

Court No. 22
25.8.2022
(Item No. 2)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 24705 of 2013

Ratan Kumar Sarkar
VS
The State of West Bengal & Ors.

Mr. Gazi Faruque Hossain
Ms. Priyanka Mandal
..... for the petitioner
Mr. Rezaul Hossain
..... For the State

Affidavit-in-reply filed in Court today, is taken
on record.

The cause of action in this writ petition was in
respect of an appointment of a ***Samprasarak at
Pandit Raghunath Murmu Madhyamik Siksha
Kendra (for short, the school)*** arising out of a panel
for the year 2009-2010.

Pursuant to an advertisement dated June 1,
2009 the petitioner applied for the said post. The
petitioner claims that he was appointed and joined as
a ***Samrasarak*** at the said school and thereby
rendered his service. Necessary honorarium which
was required to be paid to the petitioner for rendering
his alleged service was not paid.

The petitioner being aggrieved thereby filed a
first round of writ petition being ***WPA 4308 of 2010***.
The said writ petition along with other similar writ

petitions was disposed of by an order dated December 3, 2012 passed by a co-ordinate bench when the Jurisdictional Nodal Officer, Balurghat, Dakshin Dinajpur Zilla Parishad was directed to consider the grievance of the petitioner with a reasoned order. Pursuant to said direction the relevant authority had passed its impugned order dated May 14, 2013, ***Annexure P-4 to the writ petition***, which is impugned in the instant writ petition.

By the said impugned decision the case of the petitioner was rejected on the reasons mentioned in detailed therein.

Mr. Gazi Faruque Hossain, learned counsel appearing for the petitioner submitted that, the rejection by the said impugned order was wholly illegal, wrongful and arbitrary. The petitioner was duly appointed pursuant to an agreement arrived at by and between the Managing Committee of the school and the petitioner dated June 23, 2009, ***Annexure P-2 to the said writ petition***. His appointment was never questioned by the authority. He rendered his service, as such he became entitled in law to receive the necessary payment. As the right to receive payment from the school authority being denied, the grievance of the petitioner arose. He

submitted that the said writ petition should be allowed.

Mr. Rezaul Hossain, learned counsel appearing for the State drew attention of this Court to **Annexure X-1 and Annexure X-3 to the affidavit-in-opposition** affirmed on behalf of the State on October 8, 2021 and submitted that, the regulating rules and guidelines for such an appointment was prescribed by the appropriate authority of the State in its written memo dated November 7, 2005, **Annexure X-3 to the said affidavit**, which, *inter alia*, specified that, a member of a Panchayat Body or his/her near relations cannot be engaged as **Samprasarak/Samprasrika** of a **Madhyamik Siksha Kendra (MSK)** and if any **Samprasarak/Samprasrika** is subsequently elected to any Panchayat Body (P.R. Body) and he/she continued to work as such, would draw remuneration in one place only.

In this case he submitted that, the petitioner's wife was a **Sahakari Sabhapati of Gangarampur Panchayat Samiti** within whose jurisdiction the said school was situated. He submitted that in view of that, the appointment of the petitioner was wholly illegal, wrongful and was in violation of the relevant State guidelines. Thus, the claim of the petitioner was

lawfully and rightly rejected through the said impugned order. The writ petition is misconceived and liable to dismiss.

Upon hearing rival contentions of the parties and on perusal of the record it appears that, the relevant rule prevailing was specified in the said ***Annexure X-3 to the affidavit*** as stated above and from the documents being ***Annexure X-1 to the said affidavit***, it was evident that, wife of the petitioner namely, Suchitra Sarkar was an office bearer of the relevant Panchayat Samity within whose jurisdiction the school was situated. Such fact was also not denied on behalf of the petitioner.

On a close scrutiny of the impugned order ***Annexure P-4 to the writ petition*** it appears that, said disqualification of the petitioner was taken into consideration under ***serial No. 5*** under the heading ***the case in brief and materials on record***.

In view of the above, it is evident that the very appointment of the petitioner was not lawful and was not sustainable in law since his wife was then an office bearer of the local Panchayet Samity. Such appointment being illegal, no infirmity is found in the said impugned order dated May 14, 2013 being ***Annexure P-4 to the writ petition*** both on law and on fact. An appointee can not become eligible to

receive any benefit out of such appointment, if the appointment is not lawful and is illegal. It is also not the case of either of the parties that opportunity of hearing was not granted to the parties.

In view of the foregoing discussions and reasons the impugned order dated May 14, 2013, ***Annexure P-4 to the writ petition*** stands affirmed.

In the premises, this writ petition being **WPA 24705 of 2013** stands dismissed.

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

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)