

D/L
Item No. 7
13.07.2022
KOLE

**MAT 458 of 2017
With
IA No. CAN 2 of 2018 (Old No. 8682 of 2018)**

**Pradip Mahato
-Vs.-
The State of West Bengal & Ors.**

*Mr. Sibnarayan Chattopadhyay,
Mr. S. S. Mondal*

...for the appellant.

*Mr. Jahar Lal De,
Mrs. Smita Das De,*

...for the State.

*Mr. Sarwar Jahan,
Mrs M. Mitra,*

...for the respondent no. 4.

By consent of the parties the appeal and the application are taken up for hearing together.

Affidavit in reply filed in Court today be kept with the records.

This appeal is directed against a judgment and order dated January 16, 2017, whereby WP No. 27260 (W) of 2016 was dismissed.

The appellant approached the learned Single Judge praying for a direction on the respondent authorities to approve his appointment. He stated that he had joined the concerned Madhyamik Shiksha Kendra (in short 'MSK') in 2009 and has been rendering service as Samprasarak since then. However, at no point of time his honorarium has been paid by the respondents.

It appears that earlier the appellant had filed a writ petition which was disposed of by an order dated September

15, 2016, directing the concerned District Magistrate (in short 'DM') to consider the case of the petitioner. Pursuant to such order, the DM passed an order on September 23, 2016, rejecting the claim of the appellant/writ petitioner. Challenging the said order of the DM, the present writ petition was filed, which was dismissed by the Learned Single Judge. Hence this appeal.

We have heard Learned Counsel for the parties. We notice from the order of the DM, which was impugned before the learned Single Judge, that the DM has referred to a Government Memo dated October 27, 2006, which clearly states that any recruitment without the approval of the Sihiksha Sanskriti Tathya-O-Krirah Sthayee Samiti of the concerned Panchayat Samiti is illegal. It has also been noted that by Memo dated May 28, 2013, the Government has directed that any engagement by a Managing Committee or Recruitment Committee in any MSK or Shishu Shiksha Kendra has been suspended.

Learned Advocate for the Paschimbanga Rajya Sishu Siksha Mission has drawn our attention to a Government order dated January 1, 2010, which states that "engagement of Samprasarak or Samprasarika, Madhyamik Sahayak or Madhyamik Sahayika in any vacancy of MSK is hereby stopped with effect from 01.01.2010 until further orders". We are told that such suspension still continues.

Learned Advocate for the appellant says that his initial appointment was in 2009, which was prior to issuance of the 2010 Government Order or the 2013 Government

Order and hence such orders would not apply to his case. He may have a point there but the fact remains that the Managing Committee of the MSK sought to appoint him on a contractual basis for one year without the approval of Sihiksha Sanskriti Tathya-O-Krirah Sthayee Samiti of the concerned Panchayat. Therefore, his appointment would be deemed to be illegal. Such appointment cannot confer any legally enforceable right on him.

In view of the aforesaid, we do not find any infirmity in the order of the DM which was impugned before the learned Single Judge or in the order of the learned Single Judge which is assailed before us.

The learned Single Judge in the order impugned has observed that if the petitioner is allowed to work by the Managing Committee, the Committee of the management is directed to pay honorarium which was being paid for the post in question. We reaffirm this observation. If the appellant has, in fact, rendered service at the concerned MSK, the Managing Committee of such MSK is directed to pay applicable honorarium to the appellant within two months from the date of communication of this order.

The appellant seeks our leave to make a representation before the concerned BDO. We do not deem it necessary to grant any such leave since if in law, the appellant has the right to make a representation, he may do so.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Rai Chattopadhyay, J.) (Arijit Banerjee, J.)