

13.06.2022.
Court No.13
Item No. 34
ap

W.P.A. No. 18374 of 2019

**Samar Kumar Ghosh
Versus
The State of West Bengal & Ors.**

Mr. Saikat Banerjee,
Ms. Juin Dutta Chakraborty.

...For the petitioner.

Ms. Chaitali Bhattacharya,
Mr. Mrinal Kanti Ghosh.

..For the State.

The petitioner claims to have been appointed on 16th April, 1994, by the Secretary of the Managing Committee of Sherpur Ramchandrapur High School, District – South 24 Parganas. The process of regular appointment i.e. advertisement, interview, qualification and eligible criteria, have not been followed, despite whereof by an order dated 28th January, 2004, a Co-ordinate Bench of this Court had directed the petitioner's service is to be regularized by the School Authority as an Assistant Teacher in Social Science Group. Additionally, a post was directed to be created.

This Court is unable to appreciate under what law the order has been obtained from a Co-ordinate Bench by the writ petitioner. The Authorities for some reason confirmed the petitioner's appointment. Since there was already a vacancy in the School in the post of Social Science, no additional post was deemed necessary to be created by the State. As to why the

order was never challenged before a Division Bench of this Court is baffling to this Court.

The petitioner's service, however, was confirmed with effect from 1st September, 2011, by the respondent authorities.

The petitioner subsequently filed a writ petition being W.P. No. 7919 (W) of 2018, which was disposed of by an order dated 4th April, 2019, by a Co-ordinate Bench of this Court. In the said writ petition, the petitioner prayed that he is entitled to be confirmed in service from 28th January, 2004 i.e. the order of this Court in W.P. No. 13063 (W) of 2001 (supra).

The Single Judge on 4th April, 2019 (supra), directed the Authorities to consider the writ petitioner's representation for regularization of service on 1st January, 2004, without in any way condoning the delay of the writ petitioner in approaching the Court.

The Authorities thereafter passed an impugned order dated 19th April, 2019, which is the subject matter of challenge in the instant writ petition.

This Court is of the view that the initial appointment of the petitioner was ex facie illegal. The same could not have been given any cloak of legality by the order of a Co-ordinate Bench of this Court dated 28th January, 2004. An order without jurisdiction, which is ex facie illegal, is a nullity and

cannot be enforced in law even in a subsequent proceeding.

The petitioner could never have been in any lawful service in the State. Given the fact that the petitioner has been paid for his service already rendered, any other claim arising out of an illegal appointment and/or illegality per se, cannot be maintained or entertained. There are no rights that flow out of an illegality. The prayer made in the writ petition for sanctioning any appointment of the petitioner or from any date from 2004 or 2011 or for any pension, therefore, does not and cannot arise.

With the aforesaid observations, the instant writ petition must fail and is hereby dismissed.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)