

17.08.2022
Item No. 19
Ct. No. 25
PG

W.P.A. 24299 of 2016
Anarul Haque
Vs.
The State of West Bengal & Ors.

Mr. Amal Baran Chatterjee, Sr. Adv.
Md. Hafiz Ali.....for the petitioner

Md.Sarwar Jahan
Mr. Sk. Nayeeml Haque
Mr. Maidul Islam Kayal....for the respondent no. 4

In spite of notice, none appears for the State.

The order passed by the Secretary, School Education Department, Government of West Bengal dated February 13, 2015 has been challenged in this writ petition. The writ petitioner claims to have been appointed pursuant to an order dated December 9, 1986. He claims that he joined the service as an Assistant Teacher on December 15, 1986. Subsequently, by a communication dated February 7, 1987, the appointment of the petitioner was recalled. The petitioner challenged the decision of the authorities recalling his appointment and the petitioner claims that pursuant to orders passed by this Court, he was allowed to join as an Assistant Teacher and he performed his duties as an Assistant Teacher in terms of the order passed by this Court.

The writ petitioner further claims that he was also paid salaries for a considerable period of time during which he rendered service as an Assistant Teacher. The grievance of the petitioner is that the petitioner has not been paid the salaries till December 29, 2009 i.e. the date of passing of the order by the Principal Secretary.

Mr. Chatterjee, learned Senior Counsel for the petitioner submits that as per ROPA 2009, the qualifying period of service for full pension is 20 years and the petitioner having completed the said qualifying period of service as specified in ROPA 2009, is entitled to pensionary benefit but the respondent authorities have not released the pensionary benefits as well as the arrear salary to the petitioner.

Mr. Jahan, learned advocate appearing for the respondent no. 4 submits that the petitioner did complete the qualifying period of service as an Assistant Teacher to be entitled to pensionary benefit and as such, he is not entitled to any pensionary benefit as per ROPA 2009. He further submits that the writ petitioner did not work beyond February 1987 and as such, he is not entitled to any salaries after February 1987. He further submits that the petitioner has been paid the salaries for the period for which he rendered service as an Assistant Teacher.

He submits that though he rendered service only till February 1987 but salaries was paid to the petitioner till April 1990 in terms of the orders passed by this Court. He thus submits that the petitioner is not entitled to any amount either on account of arrear salary or for pensionary benefit. He further submits that the service of the petitioner was not approved by the competent authority at any point of time.

Heard the learned advocates for the parties.
Perused the materials placed.

The order dated February 13, 2015 was passed by the Secretary pursuant to the direction passed by a Division Bench of this Court by an order dated December 13, 2013 in FMA 1477 of 2011. The Hon'ble Division Bench directed the Principal Secretary to consider the period for which payment is to be made to the appellant and whether the appellant could be accommodated in any other suitable vacancy, as directed by the order dated June 08, 2009.

It is well-settled that an adjudicating authority cannot travel beyond the directions contained in the order of remand. By the order dated December 13, 2013 only two issues were directed to be considered viz. (1) to consider the period for which payment is to be made to the appellant and (2) whether the appellant could be accommodated in any

other suitable vacancy, as directed by the order dated June 08, 2009.

The Principal Secretary while deciding with the first issue took into consideration the inquiry reports submitted by the Chairman, District Primary School Council, Murshidabad and the District Inspector of Schools (PE), Murshidabad wherefrom it reveals that the appellant worked upto February 1987 and he was also paid salary upto that period and accordingly, held that the appellant is not entitled to any amount of salary beyond February 1987.

Since it is not in dispute that the petitioner had already crossed the age of 60 years and therefore, the Principal Secretary held that there is no scope to accommodate him to any other suitable vacancy as per the rules.

The Principal Secretary, in the considered view of the Court, took into consideration the materials, which were available before him and passed a reasoned order and decided the issues directed by the Hon'ble Division Bench to be decided by order dated December 13, 2013.

Mr. Chatterjee, learned senior counsel for the petitioner vehemently argued that the petitioner having completed 20 years of qualifying service as an Assistant Teacher, is entitled to full pensionary benefit. The Hon'ble Division Bench in its order dated

December 13, 2013 specifically observed that the petitioner herein, who was the appellant in FMA 1477 of 2011 was an untrained candidate and he was not qualified to grant of appointment in the said post right from the start. It was further observed by the Hon'ble Division Bench that though an opportunity was given to the writ petitioner herein to produce the original testimonials with regard to training but being untrained candidate, it was not possible for the appellant to produce the same. On such factual background the Hon'ble Division Bench held that since the entry was wrongful and it was only pursuant to orders of the Court that he has continued to render service, relief insofar as the payment of retiral benefits cannot be granted.

The Principal Secretary in the order impugned took note of the aforesaid observation of the Hon'ble Division Bench while rejecting the prayer for payment of retiral benefits.

Judicial review under Article 226 of the Constitution of India, is not directed against the decision but is directed against the decision making process. In the instant case, the ultimate conclusion of the Principal Secretary in the impugned order is backed by reasons. Such finding was based on materials available on record. The findings arrived at by the Principal Secretary also cannot be said to be

an irrational one. The same also do not suffer from any perversity. This Court is of the considered view that there is no infirmity in the decision making process.

In view thereof, this Court do not find any reason to interfere with the order of the Secretary, School Education Department, Government of West Bengal dated February 13, 2015. Accordingly, the writ petition stands dismissed.

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

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(Hiranmay Bhattacharyya, J.)