

05. 10.10.2023
bd. Ct.15

WPA 7239 of 2016
IA No. CAN 1 of 2023

Sri Bibhash Chandra Ghosh

-vs-

State of West Bengal & Ors.

Ms. Pompey Bose

Mr. Abhijit Sarkar

Mr. Raja Biswas ... for the petitioner.

Mr. Rajarshi Basu

Mr. Sanjib Dutta ... for the State

Petitioner participated in the selection process for appointment of Sahayak in the district of Nadia. It has been submitted by Ms. Bose, learned advocate representing the petitioner that the selection process was initiated in the year 2007. However, petitioner was found ineligible to be appointed taking into account the marks awarded in the selection process. Petitioner initially obtained 44.5 marks in the selection process for being appointed as Sahayak. Subsequently, marks of the petitioner was considered by the District Magistrate and vide order dated 21st May, 2014 petitioner's marks was enhanced from 44.5 to 56.5 still petitioner was found not eligible since cut off marks for OBC category candidates for being engaged as Sahayak was fixed at 58.5 marks which led the petitioner to approach the examining body for supply of answer script of the written examination by making an application under Right to Information Act. Subsequently, answer script of the petitioner was supplied and it was found that petitioner was entitled to receive more marks which was not awarded by the examiner and on request

being made to the examining body ultimately marks were enhanced which took the aggregate marks of the petitioner to 62.5.

It has been submitted on behalf of the petitioner that the authorities found him to be within the zone of consideration based on the marks which was enhanced to 62.5 and vide appointment letter dated 19th January, 2015 petitioner was engaged as Sahayak. It is the contention of the petitioner that since there was no fault attributable to the petitioner for not being engaged in the year 2007 as examining authority failed to award appropriate marks to the petitioner, the petitioner is entitled to get the benefit of his service as Sahayak from the date when other similarly circumstanced candidates were appointed as Sahayak in the year 2008. It is also contended that principle of no work no pay would not apply in the present case since petitioner was willing to discharge his duty as Sahayak but due to conduct of the respondent authorities he was not permitted to work as such. Therefore, prayer is made for release of actual service benefits from the date when similarly circumstanced candidates were appointed in the post of Sahayak on the basis of the selection process which was initiated vide memo dated 20th June, 2007.

Learned advocate representing the State respondents has filed an affidavit, which was affirmed on 10th October, 2023 by the District Panchayat and Rural Development Officer, Nadia, and the same is taken on record.

Attention of this Court has been drawn to the statement made in paragraphs 4,5 and 6 of the affidavit wherefrom it appears that pursuant to a notification dated 20th June, 2007 a selection process for engagement of Sahayak was initiated and on completion of said selection process 124 candidates were empanelled based on merit for being engaged as Sahayak. Out of these 124 candidates it has been averred that 81 candidates were appointed as Sahayak vide memo dated 4th June, 2008 and the said memo is annexed at page 5 onwards to the said affidavit. The rest 53 candidates were appointed on different dates as it has been stated in paragraph 6 on completion of formalities but the dates of appointment of those 53 candidates have not been disclosed in the affidavit.

Learned advocate representing the State respondents has made an endeavour to substantiate the stand of the State respondents in the matter of engagement of petitioner as Sahayak. It has been submitted that initially petitioner was awarded 44.5 marks which kept the petitioner outside the zone of consideration as a result whereof contemporaneously petitioner could not be appointed as Sahayak. Therefore it has been submitted that there is no discrepancy in the matter of engagement of the petitioner vide appointment letter dated 19th January, 2015 and petitioner is not entitled to receive past service benefits since subsequently marks of the petitioner was enhanced based on which petitioner got appointment.

Having considered the submissions made on behalf of the parties and on perusal of the materials available on record and the affidavit which has been filed on behalf of State respondents today it appears that initially marks which petitioner obtained was 44.5 and thereafter such marks of the petitioner was substantially enhanced in two phases which took the total marks of the petitioner to 62.5. It is an admitted position that cut off marks which was fixed for OBC category candidate was 58.5. Therefore, it appears that there was failure on the part of the examining body to award appropriate marks to the petitioner contemporaneously which resulted in appointment of the petitioner vide letter dated 19th January, 2015 whereas similarly circumstanced other empanelled candidates got appointment vide memo dated 4th June, 2008 as it has been disclosed in paragraph 5 of the affidavit which has been filed today. If the petitioner would have been appointed just after publication of merit list in that event petitioner got the appointment in the year 2008 along with other 124 empanelled candidates. The reason of delay in appointing petitioner as Sahayak is not attributable to the petitioner but it was due to inability of the examining body to award appropriate marks. There was delay of approximately seven years in appointing the petitioner. Therefore petitioner is entitled to receive notional benefits of his service which is to be reckoned from 1st January, 2009 and the pay of the petitioner shall be fixed by the concerned respondent authorities taking into account the date of granting notional benefit with effect from 1st January, 2009. It is also made clear

that for computation of other service benefits including pension the service of the petitioner shall be deemed from 1st January, 2009 not from the date of engagement of the petitioner in the year 2015.

The concerned respondent authorities are directed to take necessary steps for consolidation of service benefits of the petitioner including pay fixation upon reckoning service of the petitioner with effect from 1st January, 2009 on notional basis within a period of eight weeks from the date of communication of this order and release the enhanced benefits within four weeks thereafter.

With the aforesaid direction the writ petition stands disposed of. Application, if any pending also stands disposed of.

However, there shall be no order as to costs.

The writ petition being WPA 24644 of 2014 be detached and be sent down to the department.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)