

16 22.02.2022
rkd Ct.15

W.P.A. 22503 of 2014
(Through Video Conference)

Prasanta Kumar Ghosh

-vs-

The State of West Bengal & Ors.

Mr. Subrata Mukhopadhyay,
Mr. Bandhu Brata Bhula

....for the petitioner.

Mr. Bhaskar Ghosh,
Ms. Mandira Bhowmick

....for the respondent no.7.

Mr. Tapan Kumar Mukherjee,
Ms. Debdooti Dutta

....for the State.

The writ petitioner was initially appointed on contract basis after grant of recognition in favour of Hingalganj Mahavidyalaya, District- North 24 Parganas (hereinafter referred to as "said college") in the post of Peon which is a non-teaching post along with six other candidates who were also appointed against six other non-teaching posts. The said college was approved vide Memo dated 7th April, 2005 issued by the Special Secretary, Higher Education Department with effect from the academic year 2005-2006 and seven non-teaching posts were created from the date of approval of the said college.

Mr. Mukhopadhyay, learned advocate representing the petitioner submits that petitioner was appointed against a post of Peon, two posts of

Peon were sanctioned wherein another candidate, namely, Tapan Kumar Baidya was appointed against another post of Peon. Petitioner along with six other candidates approached the concerned respondent authority for their engagements in their respective posts on substantive basis which could not yield any result which triggered the first writ petition preferred by the writ petitioner being W.P. 26480(W) of 2012 which was disposed of by a coordinate Bench by passing order dated 12th February, 2013 thereby directing the concerned respondent to consider the case of the petitioner sympathetically and to pass a reasoned order on the representations made by the petitioner. There were five other writ petitions which were preferred by five candidates who were also working in non-teaching posts in the said college. All the six writ petitions were disposed of by passing a common order dated 12th February, 2013 which is at page 29 of this writ petition.

Pursuant to such order of the coordinate Bench dated 12th February, 2013 Director of Public Instruction and Ex Officio Secretary, Government of West Bengal took up the issue for engagement of seven candidates working against seven newly created posts in the said college and ultimately

recommended the case of the petitioner along with six other candidates for their engagements permanently. Relevant part of the said Memo dated 10th April, 2013 issued by the Director of Public Instruction is quoted below:

“in view of the above facts, the undersigned hereby recommends that the service of all these 7(seven) petitioners be regularized in their respective posts with effect from the date their initial appointment in the college.”

Pursuant thereto the said college also approached the Director of Public Instruction for approval of appointment of the petitioners and their pay fixation accordingly, which were kept pending due to failure on the part of the Joint Secretary, Education Department to take final decision on engagement of the petitioners on substantive basis. Petitioner again had to approach this Court by filing second writ petitioner being W.P. 5987(W) of 2014 which was disposed of by another coordinate Bench by passing order dated 7th March, 2014 thereby directing the Joint Secretary, Higher Education Department to take decision on the claim of the writ petitioner. Pursuant thereto Joint Secretary, Education Department passed order

whereby the claim of the writ petitioner for his engagement on substantive basis was spurned and the said order of the Joint Secretary is under challenge in the present writ petition.

Mr. Mukhopadhyay has submitted that the Joint Secretary has proceeded on the basis of availability of six non-teaching posts in the said college though fact remains there are seven available non-teaching posts out of which six posts had already been filled up pursuant to the order passed by a coordinate Bench on writ petitions being W.P. 22350(W) of 2014 and five other writ petitions preferred by six other similarly circumstanced candidates. Therefore, in the available non-teaching post in the said college petitioner ought to have been absorbed by this time. It has further been submitted that the Joint Secretary while taking decision on the fate of appointment of the writ petitioner cannot seat in appeal over the decision of the Director of Public Instruction, Government of West Bengal. It has also been submitted that when in terms of the order of the coordinate Bench dated 5th April, 2016 six other similarly circumstanced candidates have been substantively accommodated/approved in the said college therefore petitioner should not be left

out.

Mr. Ghosh, learned advocate appears on behalf of the said college and submits that the college in question was approved vide Memo dated 7th April, 2005 and on approval of such college from the academic year 2005-2006 seven non-teaching posts were sanctioned and it is fact that petitioner was appointed against one of the sanctioned posts of Peon in 2007. It is also brought to the notice of this Court that six other similarly circumstanced candidates who are working in the non-teaching posts have already been permanently appointed in terms of the order of the coordinate Bench dated 5th April, 2016.

Mr. Mukherjee, learned Additional Government Pleader appears on behalf of the State respondents and has submitted since the Joint Secretary has proceeded on the basis that there were six sanctioned posts and these six posts have already been filled up, due to non-availability of vacant post case of the petitioner cannot be considered but the fact remains that seven non-teaching posts being sanctioned on approval of the said college the matter should be remanded to the Joint Secretary for reconsideration. It has also been submitted by Mr. Mukherjee upon placing reliance

on the decisions of the Apex Court, (2011) 3 SCC 436 and (2019) 19 SCC 626 on the proposition of law that based on wrong order there is no scope of applying Article 14 in the matter of giving appointment and also there is no concept of negative equality in the domain of public employment. It has further been submitted that since the contempt application was pending for alleged violation of the order of the coordinate Bench dated 5th April, 2016 the authorities regularized the appointment of six other similarly circumstanced candidates.

This Court has considered the rival submissions of the parties to this writ petition and it appears while disposing of the first writ petition of the petitioner vide order dated 12th February, 2013 the stand of the State respondent was recorded by the coordinate Bench which is quoted below:

“Under the circumstances, the learned Advocates appearing for the State and the respondent nos.8, 9 & 10 have submitted that they have no objection if the service of the petitioners is regularized and they are paid as per rules applicable to them. The petitioners were appointed

through selection process and they were appointed to the posts of Peon accordingly. They joined the said posts on November 30, 2007. Thereafter, the college authority took steps for approval of the appointment of the writ petitioners and the approval was given by the State accordingly fixing the pay at Rs.2,600/- per month (consolidated) only for one year vide Annexure P-7 at page no.35. Thereafter, the college authority took steps for regularization of the service of the petitioners and the petitioners also submitted their representations for regularization, but, they have not been regularized as yet.”

Based on such submission made on behalf of the State respondents the coordinate Bench directed the concerned authority to take decision on the claim of the writ petitioner for engagement on substantive basis. Accordingly, the Director of Public Instruction while issuing Memo dated 10th April, 2013 recommended for regularization of service of seven candidates including the petitioner herein in their respective posts with effect from the date of initial appointment in the said college. Such Memo of the Director of Public Instruction dated

10th April, 2013 is at pages 35 to 37 of this writ petition.

In spite of such recommendation being made by the Director of Public Instruction when no steps were taken for engagement of the candidates on substantive basis six other candidates filed six separate writ petitions which were allowed by the Hon'ble Justice Debangsu Basak by delivering judgment dated 5th April, 2016 thereby directing concerned authorities to issue approval of regularization of the petitioners within a period of six weeks from the date of communication of such order. It is also relevant fact that in those six writ petitions petitioners questioned the order of Joint Secretary dated 28th November, 2013 by which claim of the writ petitioners was negated by the Joint Secretary and vide order dated 5th April, 2016 such decision of the Joint Secretary dated 28th November, 2013 was set aside.

In the present case this Court is considering issues identical to the facts of the six writ petitions which were disposed of by the Hon'ble Justice Debangsu Basak upon delivering judgment dated 5th April, 2016. Before Justice Debangsu Basak on behalf of the State respondents points were taken that the petitioners since were

not appointed substantively but on contractual basis therefore they do not have the right of regularization. However, such contentions raised on behalf of the State respondents were negated by Justice Basak and directions were given for regularization of the petitioners.

It appears from the report of Joint Director of Public Instruction that the State respondents preferred appeals being FMA 1191 of 2017, FMA 1192 of 2017, FMA 1193 of 2017, FMA 1194 of 2017 and MAT 1606 of 2016 questioning the judgement of Justice Basak dated 5th April, 2016 but such appeals were dismissed whereby the judgment dated 5th April, 2016 attained finality. It appears to this Court that said judgement dated 5th April, 2016 is squarely applicable in the present case of the petitioner since petitioner is similarly circumstanced like six other candidates who got the benefit of such judgment dated 5th April, 2016 on regularization of their service against vacant posts of non-teaching staff in the said college. It is also indisputable that the petitioner was appointed against a sanctioned post of Peon in the college in question along with those six candidates therefore the petitioner herein deserves similar treatment like six other candidates.

Though reliance has been placed by Mr. Mukherjee, learned Additional Government Pleader on the decisions rendered by the Apex Court reported in (2011) 3 SCC 436 and (2019) 19 SCC 626 but the ratio of these judgments are of no help since the judgment of Justice Basak dated 5th April, 2016 attained finality.

In above conspectus, Memo dated 16th April, 2014 of the Joint Secretary, Education Department is set aside and the concerned respondent authority is directed to finalize engagement of the petitioner in the post of Peon in the said college on substantive basis within a period of eight weeks from the date of communication of this order.

With the above directions, the writ petition stands disposed of.

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.)