.A. No. CAN 1 of 2021**

Bimal Debnath
Vs.
The State of West Bengal & Ors.

For the petitioner: Mr. Supriya Chattopadhyay
Mr. Samaresh Chandra Dhara

For the State: Mr. Ejaz Hossain

Judgment on: 23.02.2022

Krishna Rao, J.

In the instant writ petition, the petitioner prayed for a direction upon the respondent no. 2 to grant and release the entire amount of money payable to the petitioner which was withheld by the respondents as well as all other financial/monetary service benefits which the petitioner is entitled.

In the first round of litigation in W.P.No. 24096(W) of 2009 (Prahlad Biswas and Ors. Vs. The State of West Bengal and Ors.) the petitioner was one of the writ petitioner as petitioner No. 4, and have prayed for grant of approval of appointment as non-teaching staff (Group-D) of a recognised

secondary school, namely, Taherpur Lalbahadur Shastri Vidyapith(High), Taherpur Disctrict-Nadia.

The said writ petition was disposed of by the Co-ordinate Bench of this Court on 19/11/2010 by passing the following order.

“In view of the above, I am of the opinion that the District Inspector of schools namely D.I. of Schools (SE) Nadia should immediately approve the appointments of all the petitioners made by the Managing Committee of the schools, way back in the year 1994 onwards being to the petition appearing in the petition thereof. The District Inspector of Schools (S.E.), Nadia is therefore, directed to approve the appointments of the petitioners within a period four weeks from date of communication of this order and once the appointments are approved the petitioners will be entitled to receive salary month by month without any interruption.

In passing the above order the decision of the Supreme Court cited in support of the case of the writ petitioner, namely U.P. State Electricity Board –Vs- Purna Chandra Pandey & Ors., reported in 2008, I.C.L.J. (S.C.) is taken into account together with the earlier decisions of this Court”

In terms of the order passed by a Co-ordinate Bench of this Court dated 19/11/2010, the District Inspector of School (S.E.), Nadia dated 22/06/2017 issued a Memo No. 173/Law/SE dt.22.6.2017 wherein the appointment of the petitioner as non-teaching staff of the school has been approved w.e.f. 19/11/2010.

After the approval of the appointment of the petitioner, the petitioner was getting his regular salary from the school authorities.

On 09/11/2020, the Additional District Inspector of Schools (S.E.), Ranaghat Sub-Division, Nadia vide Memo No. 146/G/RS, it was informed to the Deputy Director of School Education (Law), Bikash Bhavan, Kolkata-91, *inter alia*,

“ With due respect, I beg to inform you that the above named three (03) employees were duly approved by the District Inspector of Schools (SE), Nadia vide memo no. i) 40/Law/SE, dated 29/01/2018, ii) 173/Law/SE, dated 22/04//2017 & iii) 57/Law/SE, dated 31/10/2-18 to comply with the respective court’s order. On receipt of the prayer from the concern School Authority (SA) & after profile finalization the salary were released against above three (03) employees on a regular basis upto January,2020.

But as per solemn order passed by the Hon’ble Justice Raj Sekhar Mantha of Calcutta High Court dated 04/02/2020 in CAN 3930 of 2018 as well as a letter from Assistant Directors of School Education vide meo no.127/1(2)-LS dated 11/02/2020 and with the telephonic direction from District Inspector of Schools, Ranaghat Sub-Division, Nadia vide his memo no. 47/G/RS, dated 25/02/2020 issued letter to the concern SA not to release salaries from February 2020. On the above, salaries of the three above named employees are still shop now.

Hence, the above named employees now submitted their prayer to release their due salaries as they are all hand to mouth during tyhis pandemic

situation. The Learned advocates of Calcutta High Court also submitted a letter regarding release of stop salaries and give a certificate in this regard. From the part of the employees concern prayer along with necessary papers dated 08/09/2020 has already been submitted to the end of District Inspector of Schools (SE), Nadia for release of pending salaries, but no responses has received by our office till now.

The above three employees and their associates pressed our office on regular basis to release their stop salary immediately. Finding no other alternative, I pray to your good self to solicit necessary instruction whether stopped salaries against these three employees will be released from our end or not at this stage”

In terms of the letter dated 09/11/2020 the school authorities have stopped the payment of the writ petitioner.

The Counsel for the petitioner submitted that the service of the petitioner was approved by the competent authority in terms of the order passed by this Court dated 19/11/2010 and after the period of ten years the respondents without assigning any reason have stopped the salary of the petitioner and prayed for a direction for release of salary of the petitioner.

Per contra the Counsel for the respondent submitted that in terms of the order passed by a Co-ordinate Bench of this Court in W.P.No. 24096(W) of 2009 dated 19/11/2010, the authorities have approved the appointment of the petitioner and release the payment of the petitioner. But subsequently, one Sunil Dutta had filed a writ petition being W.P. No.18239(W) of 2010 in

which seven applications for addition of parties were filed by different candidates including the writ petitioner herein being C.A.N. Nos. 10918 of 2010, 10919 of 2010, 10921 of 2010, 10922 of 2010, 10923 of 2010 and 10924 of 2010. All applications for addition of parties was allowed and all the petitioners including the petitioners herein have been added as writ petitioner in W.P.No.18239(W) of 2010.

The Writ Petition No.18239 (W) of 2010 was disposed of on 24/12/2010 and in the said writ petition, similar order has been passed like earlier writ petition being W.P.No.24096(W) of 2009.

Learned Counsel for the respondent further submitted that as the service of Shri Sunil Dutta was not approved and accordingly, he had filed a contempt application before this Court. In the said contempt application, the authorities have filed an application being C.A.N.No.3930 of 2018 for recalling of the order dated 24/12/2010.

The contempt application along with the application for recalling of the order dated 24/12/2010 was taken together by the Co-ordinate Bench of this Court on 04/02/2020 and the Co-ordinate Bench had passed the following order:-

CAN 3930 of 2018

“It appears that the order dated 24.02.2010 itself that it was passed applying the decision of the Hon’ble Supreme Court in the case of U.P.S.E.B vs. Pooram Chandra Pandey reproted in (2007) 11 SCC 92. The said decision has been held to be obiter and bad in law by the Hon’ble

Supreme Court in the case of Official Liquidator vs. Dayanand reported in (2008) 10 SCC 1.

That apart, the facts of the case indicate that there are no records of the petitioner having worked in the School in the first place. No communication was ever received by the D.I. of Schools as regards petitioner's appointment. The filling up of the posts of Assistant Teacher in the School has been approved by the D.I. of Schools.

The learned Government Pleader further submits that seven CAN applications that were tagged along with the main writ application were not listed before the Court. It is also submitted that the said seven CAN applications pertain to 35 other persons who are not parties to the main writ application and claimed appointment in schools other than that of the petitioners are in different facts.

It is further submitted that the order dated 24.02.2010 does not disclose any reason whatsoever for ordering the D.I. of Schools to grant appointment to the petitioner herein and those 35 other persons.

Considering the above, this court is, therefore, of the view that the said order could not have been posted for relied upon the decision of Pooran Chandra Pandey (supra) which has been specifically overruled and held to be bad in law by the Three Judge Bench of the Hon'ble Supreme Court in the **Dayanand (supra)**.

Apart from the above, this court's mind is not free from doubt that the order dated

24.12.2010 may have been fraudulently obtained from this court and is as nullity.

*The said order is recalled. CAN 3930 of 2018 is allowed and **disposed of**.*

*For the reasons stated hereinabove, the instant contempt application is **dismissed**. Rule, if any, shall stand discharged.”*

The Counsel for the respondent further submitted that the Secretary of Taherpur Lalbahadur Shastri Vidyapith High School has arbitrarily and illegally appointed the petitioner as non-teaching staff without following the Government Order and violating the existing rules by not taking any prior permission from the competent authority for filling up the post.

He has further submitted that no resolution of the Managing Committee was adopted by the school authority and no notice or advertisement regarding appointment has been published by the school authority.

The Counsel for the respondent further submitted that the Co-ordinate Bench of this Court has recalled the order passed in W.P.No.18239(W) of 2010 dated 24/12/2010 which was similar to the order passed in W.P.No. 24096(W) of 2009 dated 19/11/2010.

Learned Counsel for the respondent further submitted that the Hon’ble Co-ordinate Bench had recalled the order on the ground that the order was passed relied upon the decision of the Hon’ble Supreme Court in the case of U.P.S.E.B. Vs. Puroh Chandra Pandey reported in (2007)11SCC Page 92 and the said decision has been held to be obiter and bad in law by the Hon’ble

Supreme Court in the case of Official Liquidator Vs. Dayanand reported in *(2008) 10 SCC Page 1*.

The learned Counsel for the respondent further submitted that as the petitioner has obtained the order by playing fraud upon the authorities as well as before this Court and the order obtained by the petitioner has been recalled by the Co-ordinate Bench of this Court and thus the respondents have rightly stopped the payment of the petitioner.

The counsel for the respondent further drawn the attention of the Letter dt.07.01.2021 wherein the Director, Inspector of School (S.E.) Nadia directed that no incumbent related with W.P. No. 18239 of 2010 along with civil applications shall be allowed in the school for any kind of school related work.

Counsel for the respondent prayed for dismissal of the writ petition.

This Court considered the rival submissions of the parties and the documents available on record.

The petitioner initially approached before this Court in the year 2010 and got a favourable order dated 19/11/2010 and on the basis of the same the petitioner has got an approval of his appointment as non-teaching staff.

Similarly situated circumstances of non-teaching staff, namely, Sunil Dutta had filed separate Writ Application being W.P.No. 18239(W) of 2010. In the said writ petition altogether seven petitioners have joined by filing separate applications for addition of parties including the petitioner herein. The writ petition was filed by Sunil Dutta was disposed of by a Co-

ordinate Bench of this Court by passing similar order to that of the order passed in the case of the petitioner in W.P.No. 24096(W) of 2009 dated 19/11/2010.

Though Sunil Dutta had obtained order from this Court in W.P.No. 18239(W) of 2010 dated 24/12/2010, but the school authorities have not approved the appointment of Shri Sunil Dutta and, accordingly, Sunil Dutta had filed a contempt application against the school authority. In the said contempt application the authorities have filed an application for recalling of the order dated 24/12/2010.

The Co-ordinate Bench of this Court while disposing of the contempt application filed by Sunil Dutta along with the application for recalling of the order dated 24/12/2010 filed by the school authorities, the Hon'ble Judge had recalled the order on the ground that the order was obtained by applying the decision of the Hon'ble Supreme Court in the case UPSEB Vs. Puran Chandra Pandey(Supra) but the said decision of the Hon'ble Supreme Court has been held to be obiter and bad in law by the Hon'ble Supreme Court in the subsequent decision in the case of Official Liquidator(Supra).

The order passed by the Hon'ble Co-ordinate Bench of this Court in the case of Sunil Dutta is the similar order to that of the order passed in the writ petition filed by the writ petitioner in W.P. No. 24096 (w) of 2009 dated 19.11.2010.

The District Inspector of School vide Letter dt.07.01.2021 already directed not to allow any of the incumbent to perform any kind of related to the school work.

The Co-ordinate Bench has held that the order obtained by Sunil Dutta which is to that of the order obtained by the petitioner in W.P. No.24096 (W) of 2009 is passed applying the decision of the Hon'ble Supreme Court in the case of UPSEB (supra) in terms of the said decision has been held to be obiter and bad in law but the subsequent decision of the Hon'ble Supreme Court in the case of Official Liquidator (supra), this Court is of the view that the communication vide Memo No. 146/G/RS dated 9.11.2020 issued by the Additional District Inspector of Schools (SE), Ranaghat Sub-Division, Nadia to the Deputy Director of School Education, Bikash Bhavan, Kolkata requires no interference and the authorities have rightly stopped the salary of the petitioner.

WPA 488 of 2021 is thus dismissed.

In view of disposal of the writ petition, nothing survives in the application and the application being, I.A. No. CAN 1 of 2021 is also disposed of.

Urgent photostat certified copy of this judgment, if applied for, be given to the learned advocates for the parties.

(Krishna Rao, J.)