

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FMA 927 of 2020
with
IA No: CAN 1 of 2019 (Old No.CAN 11835 of 2019)

Smt. Sefali Barman & Ors.
versus
The State of West Bengal & Ors.

For the Appellants : *Mr. Golam Mostafa,*
Mr. Tarasankar Samanta.

For the State : *Ms. Chaitali Bhattacharya,*
Mr. Mrinal Kanti Ghosh.

For the Respondent No.9 : *Md. Sarwar Jahan,*
Ms. Mousumi Mitra.

Hearing is concluded on : *30th November, 2022.*

Judgment On : **12th December, 2022.**

Partha Sarathi Chatterjee, J.

1. The present appeal has been preferred challenging the judgment dated 29th July, 2019 passed in a writ petition being WP 17835 (W) of 2013.

2. A legal tussle has spiraled up to this Court seeking a quietus to the primary issues as to whether the order dated 18th March, 2013 passed by the respondent no.5 is perverse, whether the said order has been passed misinterpreting the directions contained in the order dated 7th August, 2012 passed in an earlier writ petition being WP No.19544 (W) of 2005 and whether the authorities have acted arbitrarily and in a manner which would benefit a private party at the cost of the authorities.

3. Shorn of unnecessary details the facts are that the appellants were selected and engaged as Sahayikas in different Shishu Shikshya Kendras under the Hemtabad Panchayat Samiti on and from diverse dates in the year 1999. Such engagement was yearly renewed till the year 2005. Pursuant to orders passed in earlier writ petitions, the appellants received their honorarium as due and payable but their claim towards renewal was withheld. Aggrieved thereby, the appellants preferred another writ petition being WP No.19544 (W) of 2005 which was disposed of on 7th August, 2012 with a categorical direction upon the respondent authorities *‘to decide the case of the writ petitioners taking note of fulfilling the conditions at the time of initial appointment and also their renewal for subsequent period’*. The appellants’ claim was rejected by an order dated 18th March, 2013 passed by the respondent no.5. The writ petition preferred challenging the said order was dismissed by the order impugned in the present appeal.

4. Mr. Mostafa argues that the order impugned in the writ petition had been passed by the respondent no.5 misinterpreting the directions contained in the order dated 7th August, 2012 passed in the earlier writ

petition being WP No.19544 (W) of 2005. Though the appellants admittedly fulfilled the conditions towards engagement at the time of initial appointment, the respondent no.5 rejected their claim in an illegal and *malafide* manner.

5. Mr. Mostafa contends that the government orders (hereinafter referred to as GOs) dated 22nd July, 2003 and 8th November, 2004 were prospective in nature and were applicable in respect of fresh engagements. The same had no manner of application in respect of the appellants, who were engaged prior to issuance of the said GOs. However, the respondent no.5 rejected the appellants' claim applying the provisions of the said government orders. The learned Judge failed to appreciate such infirmity and dismissed the writ petition by a cryptic order.

6. According to Mr. Mostafa the learned Judge failed to appreciate that the alteration of conditions of engagement subsequent to 2003 could not have been applied in respect of the appellants since their engagement had been renewed from time to time till the year 2005 upon arriving at a finding that they have rendered satisfactory service. The learned Judge has glossed over and has not returned a finding on the said issue and such infirmity on the face of the records warrants interference in appeal.

7. Mr. Mostafa argues that the authorities were successful in elbowing out the appellants by setting new benchmarks. Such act is perverse and most unbecoming of a statutory authority and lacks *bonafide*. The appellants' claim was abruptly rejected in a perfunctory manner. No

weightage was granted to the satisfactory service rendered by them in the previous years.

8. *Per contra*, Ms. Chaitali Bhattacharya, learned advocate appearing for the State respondents submits that all the appellants were schedule caste and schedule tribe candidates and were appointed upon relaxation of the eligibility criteria towards engagement. Since inception the requisite qualification for engagement as Sahayika was that the candidate should be Madhyamik pass. None of the appellants herein had such qualification at the time of their initial engagement. They were granted relaxation and engaged due to non-availability of qualified candidates.

9. Drawing our attention to GOs dated 22nd July, 2003 and 8th November, 2004, she submits that with a view to ensuring quality of education in the Shishu Shikshya Kendras and to qualify for funding from the Government of India, a decision was taken that all under qualified Sahayikas/Sahayaks need to be replaced by such candidates who have at least passed Madhyamik Pariksha. In consonance with such decision the State Government framed the procedure for engagement of Sahayikas stating that even in case of renewal the candidates must have the requisite qualification. Upon considering all the relevant GOs, the respondent no.5 passed a detailed order and the same does not suffer from any infirmity and as such the learned Single Judge rightly did not interfere.

10. According to her, the order passed in the earlier writ petition on 7th August, 2012 was duly considered by the respondent no.5 while issuing

the order impugned in the writ petition. A perusal of the order dated 7th August, 2012 would reveal that the Court directed the respondent authorities to decide the case of the appellants taking note of fulfilling the conditions at the time of initial appointment. No mandatory order was passed by the Court towards renewal of engagement.

11. Ms. Bhattacharya submits that the appellants have already been paid the honorarium for the service they had rendered. Their prayer for renewal was not acceptable since they did not fulfil the requisite qualification required to be engaged as Sahayikas and the vacancies have already been filled up in strict consonance of the GOs.

12. Mr. Jahan, learned advocate appearing for the respondent no.2 submits that since inception till the year 2004 the requisite qualification for engagement to the post of Sahayika was Madhyamik pass. However, there was no prescribed selection procedure towards engagement and renewal of Sahayikas. On the basis of orders passed by different Hon'ble Benches of this Court the competent authority laid down the selection procedure, as would be explicit from the GO dated 8th November, 2004. The appellants' claim was rightly rejected by the respondent no.5 since they did not have the requisite qualification.

13. The argument of Mr. Mostafa that the order passed by the respondent no.5 was violative of the directions contained in the order passed in the earlier writ petition is not acceptable since the earlier order dated 7th August, 2012 contained a direction for consideration dependent upon

fulfilment of the prescribed academic qualification. The contents of the order need to be read as a whole and not in isolation. A particular clause cannot be taken up and highlighted. Admittedly, the appellants did not have the requisite qualification to continue in the post of Sahayika. No legal right of the appellants has been infringed.

14. The issue of perversity, as argued was considered and rightly negated by the learned Court since the decision impugned was taken upon due consideration of the records and upon granting an opportunity of hearing to the appellants. The order dated 18th March, 2013 passed by the respondent no.5 satisfies the test of sufficiency of evidence and the findings and conclusions arrived at are neither patently unfair nor palpably perverse.

15. We are of the considered opinion that there was nothing wrong with the approach and decision of the learned Single Judge. The appellants could not establish any arbitrariness or irrationality or perversity warranting the constitutional Court to interfere with the decision making process or the decision. We find no infirmity in the judgment warranting interference in the present appeal.

16. Accordingly, the appeal being FMA 927 of 2020 and the connected application being IA No: CAN 1 of 2019 (Old No.CAN 11835 of 2019) are dismissed.

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

18. Urgent Xerox certified copy, if applied for, shall be given expeditiously upon completion of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)