

30-03-2023
Item No.11
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction
Appellate Side

WPA No.8756 of 2021
Smt. Shashibala Pandey

-vs-

The State of West Bengal & Ors.

Mr. Ekramul Bari
Syed Mansur Ali
Ms. Tanuja Basak
Mr. Imtiaz Uddin ...for the petitioner

Mr. Rezaul Hossain ...for the State

Mr. Arjun Roy Mukherjee
Ms. Saheli Chakraborty ...for respondents 2 & 3

The petitioner by preferring this writ petition seeks direction upon the concerned respondents to disburse salary/honorarium to her at par with other para-teachers and to release the arrear and current salary to her at enhanced rate commensurate with the financial benefits admissible to a para-teacher.

There is a chequered background of the writ petition which may be summarised as under:

In response to an advertisement made by the managing committee of Sanghamitra Vidyalaya (HS), the petitioner applied for additional para-teacher in the subject hindi in the school in the year 2007. Though she was empanelled to be selected as a para-teacher (Hindi) in the school, she was not engaged as such in the educational institute. However, by an order of this court in a writ petition being WP No.15365(W) of 2009 preferred by the petitioner she was allowed to join as the additional para-teacher (Hindi) in the said school and accordingly she joined the said school on February 24, 2012.

However, the fortune bestowed upon her did not last for long. By an administrative order, the appointment made to her was cancelled. Challenging the order of cancellation of her appointment, the petitioner preferred another writ petition being WP No.34425(W) of 2013. By an order dated March 1, 2016, the writ petition was disposed of by issuing a writ of mandamus in terms of prayer (A) to the writ petition whereby the concerned authorities were directed to appoint / engage the petitioner as additional para-teacher (Hindi) in the said school. In compliance of the order of this court, the District Project Officer, Sarva Shiksha Mission by an order dated May 12, 2016 allowed the claim of the petitioner to this extent that the petitioner be permitted to function as a para-teacher in Sanghamitra Vidyalaya (H.S) for the subject Hindi with effect of the date of her first appointment on 24.02.2012. By the order she was allowed to avail of all the financial benefits (remuneration/ honorarium) with retrospective effect.

It is alleged by the petitioner that though she made several representations to the authorities concerned seeking all the financial benefits as admissible to other para-teachers, but her representations could not draw the attention of the authorities. Under such circumstances, the petitioner seeks the directions as indicated above.

The respondents nos. 2 and 3 in their affidavit-in-opposition by referring to the Government Orders dated 9th June 2010 and 10th October 2018 submit that the claim as made by the petitioner could not be allowed as per the aforesaid orders. On such counts, the answering respondents submit that the writ petition is liable to be dismissed.

What I find, the petitioner, challenging the cancellation of her appointment / engagement brought the second writ petition being WP No.34425(W) of 2013. By order dated March 1, 2016 a coordinate Bench disposed of the writ petition by passing a writ of mandamus in terms of prayer (A) where by the order of cancellation of the petitioner's appointment of engagement was quashed. In compliance of this order, the District Project Officer, Sarva Shiksha Mission by his order dated May 12, 2016 passed the following direction:-

“As the Hon’ble Court has quashed the order dated 01.07.2013, this office in accordance with the court order dated 01.03.2016 approves the appointment of the petitioner Smt. Shashibala Pandey thus allowing her to function as an Additional Para Teacher in Sanghamitra Vidyalaya (H.S.) for the subject Hindi w.e.f. 24.02.2012 i.e. from the date of her first appointment.

As her post as an Additional Para Teacher in Sanghamitra Vidyalaya (H.S.) for the subject Hindi is approved by this office on 06.05.2016 (in accordance with the court order dated 01.03.2016) the school authority is therefore directed to issue her a fresh letter of appointment after the issuance of this letter. She will avail all financial benefits (remuneration/honorarium) from 24.02.2012 with retrospective effect.

Her monthly remuneration will be fixed @ Rs.7425/- per month from 24.02.2012 onward as she had joined her post after 01.06.2010 (as per the memo no. 257/Ac/PBSSM dated 30.07.2013). Her financial dues in terms of remuneration/honorarium from 24.02.2012 including her current remuneration will be cleared after the receipt of an attendance report (from 24.02.2012 to 30.04.2016) from the School authority.”

The order dated May 12, 2016 as above reveals that the petitioner has been allowed to function as an additional para-teacher in the aforesaid educational institute with effect from February 24, 2012, i.e. from the date of her initial appointment / engagement. The school authority was accordingly directed to issue a fresh letter of her appointment and it was directed therein that the petitioner would avail of all financial benefits (honorarium/remuneration) from February 24, 2012 with retrospective effect.

The order of the coordinate Bench and the order dated May 12, 2016 passed by the concerned authority in compliance of the order of the court unequivocally show that the petitioner was allowed to function as additional para-teacher (Hindi) in the said institute with effect from February 24, 2012. By the same order the District Project Officer also directed that the petitioner would avail all the financial benefits with effect from her initial appointment, i.e. on February 24, 2012.

Now, the question is whether the appointment / engagement of the petitioner as additional para-teacher (Hindi) with effect from February 24, 2012 in compliance with the court's order will be circumvented by the Government Orders dated 9th June 2010 and 10th October 2018 as referred to in the affidavit-in-opposition.

While the petitioner has been allowed to function as additional para-teacher (Hindi) with effect from February 24, 2012 and she has been functioning accordingly since then, I feel that getting all the financial benefits by her at par with other para-teachers cannot be discriminated in violation of the golden rule of equality as enshrined in Article 14 of the constitution.

Having heard learned counsels for the respective parties and on consideration of the court's order and all the relevant Government Orders, I am of the view that the petitioner is entitled to get all the financial benefits which are admissible to other para-teachers working in the school at enhanced rate as per the existing Government Orders.

In view of the above, the writ petition may be disposed of by passing the following order.

The concerned respondents are directed to pay the enhanced salary/honorarium to the petitioner at par with other para-teachers of a school as per the Government Orders by which the salary/honorarium of para-teachers has been enhanced.

The respondents are further directed to go on paying the current salary/honorarium to the petitioner immediately. They are also directed to pay off the arrear honorarium/salary including the arrear ex gratia to the petitioner within six weeks from the date of communication of this order.

The respondents shall also extend the benefit of provident fund contribution to the petitioner at par with other para-teachers.

It is made clear that the petitioner shall continue to serve till the age as available to other para-teachers.

With the aforesaid directions the writ petition stands disposed of.

No order as to costs.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

Certified copy of this order, if applied for, shall be made available to the parties.

[Rabindranath Samanta, J.]