

S/L 12
04.08.2022
Court. No. 22
*Sourav/
Suwayan*

WPA 29035 of 2015

**Sri Indranarayan Chakraborty
Vs.
The State of West Bengal & Ors.**

*Mr. Sanjib Bandopadhyaya
Mr. Biswajit Dutta*

...for the Petitioner.

*Mr. Amitesh Banerjee,
Sr. Adv. and Ld. Senior Standing Counsel
Mr. Manas Kumar Sadhu*

...for the State.

This writ petition has been filed assailing the impugned order dated August 25, 2015 passed by the District Inspector of Schools (Secondary Education), Hooghly (for short, “the D.I.”).

The writ petitioner is a candidate who seeks to be appointed as a Laboratory Attendant at Dr. Sital Prosad Ghosh Adarsha Sikshalaya, Chandernagore, Hooghly, (for short, “the School”). The petitioner had qualified Madhyamik Examination in 1989 in Third Division and then the Higher Secondary Examination in 1995 in Pass Division. Initially, the School did not have the recognition for Class XI and XII in the Science Stream. Since 1998, the School was upgraded, *inter alia*, for the Science Stream which gave rise to the need of running regular Laboratory and as such the requirement of Laboratory Attendant for the efficacious function of such Laboratory arose. However, the post for such Laboratory Attendant was never sanctioned at the

relevant point of time. The petitioner rendered his voluntary service as a Laboratory Attendant against a token honorarium for a sum of Rs. 200/- per month and afterwards Rs. 500/- per month for providing his voluntary services as Laboratory Attendant and Librarian, as per the need of the School. The petitioner had been rendering his service since 1998 and the Laboratory of the School had commenced its function though in 1998 but the post was created in 2001. As per the combined roster of Clerk and Group – D, the post of Laboratory Attendant was reserved for Scheduled Tribes (ST) Category. The petitioner at no point of time belonged to such specified category, namely, Scheduled Tribes (ST). Later on, the said post for Laboratory Attendant was opened for the General Category (E.C.) i.e. Exempted Category. The petitioner was also not belonged to such Exempted Category.

According to the learned Senior Standing Counsel appearing for the State, the petitioner with effect from August 2011 was released from his duty of Library work and then the petitioner stopped attending the School with effect from February 2012 and did not serve the School as Laboratory Attendant also. Such fact would also be evident from the resolution of the Managing Committee of the School dated January 14, 2012.

This is the second round of writ litigation. In the first writ petition being **WP 8671 (W) of 2009**, a co-ordinate Bench of this Court by its order dated March 30, 2015 directed the case of the petitioner to be considered by the

D.I. and allowed concession in respect of the petitioner's age bar. Pursuant to the said direction, the impugned order/decision dated August 25, 2015 was passed.

By the said impugned order/decision, the D.I. had rejected the case of the petitioner with reasons. The relevant observations regarding such rejection are set out hereinbelow:

“Now the law points involved in this case are as follows

- 1. The Certificate as issued by the then TIC dtd. 20/02/2001 reveals that the petitioner had been rendering voluntary service as Laboratory Attendant for the benefit of the students with a token honorarium of Rs. 200/- which under any circumstance may not be treated as letter of engagement.***
- 2. The then TIC and the Concerned Secretary was not at all the competent authority to engage someone as Laboratory Attendant before the creation of the post, and without any prior permission from the District Inspector of Schools.***
- 3. No selection process following the recruitment rules for appointment at the material point of time was made by the school authority. The petitioner approached the school authority for appointment as the part time Laboratory Attendant and no resolution, therefore, was unavailable at the end of the School authority which is envisaged from the submission of the school authority.***

4. *Shri Chakraborty was agreeable at the real time to work with a token honorarium of Rs. 200/- (Rs. Two hundred) only for his personal interest.*
5. *The petitioner had rendered voluntary service to the institution as per the need of the institution and that was also not in continuous manner.*
6. *No register in support of his daily attendance was maintained by the school as the petitioner was not a regular one.*
7. *The petitioner stopped servicing at his discretion w.e.f. February 2012.*
8. *From the submission of the petitioner it is clear that on the date of 13th March, 2009 the age of the petitioner exceeded 37 years (d/b=12.03.71).*

With these observations and the observation and direction of Hon'ble Court in the case of Gobinda Chandra Mondal (Supra) vs Principal, Rabindra Mahavidyalaya reported in 2013 (1) CHN (Cal) the regularisation of the services of the petitioner is regretted without any relief but whatsoever considering the observation of the Hon'ble High Court, Calcutta, dtd. 30/03/2005 liberty is given to the petitioner to approach the W. B. School Service Commission (Eastern Region) for allowing him to take part in the regular recruitment process upon condonation of age alongwith other eligible candidates.

Such being the legal position the matter is being disposed of."

Relying upon the affidavit-in-opposition filed by the State, the learned Senior Standing Counsel specifically referred to paragraph 4 thereto and submitted that it was the

specific contention of the State that the petitioner had rendered voluntary service as Laboratory Attendant for a token sum of Rs. 200/- per month and afterwards Rs. 500/- per month for rendering services as Laboratory Attendant and Librarian as per the need of the School and was also not in a continuous manner. The petitioner did not receive any letter of engagement or appointment from the School. No register in support of the petitioner's daily attendance was maintained by the School authority as he was not a regular one. The petitioner stopped serving the School at his own discretion with effect from February 2012.

Referring to paragraph 5 of the affidavit-in-reply filed by the writ petitioner, the learned Senior Standing Counsel for the State submits that all the above contentions of the State were not denied by the petitioner.

After hearing the learned Counsel for the petitioner and the learned Senior Standing Counsel for the State and on perusal of records, it appears to this Court that, there was no sanctioned post for Laboratory Attendant at the juncture when the petitioner in 1998 started rendering his service as Laboratory Attendant. The discontinuation of service of the petitioner is also corroborated from the affidavits filed by the parties. Inasmuch as, the appointment of the petitioner was not permanent and it was a voluntary service rendered by the petitioner against a token honorarium paid to him by the School. Honorarium, in any event, cannot create any right in favour of the petitioner to exercise any of his legal right. Inasmuch as, the post being not a sanctioned one, when the

petitioner had started rendering his service, he cannot come within the purview and exception of the law laid down by the Hon'ble Supreme Court in the matter of ***Secretary, State of Karnataka Vs. Uma Devi***, reported at **2006 (4) SCC 1**. On the contrary, the petitioner being an ***unequal*** for the post of Laboratory Attendant cannot be treated as an ***equal***.

This Court in exercise of its power of judicial review under Article 226 of the Constitution has a very limited authority and jurisdiction to assess the said impugned order dated August 25, 2015 being ***Annexure P-8*** to the writ petition. This Court is only permitted to assess the decision making process of the authority, who passed the said impugned order. From a closed scrutiny of the said impugned order, this Court is of the considered view that, the same contains sufficient and well-founded reasons while rejecting the case of the petitioner. The impugned order is otherwise very well-versed and there is no infirmity in law and/or fact on the same. There is no perversity in the said impugned order.

In view of the foregoing discussions and reasons, the said impugned order is not required to be interfered with by this Court. The same stands affirmed.

In view of the above, the writ petition being **WPA 29035 of 2015** stands dismissed.

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

(Aniruddha Roy, J.)