

Item-166.	25-07-2023	FMA 21 of 2019 CAN 1 of 2018 (old CAN 9331 of 2018)
sg	Ct. 8	The Bolpur College Versus Pradip Laha & Ors.

Mr. Uday Sankar Chattopadhyay, Adv.
Mr. Suman Sankar Chatterjee, Adv.
Mr. Santanu Maji, Adv.
Mr. Debdipto Banerjee, Adv.
Ms. Trisha Rakshit, Adv.
Ms. Rajashree Tha, Adv.

...for the appellant

Mr. Soumya Majumdar, Adv.
Mr. Dibanabdhhu Dan, Adv.
Mr. Dipankar Ghosh, Adv.

...for the State

The appeal is arising out of a judgment and order dated 31st July, 2018 passed by the learned Single Judge in a writ petition praying, inter alia, for a direction upon the respondent nos. 5 and 6 (the appellants herein) to perform his duty as part-time teacher in the said Bolpur College by allotting classes as per Higher Education Department, C.S. Branch under Memo No. 519-3dn(CS)5P-46/99 dated 29th June, 2010 and a further direction upon the authorities to pay his allowances and/or remuneration in accordance to the Government Orders including the order referred to above.

The learned Single Judge has arrived at a finding that it is clear case of retrenchment and the writ petitioner appears to be covered by Memorandum dated 29th June, 2010. In view of the submission made on behalf of the writ petitioner that he would prefer to be engaged as part-time teacher under regulation of the State rather than working for private college. He was prepared to

give a declaration of engagement of one assignment. On the basis of such submission, the Bolpur College was directed to reinstate him and allot him requisite number of classes prescribed for part-time teacher within a period of four weeks from the date of communication of the said order. The claim for his arrear salary was also directed to be considered and disposed of. This order is under challenge.

At the initial stage, the order directing payment of arrear salary was stayed as it was found that he had joined as Assistant Professor in the department of business Administration on 1st August, 2008 in a private college and was working at least till December, 2016 as would be evident from the letter of the College dated 17th December, 2016 addressed to the Principal of the Bolpur College. This information was admittedly not disclosed in the writ petition, in which, inter alia, the retrenchment compensation has been claimed. The present statute of the employment is however not disclosed.

The entire matter involves a factual finding with regard to engagement of the petitioner since 2008 till he claimed to have worked in February 2009 and thereafter. It is claimed that he was wrongfully retrenched. The claim of the petitioner is primarily based on the statements made by the College Authorities in paragraphs 9 and 16 of the affidavit-in-opposition. In paragraph 9, the College Authorities have stated that the writ petitioner was irregular in January, 2009 and from February, 2009 he has left the College voluntarily. In paragraph 16, while reiterating that he has joined as a full-time teacher at Bengal Institute of

Technology and Management, Shantiniketan, it was stated that he was paid his monthly allowance till January 2009. The said affidavit is consistent at least to the effect that he had received his remuneration till January 2009 and it presumes that such part-time allowance was paid as he attended the classes till such time. However, disputes have arisen with regard to the number of classes allotted to him and classes that he had taken during his engagement. Essentially it is a question of computation of the remuneration of the part-time teacher in accordance with the relevant circulars operating in the filed during the aforesaid period.

The writ petitioner has stated that from January 2009 to March 2009 the College authority did not pay him the monthly allowance though he worked in the said period and since April 2009, he has been working regularly as part-time Lecturer but the Bolpur College authority did not allot classes to him and not paying his monthly allowance thereby essentially raising an issue of non-payment of monthly allowance as part-time teacher during the period when he worked. Similarly if he were prevented from taking any class although he joined his duties his claim would remain valid. At the same time it cannot be overlooked that by that in the meantime he had joined in a private college as full-time Assistant Professor.

Surprisingly, we do not find any communication from the writ petitioner to the college authority complaining that he was not being paid allowance commensurate with the classes he had taken during this period or that he was prevented from taking

classes. It was only in November 2010 a demand of justice was issued. This letter was seemingly issued after the notification dated 27th February, 2009 and 21st September, 2010. This is also a factor that requires consideration. This aspect of the matter appears to have not been taken into consideration in deciding the writ petition. The writ petitioner can claim the benefits provided he is successful in establishing that he worked for the said period which seems to have not been asserted till November 2010. For a prudent person not getting his salary and admissible dues a demand for justice ought to have been issued contemporaneously or within a reasonable time.

Be that as it may, we feel that the matter is required to be considered by the Directorate of Public Instruction, Education Directorate, Government of West Bengal.

We direct the appellant and the writ petitioner to produce all documents in relation to their respective claims before the said authority.

The said authority shall consider the writ petition as a representation and shall decide the issue with regard to the wrongful retrenchment and admissible dues, if any, on consideration of the entire record to be produced by the appellant as well as the writ petitioner in this regard. The said authority shall decide the matter after giving an opportunity of hearing to the parties.

The impugned order is set aside.

The entire exercise shall be completed within a period of

six weeks from the date of communication of this order by either of the parties.

We make it clear that we have not gone into the merits of the writ petition with regard to retrenchment benefits or admissible dues as the factual inquiry is required to be carried out by the authority concerned.

Accordingly, the appeal is disposed of. However, there shall be no order as to costs.

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

(Uday Kumar, J.)

(Soumen Sen, J.)