

25.01.2022
SL No. 54
Court No. 24
(P.M)

WPA 21094 of 2021

**Sri Paramjit Jana
Vs
The State of West Bengal & Ors.
(Via Video Conference)**

Mr. Biswarup Biswas,
Mr. Abhijit Basu
... for the petitioner

Mr. Supriyo Chattopadhyay,
Ms. Jyostna Roy Mukherjee
... for the State

The order dated 15th September, 2016 passed by the Commissioner, School Education Directorate, West Bengal rejecting the claim of the petitioner for being appointed on compassionate ground is under challenge in the instant writ application.

The ground for rejecting the claim of the petitioner is that “if the Government employee at material point of time is comfortable and not financially distressed, then how can petitioner having income more than the serving Government employees can be considered as financially distressed?”

The Commissioner of School Education observed that when the petitioner’s father died, the family income was amounting to Rs. 7397/- which is far more than the income of a Group D employee of Rs. 4156/- and Group C employee of Rs. 5327/-.

It appears from the documents annexed to the writ petition that the petitioner filed an earlier writ petition being WP 7490 (W) of 2016 challenging the rejection order passed by the Commissioner of School Education on 7th April, 2016. The prayer of the petitioner was rejected on the ground that at the material point of time, initial gross salary of a Group D employee was Rs. 4156/- and the initial gross salary of a Group C employee of Rs. 5327/-. Recurring income of the family is higher than the income of a Group D staff. The family might not be considered as so distressed that the members were unable to arrange two square meals and other essentials.

The Court in W.P. No. 7490 (W) of 2016 (Sri Paramjit Jana – Vs – the State of West Bengal & Ors.) considered the aforesaid impugned order of rejection dated 7th April, 2016 and in its order dated 28th April, 2016 came to a specific finding that “applying such legal proposition of law to the facts of the instant case, I am of the opinion that the impugned order dated 7th April, 2016 passed by the respondent No. 2 is not sustainable in law and the same is set aside”.

The Court directed the said respondent to consider the petitioner’s claim afresh on the basis of categorical findings arrived at by the Court and to pass a reasoned order.

It appears from the present impugned order dated 15th September, 2016 that the ground taken for rejecting the prayer of the petitioner is similar to the ground taken for rejecting the prayer of the petitioner in the earlier occasion on 7th April, 2016.

The Court, by a detailed order dated 28th April, 2016, was pleased to hold that the order of rejection is not sustainable and accordingly set aside the same. The self-same ground has been repeated once again for rejecting the prayer of the petitioner which has been impugned herein.

The petitioner prays for setting aside the aforesaid impugned order of rejection.

Learned advocate representing the State respondent submits that as the Court by order dated 28th April, 2016 passed in the earlier writ petition directed the respondents to consider the petitioner's claim afresh, accordingly it was open for the respondent to adopt any ground which is in accordance with law for taking a decision with regard to the claim of the petitioner.

It has been submitted that after the impugned order dated 15th September, 2016 was passed and communicated, the petitioner filed a contempt application being CPAN No. 1618 of 2016 and by order dated 24th March, 2021 the same stood dismissed. It

has been submitted that the Court took into consideration the provision of law at the time of consideration of the contempt application and hence was pleased to dismiss the same.

I am afraid that the Court cannot accept the contention of the State respondents.

The application for contempt stood dismissed relying upon the principle laid down by the Hon'ble Supreme Court in J.S. Parihar Vs. Ganpat Duggar & Ors. reported in (1996) 6 SCC 291.

It appears that the contempt application stood dismissed as passing the impugned order gave rise to a fresh cause of action, legality of which could not have been decided in a contempt application.

The Court specifically observed that the merit of the order passed by the Commissioner cannot be assessed in a contempt proceeding.

The petitioner accordingly filed the present writ application assailing the order passed by the Commissioner on the self-same ground which was already set aside by the Court on the earlier occasion.

I am of the opinion, that as the ground taken by the Commissioner to reject the prayer of the petitioner was already set aside by the Court on an earlier occasion, the Commissioner could not have referred to

the same ground for the purpose of rejecting the prayer of the petitioner for the second time.

Once the ground adopted by the Commissioner was set aside by the Court, the same could not have been resorted to for rejecting the prayer of the petitioner for grant of compassionate appointment all over again.

Had the respondents been aggrieved by the order of the Court setting aside the order of rejection of the prayer of the petitioner, then necessary steps for challenging the same before the superior forum ought to have been adopted by the respondents.

Instead of challenging the order of setting aside, the respondents complied with the direction passed by the Court but referred to the self-same ground for nullifying the prayer of the petitioner, which stood set aside by the Court on an earlier occasion. The same is impermissible in law.

It is not expected that the Court will decide the merits of the impugned order all over again as the ground for rejection has already been set aside by the Court on an earlier occasion.

In view of the above, the impugned order passed by the Commissioner of School Education, West Bengal dated 15th September, 2016 stands set aside.

The proposal of the Chairman, Purba Medinipur District Primary School Council dated 1st December, 2015 appearing at page 46 of the writ petition is required to be approved by the Commissioner of School Education, West Bengal for taking necessary consequential steps in this matter.

The Commissioner of School Education shall take steps in the matter at the earliest but positively within a period of eight weeks from the date of communication of a copy of this order.

Affidavit of service filed in Court is taken on record.

Writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)