

8 11.04.2022

gd/ssd

WPA(P) 266 OF 2021
ABUL KALAM AZAD
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Barun Kumar Samanta
..for the Petitioner.

Mr. Swapan Kumar Datta,
Mr. Rajat Dutta
..for the State.

Mr. Jayanta Kumar Das,
Ms. Madhumanti Das
..for the Respondent No.6.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that in the present public interest petition the plea of the petitioner is that the respondent no.6 is illegally holding the post of Assistant Headmaster of the concerned school as well as the Teacher-in-Charge and that he is drawing the additional salary for that purpose.

The record reflects the petitioner himself was Headmaster of the said school and during his tenure the respondent no.6 had created certain problems which are reflected in paragraph 3 of the petition, therefore, prima facie, out of vengeance this petition has been filed.

That apart, the issue, which is raised by the petitioner, relates to pure service matter for which the public interest petition cannot be maintained, Supreme Court in the matter of Madan Lal v. High Court of

Jammu and Kashmir and Others reported in (2014) 15

SCC 308 has held that:

“9. That apart time and again this Court repeatedly held that in service matters, public interest litigation is not maintainable. We can profitably refer to a recent decision reported in *Hari Bansh Lal v. Sahodar Prasad Mahto*. Paras 14 and 15 are relevant which are as under: (SCC pp. 660-61)

“14. In *Ashok Kumar Pandey v. State of W.B.* this Court held thus: (SCC pp. 358-59, para 16)

‘16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in *Duryodhan Sahu v. Jitendra Kumar Mishra* this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents.

Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.'

The same principles have been reiterated in the subsequent decisions, namely, *B. Singh v. Union of India*, *Dattaraj Nathuji Thaware v. State of Maharashtra* and *Gurpal Singh v. State of Punjab*.

15. The above principles make it clear that except for a writ of quo warranto, public interest litigation is not maintainable in service matters."

Though the averments made in the petition have been denied by the counsel for the State by filing the affidavit-in-opposition, but we need not go into that aspect of the matter because for the reasons mentioned above the PIL itself cannot be maintained in service matter at the instance of the petitioner.

Hence, the petition is dismissed. However, with liberty to the petitioner to avail such other remedies as available in law.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

