

Court No. 22
29.9.2022
(Item No. 8)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 18458 of 2022

Latika Sarkar
VS
The State of West Bengal & Ors.

Md. Manuwar Ali
Ms. Moumita Karmakar
..... for the petitioner
Mr. Supriya Chattopadhyay
Ms. Sayantee Bhattachrjee
..... for the State

Affidavit of service filed in Court, is taken on record.

The petitioner claims to have joined as an **Assistant Teacher at Nagara Niroda Devi Adibasi High School (H.S.) District – Murshidabad (for short, the School)** on and from June 15, 1996. She became Assistant Headmistress of the School with effect from August 1, 2018. The commensurating pay fixation was duly approved by the respondent No. 3. The petitioner was transferred from the said School to one Gora Bazar Bijoy Kumar High School (H.S.) through Utsashree Portal and have joined the new School on October 8, 2021 as an Assistant Teacher.

The petitioner claims that after joining the said new School as an Assistant Teacher the basic pay and other ancillary pay payable to the petitioner which was earlier paid at the said previous School were reduced.

The petitioner thus being aggrieved submitted its representation dated June 10, 2022, **Annexure P-7** to the writ petition.

The learned counsel for the petitioner submitted that, the respondent authorities had wrongfully and arbitrarily in exercise of its discretion and power decreased the pay scale from the amount which was already paid to the petitioner at the earlier School when she was the Assistant Headmistress of that School. The said representation dated June 10, 2022 did not received any attention of the relevant State respondents.

Mr. Supriya Chattopadhyay, learned State counsel submitted that, no wrong or no arbitrary action was there. Relying to the **West Bengal School Service Commission (General Transfer on Special Grounds and Re-allocation) Rules, 2015** the payment is being made to the petitioner. It is further submitted that, there was no illegality committed on the part of the State respondents in paying the petitioner to what she is eligible under the law.

The School is not represented.

After considering the rival contentions placed before this Court and on perusal of the materials on record, it appears to this Court that, to decide the issue in the writ petition, the same would require certain factual finding by applying the relevant Rules in the case of the petitioner and this Court in exercise

of its high prerogative writ jurisdiction as a self-imposed restriction should not cause such fact finding enquiries before it. In as much as, to decide the eligibility of the petitioner considering the relevant facts, the respondent No. 3 would be fit person to deal with the representation of the petitioner dated June 10, 2022, **Annexure P-7** to the writ petition.

In view of the above, the respondent No. 3 is directed to consider the representation of the petitioner dated June 10, 2022, **Annexure P-7** to the writ petition upon giving a prior notice of hearing of at least seven days to the petitioner and the respondent No. 4 and after giving them an opportunity of hearing, the respondent No. 3 shall decide the issue with a reasoned order.

The entire exercise as directed above, shall be carried out by the respondent No. 3 within a period of eight weeks from the date of communication of this order. The respondent No. 3 then communicate its reasoned order to the petitioner and the respondent No. 4 within a further period of two weeks from the date of the said reasoned order to be passed.

It is needless to mentioned that the respondent No. 3 while deciding the issue shall decide the same strictly in accordance with law and after considering the relevant statutory provisions applicable for the petitioner.

It is made clear that, this Court has not gone into the merit of the claim of the writ petitioner in any manner. All points shall be kept open for the petitioner and the respondent No. 4 to urge before the respondent No. 3. The petitioner and the respondent No. 4 shall be at liberty to rely upon whatever documents and records they wish to rely upon before the respondent No. 3.

Since affidavits are not called for the allegations made in the writ petition are deemed not to have been admitted by the respondents.

On the above terms, this writ petition being **WPA 18458 of 2022** stands disposed of.

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

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

(Aniruddha Roy, J.)