

26 05.9.2022
Sc Ct. no.22

WPA 9619 OF 2021

Abdur Razzaque Ansari

Vs.

State of West Bengal & Ors.

Mr. Joytosh Majumder
Mr. Sougata Mitra
Ms. Jahanara Begum.

.... For the Petitioner

Mr. Jaharlal Dey
Mr. Rezaul Hossain.

.... For the State

Affidavit-of-service, filed in Court today, is taken on record.

This is the third round of writ litigation filed by a ***Mukhya Siksha Samprasarak of Darul Oloom Hanfia, Senior Madrasah (MSK Typa)***.

In the first round of litigation the writ petition, ***WPA 17899 (W) of 2019***, was disposed of by a coordinate Bench by its ***order dated September 20, 2019*** when the coordinate Bench was pleased to observe that, the dismissal of service of the writ petitioner was ***in violation of the elementary principles of natural justice*** as no hearing was afforded to him. It was also observed that, if any disciplinary proceeding needs to be instituted, then the same should be completed within a period of three months and the employment of the petitioner would abide by the result of such disciplinary proceeding.

It is submitted by Mr. Joytosh Majumder, learned counsel appearing for the writ petitioner that no such disciplinary proceeding was ever initiated against the petitioner and the petitioner has been suffering without being paid with his salaries and other monetary benefits arising out of his employment since 2018.

In this backdrop the second writ petition was filed, **WPA 750 (W) of 2020**, when another coordinate Bench by its **order dated February 6, 2020** specifically directed that the petitioner should be served with a **Preliminary Inquiry Report** arising out of the dismissal of his employment, if any, though a detailed departmental inquiry was not required as the employment of the petitioner was purely contractual in nature. However, the petitioner was directed to continue as a **Samprasarak**.

Meanwhile, the respondent no.8 on December 15, 2019 in presence of the other relevant office bearers adopted a resolution and observed thereunder that, the petitioner should be allowed to render his service as a **Sahayak Siksha Samprasarak**.

Mr. Majumder then submits that the writ petitioner on December 28, 2020, **Annexure – P15** to the writ petition, submitted a detailed representation seeking release of his salary and all other allied benefits arising out of his employment. This representation is still pending and was not heeded to by the concerned authorities.

Mr. Majumder further submitted that both the said two orders passed by this Court namely, **September 20, 2019** and **February 6, 2020** were not challenged in any manner and no appeal was carried out therefrom. These orders bind the authorities.

Mr. Rezaul Hossain, learned counsel appears for the State. He submits that, the State has got nothing to do with the said representation already submitted by the petitioner and he further submits that, according to him, respondent no.2 being the appropriate authority may take decision in accordance with law.

None appears for the rest of the respondents, nor any accommodation has been sought for.

After hearing the submissions made by learned counsel for the appearing parties and on perusal of records, it appears to this Court that the said two orders dated **September 20, 2019** and **February 6, 2020** are still in force. The petitioner is still working as a **Samprasarak** and as such, is continuing with his employment.

This Court also finds that by virtue of the said two orders mentioned above, a valuable right of employment has already been adjudicated in favour of the petitioner. Since, the petitioner is on employment, he must receive his remuneration in every respect in terms of his employment contract and the prevailing rules.

In view of the reasons mentioned above, the respondent no.4 being the appointing authority and a superior authority of the employer, shall take a decision and dispose of the said representation of the petitioner dated December 28, 2020 being **Annexure – P15** to the writ petition after giving a prior hearing notice of at least seven days to the petitioner and all concerned and then after giving an opportunity of hearing to the petitioner and all concerned, shall pass a reasoned decision/order strictly in accordance with law. While conducting the hearing and passing the reasoned decision/order, the respondent no.4 shall take into account the said two orders passed by this Court dated **September 20, 2019** and **February 6, 2020** in the earlier two rounds of writ litigations.

The entire exercise as directed above, shall be carried out and completed by the respondent no.4 within a period of four weeks from the date of communication of this order positively and the respondent no.4 thereafter shall communicate his reasoned decision/order to the petitioner and all concerned within a further period of two weeks from the date of the said reasoned decision/order to be passed.

The writ petitioner is directed to serve a copy of this order along with a copy of the writ petition upon the respondent no.4 forthwith.

In the event the reasoned decision/order goes in favour of the petitioner, all the benefits and the monetary benefits arising out of the employment of the petitioner including the arrear thereof shall be paid and given to the writ petitioner within a period of six weeks from the date of communication of the said reasoned decision/order to be passed by the respondent no.4.

On the above terms this writ petition, **WPA 9619 of 2021** stands allowed.

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

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)