

Court No. 24

10.02.2022

(Item No. 7)

(AB)

W.P.A. 22660 of 2018
(via video conference)

Smt. Subhra Das

VS

The State of West Bengal & Ors.

Mr. Falguni Bandyopadhyay

Mr. Jagadish Chandra Halder

..... for the petitioner

Mr. Supriyo Chattopadhyay

Ms. Iti Dutta

..... for the State

Mr. Bhaskar Prasad Vaisya

Mr. Sagnik Chatterjee

..... For DPSC South 24 Pgs.

The petitioner is aggrieved by the letter of termination dated 27th July, 2016 whereby her service stood terminated in compliance of direction passed in W.P. No. 13036 (W) of 2010 (Mohitosh Kayal Vs. The State of West Bengal & Ors.).

The case of the petitioner is that she was appointed as an Assistant Teacher (Primary) on 13th February, 2012 and her service was confirmed on 18th May, 2015. The Chairman, South 24 Parganas District Primary School Council all on a sudden issued a letter of hearing to her in July, 2016 and the impugned order of termination was passed on 27th July, 2016 allegedly in compliance of the direction passed by the Court in the case of Mohitosh Kayal (Supra).

It is the contention of the petitioner that she was not a party in the aforesaid writ petition. She was however given an opportunity of hearing prior to the passing of the order of termination in compliance of the direction passed by the Court.

The petitioner submits that the candidates obtaining lesser marks than her were given appointment and accordingly the appointment of the petitioner ought not to be terminated.

Learned advocate representing the respondents have filed a report wherefrom it appears that the petitioner belongs to the General Category and she obtained 46.772 marks in the selection test.

The last empanelled candidate in the General Category obtained 47.106 marks. As the petitioner obtained lesser marks than the lowest empanelled candidate, accordingly, her appointment stood cancelled in terms of the direction passed by the Court.

The petitioner submits that other candidates namely Md. Alauddin Molla & Ors.(W.P. 4596 (W) of 2017), Bapi Karar & Ors.(W.P. 4598 (W) of 2017) and Subrata Mondal (W.P. 4798 (W) of 2017) filed similar writ petitions. The Court directed the respondents to accommodate the said writ petitioners in whatever manner they deem fit and if necessary by creating supernumerary post to ensure that the services of the petitioners are not interrupted. The Court observed that the writ petitioners did not have any role to play in the erroneous appointment. It would grossly unfair and extremely unconscionable if after a lapse of a period between 5 to 7 years the appointments of the writ petitioners are annulled on the plea that the respondents had erred in issuing the appointment letters in their favour.

The learned advocate representing the State respondents submits that the name of the petitioner was empanelled in a separate list where additional 5% candidates' names were empanelled. There is no explanation in the report filed on behalf of the Commissioner of School Education that the petitioner had any role at the time of issuance of appointment letter in her favour. There is no allegation against the petitioner in the report filed by the Commissioner.

Admittedly, the appointment letter was issued in her favour in the year 2012 and her service stood confirmed in the year 2015. The alleged error on the part of the respondents came to light only after some successful candidates filed writ petitions before the Court. By the time the order came to be passed in the case of Mohitosh Kayal (*supra*), and the order of termination was passed, the petitioner already served more than four years in service. The petitioner must have become used to a particular standard of life and must have some responsibilities to keep. She may have crossed the age for appearing in any other competitive examination for getting a job. Her life, living and livelihood will be at stake if the order of termination is passed against her without any apparent fault on her part.

A co-ordinate Bench of this Court in W.P. 4596 (W) of 2017 Md. Alauddin Molla & Ors. (*supra*), under similar circumstances, directed the respondents to accommodate

the petitioners in whatever manner they deem fit and if necessary by creating supernumerary posts.

The learned advocate representing the State respondents submits that an appeal has been preferred against the order passed in the matter of Md. Alauddin Molla (supra) and the said appeal being MAT 1814 of 2017 (The State of West Bengal Vs. Md. Alauddin Molla & Ors.) is pending consideration before this Court.

As it appears that the facts of the present case are similar to the facts of the case of Md. Alauddin Molla (supra), I am inclined to pass similar order.

The impugned memo cancelling termination of the petitioner is set aside.

The respondents authorities specially the District Primary School Council, South 24 Parganas is directed to accommodate the petitioner in whatever manner deemed fit and if necessary by creating supernumerary post to ensure that the service of the petitioner is not interrupted.

It is however, made clear that the petitioner will not be entitled to raise any claim for payment of arrear salary for the period she could not work in the said post.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

(Amrita Sinha, J.)