

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

**WPA 2206 of 2013  
Madhusudan Das  
-Vs-  
State of West Bengal & Ors.**

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Mr. Abirlal Chakraborty, Adv.

..... for the Petitioner

Mr. Rezaul Hossain, Adv.

Mr. Bipin Ghosh, Adv.

..... for the State

Md. Sanwar Jahan, Adv.

Mr. Asif Mehdi, Adv.

Mr. S. Noor Thander, Adv.

.....for the Respondent No.8

**Heard On : 06.12.2022**

**Judgment on : 20.12.2022**

**Rabindranath Samanta, J:-**

1. The petitioner by filing this writ petition challenges the Order dated 28<sup>th</sup> September, 2012 passed by the respondent No.3, the District Nodal Officer, Burdwan whereby the petitioner's representation for disbursement of honorarium as Samprasarak was rejected.
2. This writ petition has a chequered background which may be delineated as under:

In response to an advertisement published on 21<sup>st</sup> May, 2007 the petitioner on 23<sup>rd</sup> May, 2007 applied for the post of Samprasarak in Geography in Khurtuba Sristidhar Adhikary Memorial Madhyamik

Siksha Kendra (hereinafter referred to as the Siksha Kendra). For the purpose of engagement of Samprasarak, the Managing Committee of the Siksha Kendra prepared a panel wherein the petitioner was placed in the second position. Challenging the panel, the petitioner moved a writ petition being W.P 13566 (W) of 2007 before this Court. By Order dated 21<sup>st</sup> September, 2007 the writ petition was disposed of by a learned Single Bench directing the concerned authority to recast the panel upon deleting the name of one Rafiqul Islam who topped the panel. Since the Order dated 21<sup>st</sup> September, 2007 was not complied with, a contempt application was filed. Thereafter, the panel was recast, but the candidate who was placed at fourth position of the panel was placed in the first position.

3. Aggrieved by the panel as recast the petitioner filed an another writ petition being W.P 26424(W) of 2008. On 10<sup>th</sup> September, 2009 the matter was taken up by a learned Single Bench and the learned Single Bench was pleased to pass an Order directing the concerned respondent authority to produce the recast panel before it. Though the matter remained pending for long, the Managing Committee of the Siksha Kendra on 15<sup>th</sup> June, 2011 took a resolution that the petitioner be engaged as Samprasarak in Geography in the Siksha Kendra. Ultimately, the Panchayat Samity on 26.07.2011 approved the engagement of the petitioner as Samprasarak. Accordingly, the petitioner joined the Siksha Kendra as Samprasarak in Geography on 26.07.2011. After the petitioner got engagement as Samprasarak of the Siksha Kendra, he did not intend to proceed with the writ petition being W.P. 26424(W) of 2008 and on his prayer a learned Single Bench dismissed the writ petition for non-prosecution.
4. Though the petitioner has been discharging his duties as Samprasarak since 26.07.2011, no honorarium admissible to a Samprasarak was disbursed to him by the concerned authority.

Getting no other alternative the petitioner, in order to get his honorarium disbursed, filed a writ petition being W.P 17705(W) of 2012. By an Order dated 29<sup>th</sup> August, 2012 a learned Single Bench disposed of the writ petition directing the respondent No.3, the District Nodal Officer, to consider and dispose of the representation of the petitioner by a reasoned order in accordance with law. In compliance of this Order the respondent No. 3 after hearing the petitioner rejected his representation by the impugned order dated 28.09.2012 observing therein that the Managing Committee of the Siksha Kendra and the Panchayat Samity had no legal authority to engage the petitioner as Samprasarak in view of the Government Orders dated 1<sup>st</sup> January, 2010 and 23<sup>rd</sup> April, 2010.

5. The petitioner states that since the selection process was initiated in the month of May, 2007, his engagement would be guided by the earlier Government Order and because of this his engagement as made by the Managing Committee of the Siksha Kendra and approved by the concerned Panchayat Samity is lawful.
6. Under the aforesaid circumstances the petitioner seeks direction that the impugned order dated 28.09.2012 passed by the concerned District Nodal Officer be quashed and the honorarium which is admissible to him be released.
7. In his affidavit-in-opposition, the respondent No.3 states that after the Government Order dated 1<sup>st</sup> January, 2010 issued by the Panchayats and Rural Development Department, Government of West Bengal, came in force, the engagement of a Samprasarak in any Siksha Kendra by the Managing Committee of the concerned Siksha Kendra and approval of the engagement by the concerned Panchayat Samity is stopped with effect from 01.01.2010. However, the panel already approved by the Panchayat Samity till 31.12.2009 will not come under the purview of the order. This answering respondent also states that in terms of the Memo dated 23<sup>rd</sup> April, 2010 issued by the

- Panchayats and Rural Development Department, Government of West Bengal, the selection of Samprasarak is now conducted by the recruitment committee headed by the Additional District Magistrate. This respondent states that since the petitioner was engaged on 26.07.2011 by the Managing Committee of the Siksha Kendra with the approval of the concerned Panchayat Samity, his engagement is not warranted by law and in consequence thereof he is not entitled to get any honorarium. On such grounds and denying and disputing the averments as made in the writ petition this answering respondent submits that the writ petition is liable to be dismissed.
8. Learned Counsel appearing for the petitioner submits that since the selection process was initiated by publication of an advertisement on 21.05.2007 and the ultimate engagement of the petitioner was made on the basis of the selection process initiated since May, 2007, the subsequent Government Order dated 1<sup>st</sup> January, 2010 and the Memo dated 23<sup>rd</sup> April, 2010 will not be applicable. Learned Counsel submits that in terms of a notification dated 27.10.2006 issued by the Panchayats and Rural Development Department, Government of West Bengal, the Managing Committee of the Siksha Kendra and the concerned Panchayat Samity are authorised to engage a Samprasarak in a Siksha Kendra in respect of the selection process initiated prior to the Government Order dated 1<sup>st</sup> January, 2010 and the Government Memo dated 23.04.2010 came in force. According to learned counsel, the engagement of the petitioner as Samprasarak in the Siksha Kendra is lawful and he is entitled to get the honorarium for the service he has been rendering since his engagement on 26.07.2011. In support of his contention learned counsel places reliance on a decision in the case of ***Md.Maboob Alam-Vs- State of West Bengal*** reported in ***2015 SCC OnLine Cal 9728***.
  9. Per Contra, learned counsels appearing for the State respondents as well as for the respondent No. 8 placing reliance on the Government

Order dated 01.01.2010 and the Memo dated 23.04.2010 vehemently argue that the engagement of the petitioner as Samprasarak since 26.07.2011 is illegal and as such the petitioner is not entitled to get any honorarium.

10. Admittedly, the selection process to engage a Samprasarak in Geography in the said Siksha Kendra was initiated on 21<sup>st</sup> May, 2007 when an advertisement for such selection was published. Undisputedly, a panel was prepared by the Managing Committee of the Siksha Kendra wherein one Rafiqul Islam was placed in the first position and the petitioner was placed in the second position. However, in compliance with the Order dated 21.09.2007 passed by a Single Bench in W.P 13566(W) of 2007, the Managing Committee of the Siksha Kendra deleted the name of Rafiqul Islam, but the candidate who was placed in fourth position topped the panel on recast. Challenging the panel as recast the petitioner preferred another writ petition being W.P. 26424(W) of 2008 and a learned Single Bench directed the concerned authority to produce the recast panel before it. It is not in dispute that while the aforesaid writ petition was pending, the Managing Committee recommended the engagement of the petitioner as Samprasarak in the Siksha Kendra on 15.06.2011 and the recommendation was approved by the concerned Panchayat Samity on 26.07.2011. In such context, it should be noted that on prayer of the petitioner the writ petition being W.P. 26424(W) of 2008 was dismissed for non-prosecution by a learned Single Bench.
11. Now, the point which falls for consideration is whether the engagement of the petitioner as Samprasarak in the Siksha Kendra with effect from 26.07.2011 is lawful and is he entitled to get the honorarium since his engagement ?.
12. From a copy of an enquiry report submitted by the Executive Officer, Mongalkote Panchayat Samity to the District Nodal Officer, Burdwan (Annexure R-1 to the affidavit-in-opposition) it appears that after the

- order dated 21.09.2007 was passed by a learned Single Bench in W.P No. 13566 (W) of 2007 the name of Rafiqul Islam who topped the panel was deleted from the panel and the Managing Committee recast the panel placing one Ajoy Kumar Mondal in the first position of the panel. Thereafter, Ajoy Kumar Mondal was engaged as Samprasarak on 7<sup>th</sup> December, 2007. However, the Managing Committee, cancelled the engagement of Ajoy Kumar Mondal by a resolution.
13. As it appears from the enquiry report Ajoy Kumar Monal discharged his duties as Samprasarak for the period from 7<sup>th</sup> December, 2007 to 13<sup>th</sup> June, 2011.
  14. Admittedly, the petitioner challenging the aforesaid recast panel filed an another writ petition being No. 26424(W) of 2008, but ultimately, on his prayer the writ petition was dismissed for non-prosecution pursuant to an Order dated 16.11.2011.
  15. What I find, no Order was passed by this Court in respect of writ petition No. 26424(W) of 2008 pertaining to the recast panel under challenge. The enquiry report reveals that after the panel was recast Ajoy Kumar Mondal who was placed in the first position was engaged as Samprasarak in Geography in the Siksha Kendra on 7<sup>th</sup> December, 2007 and he performed his duty till 13<sup>th</sup> June, 2011.
  16. Since engagement of the candidate namely Ajoy Kumar Mondal was made on 7<sup>th</sup> December, 2007, in pursuance of the selection process initiated on 21<sup>st</sup> May, 2007, the selection process came to a lawful end. Though the Managing Committee by a resolution cancelled the engagement of Ajoy Kumar Mondal, such cancellation does not revive the selection process put in motion in the month of May, 2007. While the petitioner Madhusudan Das was engaged on 26.07.2011, neither the Managing Committee of the Siksha Kendra nor the concerned Panchayat Samity possessed any legal authority to engage any Samprasarak in any Siksha Kendra in view of the Government Order dated 01.01.2010 and the Memo dated 23.04.2010 issued by the

Panchayats and Rural Development Department, Government of West Bengal.

17. In the decision in the case of ***Md.Maboob Alam-Vs- State of West Bengal*** reported in ***2015 SCC OnLine Cal 9728*** this Court has held that while the selection process of Samprasarak/Samprasarika was completed by 31<sup>st</sup> December, 2009, the Government Order dated 01.01.2010 will not be applicable. Since the selection process initiated in May, 2007 came to an end on engagement of said Ajoy Kumar Mondal the decision (supra) does not come to any aid to the petitioner as he was engaged after cancellation of engagement of Ajoy Kumar Mondal in July, 2011 when the aforesaid Government Orders occupied the field.
18. As discussed above, since the engagement of the petitioner as Samprasarak is not legal, his claim to get honorarium to discharge duties as Samprasarak is not warranted by law. That being the legal scenario, the impugned Order dated 28.09.2012 passed by the District Nodal Officer, the respondent No.3 herein, rejecting the petitioner's representation seeking disbursement of honorarium is justified inviting no interference by this Court.
19. Therefore, the point is answered in the negative.
20. In view of the above, the writ petition merits dismissal and accordingly the writ petition is dismissed on contest.
21. No order as to costs.
22. Connected application, if any, stands disposed of.
23. Urgent website/Photostat copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

***(Rabindranath Samanta,J.)***