

Court No. 24
04.04.2022
(Item No. 5)
(AB)

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 13842 of 2019

Asgar Ali
VS
The State of West Bengal & Ors.

Mr. K. M. Hossain
Ms. Keya Sutradhar
..... for the petitioner
Ms. Chaitali Bhattacharya
Mr. Kartick Chandra Kapas
..... for the State
Mr. Md. Sarwar Jahan
Ms. Mousumi Mitra
.... for PBRSSM

The Mission Director is not a party in the instant writ proceeding. It appears from the submissions made on behalf of the parties that the Paschim Banga Rajya Sishu Siksha Mission and the Mission Director of the said Mission are necessary parties for the purpose of proper adjudication of the instant lis.

Accordingly, learned advocate for the petitioner is directed to implead the Paschim Banga Rajya Sishu Siksha Mission and its Mission Director as parties in the instant writ application. Copy of the writ application be handed over to Mr. Sarwar Jahan, learned advocate who is present in Court along with instructions from the Mission Director.

The petitioner was engaged as Samprasarak in Gopalpur MSK in the year 2007. His engagement was terminated in the year 2008. The engagement as Samprasarak in MSK is contractual and the same is required to be renewed from year to year. As the service of

the petitioner stood terminated, albeit illegally, the petitioner's engagement could not be renewed.

Several writ petitions followed. Ultimately, by an order dated 22nd November, 2017, the issue was disposed of by the Sabhapati of the Panchayet Samity wherein the Sabhapati opined that the order of termination of the petitioner was incorrect. The portion of the order causing termination of the petitioner as Samprasarak in Social Science group in Gopalpur MSK was revoked. The considered opinion of the Sabhapati was that termination of the petitioner as Samprasarak was done on the basis of wrong information and incorrect order and the authority concerned must take all necessary steps to rectify the error and reinstate the petitioner immediately without any further delay and provide him all his entitlements/emoluments as per rules. The Sabhapati of the Panchayet Samity was of the opinion that injustice was caused to the petitioner.

The District SSK-MSK Cell Dakshin Dinajpur Zilla Parishad was requested to take all necessary measures so that the order can be complied with. The Executive Officer of the Panchayet Samity and the Block Development Officer was requested to make necessary correspondence.

The said order was passed by the Sabhapati allegedly in compliance of the direction passed by this Court in WP No. 19277 (W) of 2009 on 12th May, 2017.

The Additional Executive Officer, Dakshin Dinajpur Zilla Parishad, acted on the basis of the order of the

Sabhapati and, by an order dated 3rd January, 2019 re-engaged the petitioner in the post of Samprasarak. The said order mentions that the petitioner will be entitled to get his honorarium from the date of joining the new engagement and no arrear will be given to him.

The petitioner is aggrieved by the same.

According to the petitioner, as his service was terminated illegally he ought to be paid his arrear remuneration. It has been submitted that in view of such illegal termination, the petitioner was deprived of his honorarium and he had to run from pillar to post to get back his job.

It has further been contended that though order was passed by the Sabhapati of the Panchayet Samity in November, 2017, engagement of the petitioner was made only in the year 2019. The petitioner submits that he ought to get all his entitlements/emoluments as per Rules.

Learned advocate representing the State respondents and the learned advocate representing the Mission Director submits, upon instructions, that assuming that the service of the petitioner was terminated illegally, he cannot be paid honorarium for the period he did not render his services. The service of the petitioner is contractual and till a formal contract is entered in between the parties, the petitioner can neither claim nor be entitled to receive any emolument or honorarium.

After hearing the submissions made on behalf of the parties it appears that the Sabhapati of the Panchayet

Samity, in compliance of the order passed the Court, considered the matter and has formed an opinion that the engagement of the petitioner was terminated illegally. Paschim Banga Rajya Sishu Siksha Mission has approved the opinion expressed by the Sabhapati of the Panchayet Samity.

The same implies that the termination of the petitioner was indeed illegal. Hence, the same was revoked.

Fact remains that the petitioner rendered service only for the year 2007 and thereafter the contract of the petitioner was not renewed. Fresh engagement was made in his favour in January, 2019. In the interregnum for the period 2008-2018, the petitioner did not perform any work as the contractual engagement of the petitioner was not renewed.

According to the service Rule of Samprasarak prevailing at the relevant time and thereafter till March 2010, engagement was made on contract on yearly basis. The contract was renewable every year. Thereafter there was a change in the service condition and the Government published order(s) by which the engagement of Samprasarak was extended till 65 years of age.

As the petitioner did not render any service for a long stretch of nearly ten years, it will not only be unfair but inappropriate to direct the employer to pay honorarium to the petitioner for the said period. However, at the same time, it appears that it was not by choice that the

petitioner could not render his service. He was prevented from doing his duty as his service was terminated illegally.

Accordingly, to maintain a balance, and to give some relief to the affected party, this Court thinks it fit that the petitioner be given the notional benefit for the period during which he did not render service so that he may be eligible to receive the one-time terminal benefit after he superannuates from service. The period of service of the petitioner from the year 2007 be taken into consideration as continuous service till he attains the age of superannuation on attaining 65 years of age.

As it also appears that the petitioner was victimized due to some illegality committed by the respondents, accordingly, it is held that the petitioner be paid one-time compensation assessed at Rs. 25,000/- (rupees twenty-five thousand) only. The said payment shall be directly credited to the bank account of the petitioner within a period of twelve weeks from date.

Paschim Banga Rajya Sishu Siksha Mission through its Mission Director and the Block Development Officer, Bansihari shall take steps for making payment of the compensation amount as mentioned herein above.

The order dated 3rd January, 2019, impugned in the present writ application, is not interfered with.

The writ petition stands disposed of.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)