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28.03.  
2023  
Ct. No.22

IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
Appellate Side

**WPA 8287 of 2022**

**Sarmistha Rana**  
**Vs**  
**The State of W. B. & Ors.**

**Mr. Debraj Bhattacharya**  
**Mr. Subhrojyoti Bhowmick**  
**Mr. Saikat Ghosh**  
**.....For the Petitioner**

**Mr. Raja Saha**  
**Ms. Tanusri Chanda**  
**.....For the Respondent No.3**

**Mr. Arjun Roy**  
**Ms. Saheli Chakraborty**  
**.....For the Respondent No.2**

Affidavit of service filed in court today is taken on record.

The writ petitioner is a para teacher. Presently she is working as a para teacher in **Sonamui Kadambini Balika Vidyalaya, Howrah.**

The appointment of the petitioner was caused for the post of para teacher pursuant to the direction of a Co-ordinate Bench made on **November 20, 2012** in a writ petition being **W. P. 17461 (W) of 2012.** The said previous writ petition was allowed by a Co-ordinate Bench with the following observation:

***Admittedly the petitioner was the third successful empanelled candidate. The first two candidates did***

*not accept the offer. Therefore, under the norms the petitioner was the next eligible candidate who should have been appointed. Though the school without approval had given appointment to the petitioner, in my view, in the light of the norms such appointment may be irregular but not illegal. Therefore, as the matter relates to appointment prior to 31<sup>st</sup> May, 2010 and as the name of the petitioner, who is qualified, appears in the panel, in my view the order dated 15<sup>th</sup> June, 2012 cannot be sustained and is, thus, set aside and quashed. The writ petition is allowed. Accordingly the respondent no.3 is directed to grant post facto sanction to the appointment of the petitioner and consequently the salary and/or honorarium shall be paid in accordance with law within eight weeks from the date of communication of this order.*

In terms of the direction made by the Co-ordinate Bench, the relevant office of the District Project Director by its communication dated **February 11, 2013, Annexure P-7 at page 52 to the writ petition** had regularized the appointment of

the petitioner at the said school. Since then the petitioner is working as such.

The grievance of the petitioner was that all the facilities and service benefits ought to have been granted to a para teacher was not granted to the petitioner. On this score the petitioner had filed several writ petitions which were disposed of directing the relevant authority to consider the case of the petitioner with reason.

The decision impugned in this writ petition is dated **November 20, 2017, Annexure P-11 at page 75 to the writ petition.**

On a scrutiny of the said impugned order passed by the respondent no.3 it appeared that the petitioner was not granted the 60 years of engagement benefit and she was not brought under the Employees' Provident Fund Scheme. The relevant observations from the said impugned order are set out below:

***“Clause (j): As per order of PBSSM vide memo no. 263/AC/PBSSM/2016 dated 19.07.2016 only those personnel [para teachers (Primary & Upper Primary, Shiksha Bandhus and Special Educators] who were on the roll on 01-06-2010 and got the benefit of 60 years and who have completed three years’ service as on 1<sup>st</sup>***

*June, 2016 after completion of 1<sup>st</sup> three years' service on 1<sup>st</sup> June, 2013 (counting from 1<sup>st</sup> June, 2010) will be eligible for such (5% of the consolidated remuneration) enhancement."*

*But since her date of joining as para teacher is after 01.06.2010, her increment has not been given effect.*

*"Clause (l): As per order of PBSSM vide memo no. 183/AC/PBSSM/Admn/26/2013 dated 21.07.2015, for implementation of Employees Provident Fund and Miscellaneous Provisions Act, 1952, in respect of Para Teachers, Shiksha Bandhus and other contractual employees under Paschim Banga Sarva Shiksha Mission who are engaged under contractual basis and will remain engaged till attainment of the age 60 years. Since Smt. Sarmistha Rana has not been given 60 years of engagement, she has not been brought under the Employees Provident Fund Scheme."*

The claims of the petitioner in the light whereof the said impugned order was passed are available **at page 75 of the writ petition** which is

quoted below:

- “In the representation dated 7<sup>th</sup> August, 2015 and 20<sup>th</sup> November, 2017 the petitioner Smt. Sarmistha Rana has claimed that:***
- 1. She is not getting 5% increment of salary.***
  - 2. She has not received 60 years’ engagement letter till date.***
  - 3. Her name has not been included in the list of Para Teachers for E. P. F.***

Mr. Arjun Roy, learned counsel appearing for the Respondent No.2 referring to **Annexure P-8 at page 56 to the writ petition** which is an Executive order dated **June 9, 2010** passed by the appropriate authority submitted that, in view of the provision made therein that no new engagement of para teacher or employees of any other category can be made after issuance of the said order, the benefit could not be granted to the petitioner and was rejected accordingly.

Ms. Tanushri Chanda, learned counsel appeared for the Respondent No.3.

Considering the submissions made on behalf of the parties and considering the materials on record, it appeared to this court that, the

appointment of the petitioner was regularized by virtue of an order dated **November 20, 2012, Annexure P-6 at page 44 to the writ petition**. After such regularization of the appointment of the petitioner she was allowed to carry out her job as para teacher and had received and still has been receiving her salary. The petitioner otherwise had an unblemished career record as a para teacher. The Executive order dated **June 9, 2010, Annexure P-8 at page 58 to the writ petition** was in existence when the said order was passed by the Co-ordinate Bench on **November 20, 2012** and the appointment of the petitioner was regularized. The State Authorities had also acted thereupon.

The said executive order dated June 09, 2010 was in existence when the coordinate bench passed its order dated November 20, 2012. The presumption of law is thus, the said executive order dated June 09, 2010 was considered and/or deemed to have been considered while passing the said order dated November 20, 2012 by the coordinate bench. The State authority had also accepted the said order dated November 20, 2012 and acted thereupon. For these reasons, the said executive order dated **June 09, 2010, Annexure P-8 at page 58 to the writ petition** cannot stand in the way for granting the service benefits relating to a para teacher to the petitioner

including **the 60 years benefit** with all its consequential effects.

In view of the above, the respondent no.3 is directed to grant and shall grant the petitioner the 60 year benefit with all other consequential benefits arising there from and thereunder forthwith without any further delay and shall communicate the same to the petitioner and the relevant school positively within a period of **two weeks** from the date of communication of this order.

The respondent no.3 and/or any other appropriate authority/authorities shall release all the arrears to the petitioner since the date of her regularization, i.e. **November 20, 2012** till disbursement taking into account the said 60 year benefit to the petitioner and shall pay the arrear to the petitioner positively within a period of **three months** from the date of communicating the petitioner by the respondent no.3 as directed above.

The respondent no.3 shall continue and go on to provide the petitioner all her service benefits taking into account the said 60 years benefit without any disruption in accordance with law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

On the above terms, this writ petition being  
**WPA 8287 of 2022** stands allowed, without any  
order as to costs.

**(Aniruddha Roy, J.)**