

18.05.2022

FMA 1391 of 2015

Court : 04
Item : PB-01
Matter : FMA
Status : DO
Transcriber: nandy

Aparna Mondal (Saha) & Anr.
Vs.
The State of West Bengal & Ors.

Mr. N.G. Mukherjee, Advocate

Ms. Kaushikee Chakraborty, Advocate

.....For the Appellants

Ms. Chaitali Bhattacharya, Advocate

Mr. Subhendu Roychowdhury, Advocate

.....for the State

Mr. Sarwan Jahan, Advocate

Ms. Mousumi Mitra, Advocate

.....for the Respondent No. 2

Ms. Anindita Banerjee, Advocate

.....for the Respondent No. 9(b)

The instant appeal has arisen from a judgment and order dated July 24, 2014 passed by the learned single Judge in WP 13609 (W) of 2012 by which the writ-petition filed by the appellants was dismissed.

The appellants/writ-petitioners claimed to have been engaged as Sahayikas in the SSK since 2001 and 2003 respectively. The grievance raised in the writ-petition pertains to re-engagement as well as non-release of honorarium on and from 2004. The single Bench noticed the order dated April 16, 2012 of the District Nodal Officer, SSK & MSK, Murshidabad, wherein the said officer upon considering the enquiry report of the Assistant Coordinator (Education), Murshidabad Zilla Parishad and other relevant documents arrived at the conclusion that the petitioners were not engaged as Sahayikas in the said SSK and such engagement was contrary to the said norms and procedure

prescribed therefor. The single Bench was, therefore, of the opinion that once the engagement was found to be invalid having made without following the norms and procedure applicable in this regard no relief can be granted to the writ-petitioners.

Our attention is drawn to the decision of the District Nodal Officer issued on April 16, 2012 wherein the said office arrived at the conclusion taking into account the Government Order No. 4696/PNB/0/1/48-3/02 dated September 18, 2006 issued by the P & RD Department, Government of West Bengal. According to the said District Nodal Officer since the said Government Order indicates the exhaustive provision required for the engagement and if the same has not been adhered to, such engagement cannot be held to be valid.

As indicated above, the petitioners were engaged in the year 2001 to 2003 respectively prior to the issuance of the said Government Order. It has been fairly conceded by the learned Counsels for the State as well as the Zilla Parishad that prior to the said Government Order there was no Government Order which was in vogue providing exhaustive provisions relating to the procedures and norms to be adopted for engagement of Sahayikas. All the Sahayikas, four in numbers, engaged in the said SSK have been appointed following the uniform procedures adopted prior to the said Government Order and, therefore, we do not find any justification

in declaring the engagement of the appellants as invalid. In absence of any express indication in the Government Order to operate retrospectively, such Government Order ordinarily operates prospectively and engagement made thereafter, if any, has not been done strictly in adherence to the procedures and norms provided therein shall be rendered invalid.

The engagement which was done prior in time, cannot be declared invalid merely on the basis of the subsequent Government Order which do not have the retrospective operation. Furthermore, two of the Sahayikas engaged in the said SSK are still working and if their appointment was on the basis of the same norms and procedures which was the basis of the appointment of the appellants and the same is allowed to be continued treating the same to have been validly made, the decision of the District Nodal Officer is discriminatory and, therefore, falls within the mischief of Article 14 of the Constitution.

It is relevant to record that enquiry was conducted by the Block Nodal Officer and the report was submitted on April 12, 2010 indicating the engagement of four Sahayikas including the appellants and, therefore, the stand of the authority that the communication received from the competent authority does not reveal the names of the appellants is untenable.

The order of the District Nodal Officer dated April 16, 2012 is quashed and set aside.

Since the SSK has now being controlled and regulated by the concerned Municipality i.e. the Domkal Municipality, we direct the said Municipality to re-engage the appellants in the said SSK within fortnight from date and if any further formalities are required for such re-engagement, the concerned authorities are further directed to take steps accordingly.

It appears from the said report of the Block Nodal Officer that on April 12, 2010, the petitioners were engaged in the said SSK there is no document forthcoming that the honorarium has been paid to the appellants since 2004.

We, therefore, direct the concerned Municipality to pay the honorarium to the Sahayikas as a special case for the period the appellants have actually worked in the said SSK and within a month from the date of communication of this order. The said order shall not be treated as precedence.

With these observations, the appeal being **FMA 1391 of 2015** is **disposed of**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

