

252 17.11.2023
ML Ct. no.22
Sc

WPA 8209 OF 2014

Md. Jamal Haider

Vs.

The State of West Bengal & Ors.

Mr. Mahananda Ray

....For the Petitioner

Mr. Avishek Prasad

....For the State

Dr. Sutanu Kr. Patra

Mr. Kanak Kiran Bandyopadhyay.

....For the Respondent
Nos. 4 & 5

The petitioner was an aspirant and participated in the **5th Regional Level Selection Test (the 5th SLST)** held in **2004**. **The petitioner was an aspirant for the post of Assistant Teacher**. Initially, the petitioner's selection was denied. Such denial led the petitioner towards litigations before this Court. Previously, the writ litigation travelled up to the Hon'ble Division Bench of this Court and finally, the **Hon'ble Division Bench** by its **order dated September 7, 2007, Annexure-P2** to the writ petition **had granted relief to the petitioner** with the following observations:

"We have heard the learned Advocate of the respective parties and we have perused the relevant papers and documents, which are annexed to the paper book as well as furnished before us by the learned Advocates appearing for the respective parties. From the advertisement, it appears that the vacancies

were notified for appointment of teachers in the school as M1-4 and F1-2. This clearly indicates that for male candidates, there were four vacancies and for female candidates, there were two vacancies in the General Category. But the respondent authorities gave appointment to three male candidates and three female candidates, which was in violation of the advertisement published in the newspaper. We are of the view that the present appellant/**writ petitioner should have been included in the panel of 4(four) in male General category, which was not done by the respondent authorities. In such circumstances, we are of the view that the action of the respondent authorities was not at all justified.** Such selection was made not in accordance with the terms and conditions set out in the advertisement as referred to above.

Accordingly, we allow the appeal setting aside the order dated 21.11.06 passed by the learned Single Judge and direct the respondent authorities to recast the panel and to take steps for giving appointment to the appellant/**writ petitioner within a period of three months** from the date of communication of this order. The application for stay is also disposed of accordingly.

We make it clear that this order shall not be treated as precedence.

There will be no order as to costs.”

(emphasis supplied)

Being aggrieved by the said order passed by the Hon’ble Division Bench, the respondent nos. 4 and 5 preferred a Special Leave Petition before the Hon’ble

Supreme Court being **Special Leave Petition (C) No.3649/2008**. Subsequently, the said respondents on or about April 4, 2012 filed an application before the Hon'ble Supreme Court seeking permission to withdraw the said Special Leave Petition, **Annexure-P4** to the writ petition.

By an **order dated December 11, 2012** passed by the Hon'ble Supreme Court, **Annexure-P5** to the writ petition, the **Special Leave Petition was dismissed as withdrawn**. Thus, the decision of the Hon'ble Division Bench dated **September 7, 2007, Annexure-P2** to the writ petition stood crystallized and became binding on the parties.

The respondent nos. 1 to 3 did not challenge the said decision of the Hon'ble Division Bench and on the contrary, had accepted the same.

Pursuant to and in terms of the direction made by the Hon'ble Division Bench on **September 7, 2007** the **respondent no. 5 issued the recommendation on January 29, 2013** for appointment of the petitioner for the post of Assistant Teacher at **Shibpur Urdu New Set Up Upper Primary School** (for short the said school), **Annexure-P6** to the writ petition. Following the said recommendation of the respondent no.5 and in terms thereof, the school issued the **Appointment Letter dated February 14, 2013, Annexure-P7 to the writ petition** in favour of the petitioner. The necessary **Approval**

Letter for appointment of the petitioner with effect from **February 26, 2013** was issued by the respondent no.3 on May 27, 2013, **Annexure-P8** to the writ petition.

Mr. Mahananda Ray, learned counsel for the petitioner submits that, since his appointment, as stated above, the petitioner is working as an Assistant Teacher at the said school. The petitioner now claims **notional benefit** with effect from January 16, 2008 as claimed in **prayer '(a)'** to the writ petition.

Dr. Sutanu Kr. Patra, learned counsel appearing for the respondent nos. 4 and 5 submits that, in the facts and circumstances of this case, his clients have no role to play any further as the claim on account of notional benefit, whether to be granted or not, is the issue between the petitioner and the State respondents. The moment recommendation is made for appointment, the job of the respondent nos. 4 and 5 stood complete. Accordingly, the respondent nos. 4 and 5 have not filed any report in the form of affidavit as previously directed by this Court.

Mr. Avishek Prasad, learned State counsel appearing for the respondent nos. 1 to 3 drew attention of this Court on the statements made in the report in the form of an affidavit filed on behalf of the respondent no.2, affirmed on July 26, 2023. He relied strongly upon the following paragraphs from the said report :

“6. The relevant Regional Level Selection Process was conducted by the West Bengal

Regional School Service Commission, Southern Region in the year 2004. So the West Bengal School Service Commission is the competent authority to explain the conduct of the Commission regarding the selection and recommendation of the petitioner made in the year 2013 to the post of assistant teacher in Shibpur Urdu New Set Up Upper Primary School for English under Urdu medium.

7. After, appointment in the school, the petitioner became entitled for salary and other service benefits. In existing Govt. Orders, Rules etc., there is no provision to allow any financial benefit to an approved employee of a school, in any manner, from any date prior to the date of his/her joining in service. Therefore, as per existing Govt. Orders, Rules etc., the petitioner cannot get any financial benefit, in any manner, from any date prior to his joining in service as Assistant Teacher in the aforesaid school. Therefore, he is not entitled for any financial benefit (notional benefit or cash benefit), in any manner, prior to the date 26.02.2013.

8. It is established principles of service jurisprudence that the length of service is calculated on the basis of actual work rendered by an employee. It is an admitted fact that the petitioner did not render any service for the period for which the petitioner is claiming the benefit of seniority. Mere selection or any delayed selection by the said School Service Commission cannot make any right to the petitioner for appointment having any retrospective effect. Thus the petitioner cannot claim the notional benefit as a matter of right.”

Relying upon the said report Mr. Prasad submits that, the direction of the Division Bench was prospective in nature and the petitioner is entitled to receive whatever employment benefits in accordance with law on and from the date of Letter of Appointment issued by the school dated February 14, 2013 and not before that. He further submits that, in giving appointment even if any delay has occurred, the same had not occurred due to any laches on the part of the State respondents. He further submits that, the period for which the petitioner has not actually worked, no financial benefit can be granted to the petitioner.

After considering the submissions made on behalf of the parties and upon perusal of the materials on record, it appears to this Court that, the Hon'ble Division Bench in its said **order dated September 7, 2007** had specifically held that, **the petitioner should have been included in the panel of the relevant RLST and the exclusion of the petitioner was totally unjustified and unlawful.** The Special Leave Petition which was carried out by the respondent nos. 4 and 5 was **subsequently withdrawn** by them. The State respondents did not carry out any Special Leave Petition. Thus, the said order of the Hon'ble Division Bench and its **direction dated September 7, 2007 has attained its finality and is binding upon the parties.** The **period between September 7, 2007 and February 14, 2013,**

when the Appointment Letter was issued, was the ***period of pendency*** of the Special Leave Petition which was subsequently withdrawn. Had the said Special Leave Petition not been preferred by the respondent nos. 4 and 5 then, automatically, the appointment ought to have been granted to the petitioner immediately after the said order of the Division Bench as directed therein.

The stand taken by the State as would be evident from its affidavit report, quoted above, ***cannot be accepted by this Court***, as after withdrawal of the Special Leave Petition, the direction of the Hon'ble Division Bench stood crystalised and final with effect from January, 2008 as directed in the said order of the Hon'ble Division Bench dated September 7, 2007. The argument of the learned counsel for the State that, no notional benefit can be granted to the petitioner for the period prior to receiving his Appointment Letter ***cannot sustain in law***.

To receive the receivable by an employee out of his own employment is the exclusive right of the employee. To receive such benefits is the legal right of an employee. Such right cannot be taken away or forfeited without due process of law. In the fact of this case, the Hon'ble Division Bench has adjudicated upon the right of the petitioner and held that the denial of appointment to the petitioner in the relevant **RLST** was unjustified and wrongful and as such the State employer was directed to

give an immediate appointment to the petitioner. After withdrawal of the special leave petition the said decision of Hon'ble Division Bench has fructified and achieved its finality. Notional consequential benefits, meaning thereby the petitioner will be given the benefit of seniority and fixation of his pay following the direction of the Hon'ble Division Bench. Not granting appointment under the said relevant **RLST** after being declared by the Hon'ble Division Bench unjustified and unlawful, the petitioner must be given notional benefit from the period immediately after the right of the petitioner was adjudicated upon by the Hon'ble Division Bench and upon such right being accrued in favour of the petitioner in terms of the adjudication made by the Hon'ble Division Bench. The petitioner is thus, eligible and entitled to **notional** fixation of pay from his appointment, as directed by the Hon'ble Division Bench. The petitioner is entitled to all consequential benefits such as seniority, increment, pay fixation but on **notional**, basis.

In the fact situation of this case, this Court is of the firm view that, ***the petitioner is eligible and entitled to receive notional benefit from the date as claimed in prayer 'a' to the writ petition.***

The respondent no.3 is directed to give all notional benefits in every respect including the increments, if any, and pay fixation strictly in accordance with law to which the petitioner is eligible to receive out of his employment

on and from January 16, 2008 and all the retirement benefit of the petitioner shall also be calculated and paid to the petitioner accordingly immediately after his retirement.

With the above observations and directions this writ petition, **WPA 8209 of 2014** stands ***allowed***, without any order as to costs.

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

(Aniruddha Roy, J.)