

S/L 14
23.06.2022
Court. No. 22
sourav

WPA 10435 of 2011

Arup Kumar Mandal
Vs.
The State of West Bengal & Ors.

Mr. Biswarup Biswas
Mr. Debnarayan Patra
Mr. Debashis Kundu

...for the Petitioner.

Ms. Sanghamitra Nandy

...for the State.

Mr. Kanai Lal Samanta

...for the respondent nos. 6 and 7.

Ms. Koyeli Bhattacharyya

...for WBBSE.

The petitioner prays for leave to file supplementary affidavit to bring certain subsequent developments, which are material for adjudication of the writ petition, on record. Such supplementary affidavit brought to Court is taken on record. The respondents have already been served with copies of such supplementary affidavit.

Mr. Kanai Lal Samanta, learned Advocate appearing for respondent nos. 6 and 7 files the relevant affidavit-in-opposition, the same is taken on record.

Ms. Sanghamitra Nandy appearing for the State.

Ms. Koyeli Bhattacharyya appearing for the respondent no.4.

The writ petitioner at all material time was an Assistant Teacher at **Kumvachak Pallisri Bidyabhaban**

(High School) (the school, for short) at Purba Medinipur.

On September 4, 2009 the petitioner joined at the post of Assistant Teacher after due approval dated November 26, 2009 issued by the respondent no.3.

During the period November 20, 2010 and November 25, 2010 he was absent in the school due to his illness and submitted the necessary application for medical leave. On November 26, 2010 after recovery from his illness, the petitioner joined in his duty and was allowed to put his signature in the Attendance Register. On November 27, 2010, the petitioner received a letter of even date issued by the Teacher-In-Charge of the school that one Moumita Giri lodged a complaint against the petitioner that though he promised to marry her but in the breach of such promise, he did not marry her four years ago. On the basis of the said alleged charge and complaint, the petitioner was not allowed to put his signature by the concerned Teacher-In-Charge in the Attendance Register since about December 16, 2010. Since January 4, 2011 the petitioner was not allowed to carry out his duty in the school as an Assistant Teacher and was not allowed to put his signature in the Attendance Register. The petitioner received his salary and the allied allowances on December 10, 2010.

By a letter dated January 3, 2011, the Teacher-In-Charge of school informed the petitioner that he was absent from his duty since November 20, 2010 without giving any prior information to the competent authority and

accordingly, no duty as an Assistant Teacher was allowed to be carried out by the petitioner, though the petitioner attended the school regularly. The petitioner duly replied to the said letter. On March 4, 2011, the petitioner received another letter of even date from the Teacher-In-Charge of the school that the petitioner had enjoyed unauthorized leave and as such steps would be taken against him in terms of the relevant rules. By a letter dated March 17, 2011, the petitioner replied to the said letter which was duly received by the Teacher-In-Charge on March 18, 2011.

Despite such replies being made in response to the letters of the Teacher-In-Charge as stated above, no steps were taken by the Teacher-In-Charge to allow the petitioner to carry out his duties in the school in course of his employment. The school authority had withdrawn of Grant-In-Aid on account of salary in the name of the petitioner since the month of January, 2011 by submitting requisition but did not disburse the same since the month of January, 2011.

The petitioner made several representations to the respondent no.6 and other authorities stating the correct facts as against the illegal act of the Teacher-In-Charge and of the school authority against him. Despite receipt of such representations, no step was taken by the school authorities.

On May 3, 2011, the petitioner duly carried out the election duties as Presiding Officer for 215 Khejuri (SC)

Constituency under 31 – Kanthi Parliamentary Constituency appointed by the District Election Officer, Purba Medinipur.

Since on repeated representations made by the petitioner, as against the said illegal and wrongful act of the school authorities no step was taken and being aggrieved thereby, instant writ petition was filed. On January 30, 2012, an interim order was passed allowing the petitioner to resume his duties on February 21, 2012 and school authority was directed to pay his current salary month by month. Affidavits were directed to be exchanged by and between the parties. The affidavits were filed.

From the affidavit-in-opposition affirmed on March 10, 2014 filed by the respondent nos. 6 and 7, it appears that the school has taken a resolution dated February 3, 2014, whereunder, it was *inter alia* observed that the action taken by the school authority at the relevant point of time was not proper and correct and accordingly, the alleged unauthorized leave allegedly shown on account of the petitioner was decided to be regularized.

After hearing the learned Counsel for the appearing parties and upon perusing the materials on record, it appears to this Court that, an employer school authority had got noting to do with the personal affair of a teacher, that too, the foundation of which appears to be wholly without any material and substance. The action taken by the concerned Teacher-In-Charge at the relevant point of time declaring the period from December 15, 2010 to February 20, 2012, the

petitioner was under unauthorized leave was wholly illegal, wrongful and arbitrary and as such is declared by this Court as null and void and no effect or further effect to be given thereto.

The petitioner will be eligible for all his service benefits by treating the said period between December 15, 2010 to February 20, 2012 **“as spent on duty”**. There was no discontinuation of service in any manner whatsoever. The respondents and/or the relevant authorities are further directed to regularize the account of the petitioner concerning his service benefits in all possible manner and strictly in terms of his eligibility and entitlement treating the said period from December 15, 2010 to February 20, 2012 **“as spent on duty”**. Consequently, the arrears should be paid to the petitioner for the said period by the respondent no.3 on the necessary requisition and relevant records being forwarded before him by the respondent nos. 6 and 7 positively within a period of four weeks from the date of communication of this order and upon receipt of all the said requisite requisition from the school authority, the respondent no.3 shall process and release all the relevant monetary benefits to the petitioner within a period of six weeks thereof.

The respondent no.3 shall also re-fix all service benefits of the petitioner in terms of ROPA 2009 and ROPA 2019 including the benefits on account of increment, if any, to which the petitioner is eligible. Such fixation will also be

made by the respondent no.3 within a period of four weeks from the date of communication of this order.

On the above terms, the writ petition being **WPA 10435 of 2011** stands allowed.

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

(Aniruddha Roy, J.)