

77. 03.03.2022
BD Ct.15

W.P.A. 19300 of 2017

(Through Video Conference)

Kabita Patra (Jana)

-vs-

The State of West Bengal & Ors.

Mrs. Pampa (De) Dhabal

Ms. Ashok Kumar Janah

... for the petitioner.

Mr. Ziaul Islam

... for the State.

The writ petition pertains to continuation of service of the petitioner as 4th Sahayika in Beli Basudevpur Sishu Shikhya Kendra (hereinafter referred to as the “said SSK”) in the district of Paschim Medinipur. Petitioner was appointed as 4th Sahayika in the SSK vide engagement letter dated 24th June, 2008. Petitioner worked on the basis of such engagement letter as 4th Sahayika but subsequently the honorarium of the petitioner was stopped from February 2010. However, it is the case of the petitioner that she continued to function as 4th Sahayika even after her honorarium being stopped by the concerned respondent authorities.

Petitioner being aggrieved by non payment of honorarium approached before this Court by filing the writ petition being W.P. 3504(W) of 2015

challenging the acts and actions of the respondent authorities which was disposed of by a Co-ordinate Bench vide order dated 23rd November, 2016 thereby directing the Block Development Officer, Narayangarh Block to take a decision on the grievance of the writ petitioner within certain time. Such order of the Co-ordinate Bench is at page 52 of the writ petition. Pursuant to the said order dated 23rd November, 2016 the concerned Block Development Officer, being the respondent no. 3 herein passed the impugned order dated 27th January, 2017 which is the subject matter of challenge in the present writ petition.

Mrs. Pampa (De) Dhabal, learned advocate, appears on behalf of the writ petitioner and submits that petitioner ought to have been permitted to continue her service as 4th Sahayika since she was duly appointed vide engagement letter dated 24th June, 2008 and she has continuously worked even after her salary was stopped by the respondent authorities with effect from February 2010 and she has prayed for setting aside the impugned decision of the respondent no. 3, dated 27th January, 2017.

Mr. Ziaul Islam, learned advocate, appears on behalf of the respondent authorities and has

defended a decision of the respondent no. 3, dated 27th January, 2017 on the strength of a Government Order dated 19th February, 2004 issued by the Secretary to the Government of West Bengal, department of Panchayat and Rural Development. According to Mr. Islam, learned advocate, it has been specifically provided in the said Government Order dated 19th February, 2004 that 4th Sahyika can be permitted to continue if the number of learners exceeds 120. In the present case according to the respondents at the material point of time when the petitioner was not permitted to continue as 4th Sahayika the number of learners in the said SSK was less than 120 and therefore it has been decided not to retain the petitioner.

This Court has heard the learned advocates appearing for the parties and also considered the relevant documents available on record including circular letter dated 19th February, 2004.

On perusal of the decision of the respondent no. 3, it appears that the said respondent has applied his mind while taking decision pursuant to the Court's order dated 23rd November, 2016 and has specifically come to the conclusion that at the material point of time since the number of learners in the said SSK was 69 (sixty nine) and it was

found by the said respondent no. 3 on application of the circular letter dated 19th February, 2004 the authorities are not entitled to permit 4th Sahayika to continue where number of learners is less than 120.

On such findings, the respondent no. 3, passed an order whereby the claim of the petitioner was refused as a result whereof engagement of the petitioner being the 4th Sahayika of the SSK was discontinued.

This Court does not find any anomaly in the decision of the respondent no. 3.

In addition thereto, it has also been recorded in the order of the respondent no. 3, that engagement of the petitioner was based on an agreement whereby the petitioner could continue as 4th Sahayika up to March 2010. Since petitioner was functioning as 4th Sahayika based on an agreement and according to the terms of said agreement petitioner was required to continue up to March 2010 she does not have enforceable legal right, which can be protected by issuance of mandamus.

Accordingly, the writ petition stands dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)