

19 23.8.2023
Sc Ct. no.22

WPA 12 OF 2012

Debjani Mondal

Vs.

State of West Bengal & Ors.

Mr. Tarun Kumar Das
Mr. Kanai Lal Samanta.

....For the Petitioner

Mr. Supriyo Chattopadhyay
Ms. Sayantee Bhattacharjee.

....For the State

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

The petitioner at present is working as an **Assistant Teacher at Shyampur High School, District Howrah**. She is a Master's degree qualified candidate in the relevant subject. She claimed the benefit of higher pay scale.

The petitioner first joined as an **Assistant Teacher with Bengali Honours at one Mahakalpur Mokshada Charan High School, District Howrah** (for short 'the first school') on **November 4, 1997**.

The petitioner then appeared and qualified the 6th Regional Level Selection Test-2005 (the 6th RLST) and joined one **Babupur Agricultural High School, District Purba Medinipur** (for short 'the second school') on **March 29, 2006**. Here, she joined after obtaining her

Master's degree in Bengali and accordingly, **she was granted the Master's degree pay scale.**

The respondent no.3 had approved such pay scale by its **memo dated December 5, 2007**. The said second school submitted **two bills for releasing payment in favour of the petitioner**. The first bill was released and paid to the petitioner. The **second bill was not cleared**. The respondent no.3 sought for certain clarifications from the respondent no.2. The respondent no.2 by its communication dated **July 4, 2011, Annexure P11 to the writ petition** clarified that, the appointment of the petitioner in the second school was considered as a fresh and new appointment and, as such, **no protection of pay was allowed in her favour**. It was also mentioned that, the previous period of service of the petitioner may be recorded for calculation of her continuity of service for pensionary benefits only.

Being aggrieved by the said decision of the respondent no.2, the petitioner made a representation dated **November 8, 2011, Annexure P13 at page 43 to the writ petition** before the Secretary, School Education Department and the respondent no.2. The said representation is still pending.

Mr. Tarun Kr. Das learned advocate appearing for the petitioner contended that, the plea taken by the respondent no.2 in its decision dated **July 4, 2011, Annexure P11 at page 41 to the writ petition** that, the

employment of the petitioner in the second school was a fresh and new appointment, ***is not tenable in law*** as the petitioner's employment was continuing and during continuation of such employment with the first school, the ***petitioner joined in the second school without any interruption.***

Mr. Supriyo Chattopadhyay, learned Additional Government Pleader appeared for the respondent nos.1 to 3 and 8.

He submitted that, the petitioner, while participating in the ***6th RLST*** and joined the second school thereunder, ***the petitioner did not apply through a proper channel and participated in the said 6th RLST not as a in-service candidate.***

In reply, learned counsel for the petitioner submitted that, the petitioner obtained the necessary "***No Objection***" certificate from the first school as would be evident from pages 9 and 10 to the affidavit-in-reply filed by the writ petitioner affirmed on July 31, 2023. He submitted that, his candidature as an in-service candidate was also mentioned in the application form. The employment of the petitioner was a continuous one and the respondent no.3 has approved the pay scale as such.

The ***petitioner was also granted 10 years' and 20 years' benefits.***

After considering the rival contentions of the parties and on perusal of the materials on record it appears to this Court that, several factual matrix are required to be gone into while adjudicating the claim of the petitioner upon production of records in detail. Such is not the job of a Writ Court. A Writ Court in exercise of its power under judicial review shall only look into the decision making process of the relevant authority and whether any glaring perversity exists on the face of the decision of the decision making authority. In the facts of this case to adjudicate upon the said decision of the respondent no.2 dated July 4, 2011 ***a fact finding enquiry is required to be made on the basis of the existing records.***

For the foregoing reasons and discussions to subserve justice, the added respondent no.8 shall consider the representation of the petitioner dated ***November 8, 2011, Annexure P13 at page 43 to the writ petition*** upon a prior hearing notice of at least seven days to the petitioner and all other parties interested on the issue and after giving them an opportunity of hearing shall decide the issue by passing a reasoned order in accordance with law.

The entire exercise, as directed above, shall be carried out and completed by the added respondent no.8 ***positively*** within a period of six weeks from the date of communication of this order. The added respondent no.8 then shall communicate its reasoned order to the

petitioner and all other interested parties and/or appropriate authorities concerning the issue within a further period of two weeks from the date of the reasoned order to be passed.

It is made clear that this Court has not gone into the merits of the claim of the petitioner in any manner and the petitioner, the school authorities and/or any other interested parties who shall participate in the hearing shall be free to urge whatever points they wish to urge by relying upon whatever documents and records they wish to rely upon before the added respondent no.8 but not beyond the scope of the representation dated November 8, 2011 as referred to above.

It is made clear that this order shall not create any equity or right in favour of the petitioner if the petitioner is not eligible to receive her claim strictly in accordance with law.

In the event the reasoned decision goes in favour of the petitioner then ***automatically*** the impugned decision of the respondent no.2 dated ***July 1, 2011, Annexure P11 at page 41 to the writ petition*** would stand ***cancelled and set aside***.

In the event the reasoned decision goes in favour of the petitioner the added respondent no.8 and/or any other appropriate authority shall give effect thereto with all consequential benefits within a period of six weeks

from the date of communication of the said reasoned decision.

On the above terms and with the above observation this writ petition, ***WPA 12 of 2012 stands allowed.***

There shall be no order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)