

7.9.2022
Sl.No.6
sn

WPA 4033 of 2020

**Rijiya Tarafder
Vs.
The State of West Bengal & Ors.**

**Mr. Shamim Ul Bari
Mr. Ali Ahsan Alamgir ..for the petitioner**

Mr. Somenath Basu ..for the State

Mr. Nibaran Das ..for the respdt.5

The petitioner has challenged an order dated October 9, 2013 issued by the Additional Executive Officer, North 24 Parganas Zilla Parishad & Additional District Magistrate(Dev.), North 24 Parganas. By the said order, the prayer of the petitioner for reinstatement and release of her honorarium attached to the post of Sahayika of a Sishu Siksha Kendra, was turned down. It was further observed that the petitioner could be engaged as a new Sahayika in any Sishu Siksha Kendra on the basis of the written test or interview as per guideline of the Panchayat & Rural Development Department, Government of West Bengal, as per the guidelines for recruitment.

It appears that the Additional District Magistrate(Dev.), North 24 Parganas had already decided the issue of not granting payment of honorarium to the petitioner, by an order dated November 16, 2009.

The petitioner while serving as a Sahayika at a Sishu Siksha Kendra contested the Panchayat Election in 2007 and was successful. She was also elected as the Sahakari Savapati of the panchayat samiti. It was a whole time post. The petitioner's engagement as a Sahayika was on contractual basis. Such contract ended in 2010. The petitioner resigned from the post of Sahakari Savapati in 2011. In 2012, the petitioner's tenure as a member of panchayat samiti also expired. Thereafter, the petitioner prayed before the authorities some time in 2013 that she may be reinstated in her post as Sahayika under the same Sishu Siksha Kendra. She also prayed for her honorarium for the period when she was serving as a whole time office bearer of the panchayat samiti. Her prayer was turned down. Hence, this writ petition has been filed.

The learned advocate for the petitioner submits that the Principal Secretary, Government of West Bengal, Panchayat & Rural Development Department, by an office order dated October 31, 2013 notified that the government had decided that the Sahayikas and Sahayaks of Sishu Siksha Kendras, who had won the panchayat election of 2013 and had become portfolio holders, may be allowed to take five years leave without pay from the Sishu Siksha Kendra. As such, according to the

petitioner, such office order of the Principal Secretary should be applied in her case and she should be reinstated, by treating her absence from the Sishu Siksha Kendra as leave without pay.

The learned advocate for the State respondents opposes such prayer and submits that as the petitioner was elected as a member of the Panchayat Samiti and had also held the portfolio of Sahakari Savapati of Barasat-II Panchayat Samiti, after being elected at the panchayat general election, 2007, she was not entitled to continue with her contractual job of Sahayika. After being elected to the said full time post, the petitioner was not eligible to continue with her contractual job as Sahayika at a government financed Sishu Siksha Kendra. The contract was renewed upto April 30, 2010 and thereafter no renewal had been granted. It is submitted that the prayer of the petitioner should not be allowed and the question of reinstatement would not arise. The petitioner could not perform her duties as Sahayika after April, 2008. The petitioner was to receive her honorarium as Sahakari Savapati of Barasat-II Panchayat Samiti. Several irregularities were found during her tenure as a full time office bearer and she also continued to discharge some functions as a Sahayika, irregularly.

Heard the learned advocates for the respective parties.

The petitioner was engaged as Sahayika of a Sishu Siksha Kendra. Her contract was rendered up to 2010. However, although it is the contention of the petitioner that after 2010 there was no renewal and the petitioner was automatically allowed to continue up to the age of 60 years as per the prevailing circular of the government, however such order is not on record. Rather, the authority was of the view that the petitioner could be engaged as a new Sahayika of any Sishu Siksha Kendra by participating in a recruitment process as per the guideline of the Panchayat & Rural Development Department, Government of West Bengal, but she could not be reinstated.

It is not the petitioner's case that the petitioner had applied for a fresh engagement after the order of October 9, 2013 had been passed. The petitioner became a full time office bearer of the Barasat-II Panchayat Samiti on and from July 4, 2008. As per Section 98(1) of the West Bengal Panchayat Act, 1973, the petitioner could not continue with her engagement as a Sahayika of the Sishu Siksha Kendra and also hold a full time post in the panchayat samiti.

Thus, the prayer of the petitioner for payment of honorarium for the period from June 10, 2008 to January 4, 2011 cannot be permitted as she could not serve at the Sishu Siksha Kendra, and hold the post of Sahakari Savapati at the same time.

There are also allegations of irregularities. The petitioner signed some papers as a Sahayika even after being elected as an office bearer of the samiti, by disobeying the provisions of law.

The petitioner claims reinstatement on the basis of the office order dated October 31, 2013, which was not in force at the relevant time.

The petitioner was engaged as a Sahayika of Chandigarh Sishu Siksha Kendra on March 2, 2001. The managing committee on an yearly basis renewed her contract. Renewal was lastly done for the period from May 2, 2009 to April 30, 2010. On July 4, 2008 she was elected to a full time post as an office bearer of the panchayat samiti and as such she had to discontinue with her service as Sahayika. Thereafter, no further renewal was granted. The office order relied on, is an administrative decision which does not have retrospective effect. It is also not on record that the petitioner had applied for leave without pay on the basis of any similar circular. The records also do not reveal that the managing committee of the Sishu Siksha Kendra had approved any leave in case

of the petitioner when she was elected as a full time office bearer. Thus, the administrative order on which the petitioner relies, was not in force at the relevant time and cannot be applied retrospectively. Moreover, the writ petition has been filed after seven years from the rejection of her prayer. The entire provision for appointment of Sahayikas has undergone a sea change in the meantime.

It is the contention of the petitioner that she did not take any remuneration while she was serving as Sahakari Savapati. Without going into the correctness of such statement, leave is granted to the petitioner to approach the appropriate authority for disbursement of such sum, if permissible under the law. The concerned authority shall take a decision.

This writ petition is disposed of.

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

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)