

Court No. 22
12.12.2023
(Item No. 153)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 3394 of 2011

Sri Lakshmi Kanta Dolai
VS
The State of West Bengal & Ors.

Ms. Usha Maity (through virtual mode)
Ms. Anita Khetry
..... for the petitioner
Mr. Pinaki Dhole (through virtual mode)
.... For the State

Ms. Usha Maity, learned advocate appears for the petitioner through virtual mode.

Mr. Pinaki Dhole, learned State counsel appears through virtual mode.

This is a hearing matter.

Despite there being a direction for filing affidavits, the respondents chose not to file any affidavit-in-opposition.

This is the second round of writ litigation by the self-same writ petitioner. Claiming approval of service the petitioner filed the first writ petition being **W.P. 22032 (W) of 2008**. The previous writ petition was disposed of by a co-ordinate bench by its order dated **November 3, 2008, Annexure P-13** at **page 89** to the writ petition with the following observation and direction:

“In view of what has been stated and submitted by the learned Counsel for the petitioner, this Court considers it appropriate to dispose of the writ petition by directing the respondent Nos. 2 and 4 to jointly sit together

and take up the representation of the petitioner and dispose it of strictly in accordance with law by passing a reasoned order. In order to give effect of this order, the petitioner shall serve a copy of Annexure P-13 as have been brought on record in this writ petition upon both the authorities within a period of two weeks from today. The aforementioned respondents shall then sit together on a day which is convenient to them but it should be within a period of four weeks from the date they receive the aforementioned copy of the representation as stated above. They will also give notice to the petitioner to appear either in person or through his authorized counsel and after hearing the concerned parties, they shall pass a reasoned order within a period of two weeks from the date of conclusion of the hearing.

Needless to state, the authorities concerned shall communicate their decision upon the petitioner also.

With the aforesaid observations and directions, this writ petition is disposed of.”

Pursuant to and in terms of the said direction the respondent No. 2 had passed its reasoned order dated **May 20, 2009, Annexure P-14** at **page 92** to the writ petition. The relevant portion from the said reasoned order dated **May 20, 2009** is quoted below:

“The Headmaster of the School also requested to consider the case.

The representative of the District Inspector of Schools (SE), Paschim Medinipur submitted that an embargo was imposed upon recruitment to the non-teaching staff in the non-government aided recognized schools in terms of G.O. No.

4100FB dated 13.12.2000. Lifting of such embargo in terms of G.O. No. 463-SE(A) dated 08.07.2004 was communicated to the District Inspector of Schools by the Director of School Education, West Bengal in his memo No. 2927-GA dated 26.07.04. Since the Government Order, lifting embargo was issued on 08.07.2004, the District Inspector of Schools (SE), Paschim Medinipur accorded approval of appointment in favour of the petitioner with effect from 08.07.2004.

I have examined all the relevant papers and documents in connection with the matter and heard the parties.

It appears to me that though the prior permission to fill up the vacancy of the Group – D post was accorded in the year 1999, a dispute was broken out among the members of the Managing Committee in respect of the empanelled candidates prepared for the very purpose. The dispute ultimately led the then District Inspector of Schools (SE), Medinipur to pass a reasoned order in respect of the impugned panel as contained in memo No. Law 88/7. It would be pertinent to quote the relevant portion of the reasoned order.

‘As such, it would not be wise and proper to keep the matter pending for an indefinite period and if so, it would seriously affect the interest of the school. Considering all these the following panel

- 1. Laxmi Kanta Doloi - 1st*
- 2. Uttam Kr. Dploi - 2nd*
- 3. Biren Layek - 3rd*

for the post of Group D staff reserved for S.C. arising out of retirement B. K. Goswami is hereby approved for all material purpose. The school

authority is directed to take follow up action as per provision in the recruitment rules immediately.'

It also appears that the school has 3 group D staff (2 peon and 1 matron) and the 3rd post of class IV staff in favour of the school was sanctioned with effect from 01.02.1979 as a very special case in terms of memo No. 717.G.A. dated 29.04.1985 of the Directorate of School Education, West Bengal. The petitioner joined the school on 27.08.2001 on the basis appointment letter issued by the Secretary in consequences of the panel approved by the concerned District Inspector of Schools (SE).

Under the above circumstances, I am of the opinion that the petitioner is entitled to get approval of appointment with effect from 27.08.2001 i.e. date of joining instead of 09.07.2004. The District Inspector of Schools (SE), Paschim Medinipur is requested to issue corrigendum to his memo no. 2410-S dated 15.09.2004 according approval of appointment with effect from 27.08.2001 in favour of the petitioner. The school authority is also requested to submit the arrear claim in favour of the petitioner in the prescribed proforma to the concerned District Inspector of Schools (SE). The District Inspector of Schools (SE), Paschim Medinipur is also requested to sent the claim, duly vetted by the concerned Joint/Deputy Director of Accounts to this Directorate for early release of the allotment.

Matter is thus disposed of. All concerned be informed."

On a close scrutiny of the said reasoned order passed by the respondent No. 2, it appears to this

Court that, while passing the reasoned order the respondent No. 2 after considering all the facts and documents decided that, the petitioner was entitled to get approval of appointment with effect from **August 27, 2001** being the date of joining in the service.

Following the said reasoned decision dated **May 20, 2009** the employment of the petitioner was approved with effect from **August 27, 2001** and the petitioner has been working.

Ms. Usha Maity, learned counsel for the petitioner submits that, all the payments including the arrear have duly been released in favour of and to the petitioner following the approval of appointment with effect from **August 27, 2001** and the petitioner has received all such payments. The petitioner now claims **interest since August 27, 2001**.

Mr. Pinaki Dhole, learned State counsel submits that, there was an embargo imposed upon the recruitment to the non-teaching staff in the non-government aided recognized schools in terms of one Government Order dated **December 13, 2000**. However, such embargo was lifted by another Government Order dated **July 8, 2004**. Since the embargo was lifted under the said subsequent Government Order dated **July 8, 2004** the jurisdictional District Inspector of Schools initially accorded approval of appointment of the petitioner with effect from **July 8, 2004**. Later on the said

reasoned decision dated **May 20, 2009** was taken by the respondent No. 2 and the approval was directed to be given from the **date of joining** i.e. **August 27, 2001**. Immediately the State authority had released all the payments to the petitioner and the petitioner has accepted the same. The payment was released on **September 6, 2010**. Therefore, there were no laches or delay on the part of the State authority in making the necessary payment to the petitioner and as such no interest can be foisted upon the State. He submits that, in view of the embargo the State was not in a position to approve the appointment of the petitioner and as such necessary payment could not be made to the petitioner.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the reasoned order dated **May 20, 2009** passed by the respondent No. 2 as quoted above is amply clear and the same was passed after considering the submissions of the jurisdictional District Inspector of Schools and upon due consideration of all the relevant materials placed before the respondent No. 2. The said reasoned order has not been challenged by the State. The reasoned order speaks very clear that, even after considering the embargo imposed, as submitted by the learned State counsel, the respondent No. 2 thought it fit and decided that, the approval of appointment should be

with effect from **August 27, 2001 being the date of joining of the petitioner in service.** Once the right has accrued in favour of the petitioner on a particular day, all monitory benefits touching his employment should have to be and shall be granted to the petitioner on and from the date of approval being **August 27, 2001**, which was also the date of joining in the service by the petitioner. The right of the petitioner had accrued from the date of approval.

In the event, any delayed payment is made, both law and equity prescribe that, the beneficiary of such payment must be compensated with interest. It is true that to grant interest or at what rate interest shall be granted, is left with Court in exercise of its equitable jurisdiction and such equity also has to be exercised within the frame work of law. For those reasons the contention raised by Mr. Dhole, learned advocate on behalf of the State stands negated.

In view of the foregoing reasons and discussions this Court is of the considered view that, **interest @ 5% per annum** shall be paid to the petitioner **on and from August 27, 2001 till September 6, 2010** being the date of actual payment made to the petitioner on the sum of **Rs.1,63,470/-** as prayed for in **prayer (B)** to the writ petition.

The respondent No. 5 is directed to calculate the interest as directed above herein forthwith but positively within a period of **three weeks** from the

date of communication of this order. In the event, any assistance is required from the School authority, then the respondent No. 5 shall ask such co-operation and the respondent Nos. 6 and 7 shall render all co-operation and assistance to the respondent No. 5 in calculating the interest within the said period.

The respondent No. 5 then take all consequential and necessary steps to release the payment of interest as directed herein in favour of the petitioner positively within a further period of **two weeks** after completion of the arithmetical calculation on interest as directed above, to enable the petitioner to receive the money on interest component.

With the above observations and directions, this writ petition being **W.P.A. 3394 of 2011** stands **allowed**, without any 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.)