

S/L 2
25.01.2022
Court. No. 19
GB

WPA 16212 of 2021

Tandra Chatterjee (Mukherjee) & Ors.
Vs
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Siddhartah Sankar Mandal,
Mr. Tirtha Pati Acharya.

...for the Petitioners.

Mr. Sarwar Jahan.

...for the Respondent No.3.

Mr. Sanjib Kr. Dan,
Mr. Rajarshi Basu.

...for the Respondent Nos.6 & 7.

It appears that the petitioners, who were ‘Sahayikas’ in different Shishu Siksha Kendras under the administrative control of Dubrajpur Municipality were discontinued from their engagement by the Municipality on attaining age of 60 years. Challenging the aforesaid action of the Municipality, the petitioners filed the writ petition.

According to the petitioners, the subsequent memorandum of the Government being no.708/MA/C-10/3S-35/2007 (Pt-III) dated December 22, 2016 was not followed by the Municipality, by which the upper age limit for disengagement of the ‘Sahayika’ was extended up to 65 years. According to the petitioners, the Municipality acted contrary to the Government order dated December 22, 2016, which, inter alia, states as follows:

“... regarding fixation of upper age limit of Sahayikas and Academic Supervisors of different

Shishu Siksha Kendras under administrative control of this Department, the Governor is pleased to allow the Sahayikas and Academic Supervisors appointed prior to 21.02.2013 to continue to work upto 65 years of age and while the upper age limit of such workers appointed thereafter will remain unchanged i.e. upto 60 years.”

The Additional Secretary, Urban Development Department and Municipal Affairs Department has filed a report stating, inter alia, that the said memorandum dated December 22, 2016 was applicable in case of the petitioners and the petitioners were entitled to work up to 65 years.

The Municipality submitted before the Additional Secretary, Urban Development Department and Municipal Affairs Department that they were not aware of the said memorandum, as a result of which, the petitioners were disengaged.

Having considered the rival contentions of the parties and as the Municipality has committed an error by not following the memorandum dated December 22, 2016, this Court is of the opinion that the contentions of the petitioners are correct. The orders of disengagement/termination of the services of the petitioners are set aside. The petitioners who have not yet attained the age of 65 years shall be entitled to resume their duties on and from February 1, 2022 as per the memorandum being no.708/MA/C-10/3S-35/2007 (Pt-III) dated December 22, 2016 and continue up to the age of 65 years on the same terms and conditions, by which they were

engaged. If any of the petitioners have already attained the age of 65 in the meantime, shall not be engaged. Their remedy would be to seek damages against the municipality in an appropriate proceeding.

This Court also takes note of the unjust treatment that was meted out to the petitioners. With regard to the compensation for the period when the petitioners were not working and were wrongly disengaged, the petitioners would be at liberty to approach the appropriate forum in accordance with law seeking damages for the mental agony, physical hardship and the loss that they had suffered.

This Court cannot direct payment of salary and/or remuneration for the period the petitioners did not work as the engagement was on a contractual basis, renewable, year to year.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)