

06 19.9.2023
Sc Ct. no.22

WPA 7469 OF 2016

Satyanarayan Agarwal

Vs.

State of West Bengal & Ors.

Mr. Manish Sen

...For the Petitioner

Mr. Pinaki Bhattacharyya

Mr. Sandip Chattopadhyay.

...For the Respondent

Nos. 1, 3 & 4

The previous order speaks for itself.

Today, the writ petition appears under the heading
“For Dismissal”.

Both the parties are present today and agreed to proceed with the writ petition for its hearing and disposal. Accordingly, the writ petition is taken up for consideration and its disposal.

The petitioner was an Assistant Teacher at one **Aruar B.M.D.P. Institution (Secondary), District – now Purba Burdwan** (for short the school).

The petitioner contends that, the petitioner was **prevented from attending the school for a period of more than three years**. The facts in detail are no more relevant to be discussed any further as on the given sets of facts the right of the petitioner has already been adjudicated in the previous writ petition being **C.O. 1145 (W) of 1988**. Series of orders were passed dated **December 1, 2004 at page 37** to the writ petition,

February 26, 2014 at page 39 to the writ petition, **March 5, 2014 at page 41** to the writ petition, **April 2, 2014 at page 42** to the writ petition and finally the order dated **April 9, 2014 at page 44** to the writ petition. By the said order dated **April 9, 2014** the **writ petition was allowed** by a coordinate Bench with the following finding :

“In the facts and circumstances stated above, this Court finds that the writ petitioner was prevented from joining his service in the absence of any termination proceedings. The petitioner also cannot be held to have been away for a continuous period of 5 years on leave for it to be held to be deemed that he had resigned from his service.

In the premises, the petitioner is entitled to get back wages from the time when the petitioner was prevented from joining his service till his retirement at the age of 60 years i.e. 30th June 2004, in the revised scale, as prayed for by prayer (g) of the amended writ petition being CAN 6661 of 2004.

The concerned respondents are directed to consider and dispose of the claim of the writ petitioner for his back wages in the revised scale from the date he was prevented from joining his service till his retirement, as aforesaid, upon satisfaction that the petitioner had not been employed elsewhere during that time, by giving him opportunity of being heard. Such consideration and disbursement, if found to be made, to the petitioner, must all be made within a period of six weeks from the date of communication of this order.

The writ petition is allowed.

The connected applications, if not disposed of, are deemed to be disposed of by this order.”

Mr. Pinaki Bhattacharya, learned State advocate appears for the respondent nos. 1, 3 and 4.

None appears for the rest of the respondents.

Pursuant to the direction made by the coordinate Bench while allowing the writ petition on **April 9, 2014**, the jurisdictional District Inspector of Schools then being the respondent no.4 in the previous writ petition was directed to take a decision in the light of the specific finding made in the said order dated **April 9, 2014**.

The jurisdictional District Inspector of Schools (S.E.), Burdwan (for short the D.I.) passed its **reasoned order dated February 24, 2015, Annexure-P4 at page 53** to the writ petition. The claim of the petitioner was rejected with the following observations :

“On 12/11/2014 petitioner Sri Satyanarayan Agarwal, the Headmaster of the school, Sri Bishnupada Sinha were present at the chamber of the District Inspector of Schools (Secondary Education), Burdwan to attend the hearing.

petitioner claimed that he was an assistant teacher of Aruar B.M.D.P. Institution, P.O. Aruar, Dist. Burdwan with effect from 07/04/61 and continued his service up to 01/11/1984. Then he fell sick with effect from 02/11/1981 and was confined to bed till 29/09/83. On 30/09/83 the petitioner joined at his post and continued his service up to January, 86 and drawn his salary. He stated that he had again fallen sick. After full recovery on October, 1987 petitioner went to join the school but he was prevented to join by the school authority.

Petitioner also submitted he did not take any steps against he school. He submitted the copy of annexure ‘A’ page No.12 and 13 as his claim for prayer for joining to the authority concerned.

The Headmaster of Aruar B.M.D.P. Institution stated that no action was taken by the school authority for long absence of the petitioner except a letter was issued to the secretary, West Bengal Board of Secondary Education vide no. 2223 dtd. 25/01/1982. He submitted a copy of letter dated 25/01/1982.

It is found on verification that –

On and from 04/04/75 to 30/04/84 Sri Agarwal was regularly absent at the school except 22nd 24th May, in the year 1975,

16th June, 1975

29th April 1977

August, 1981 .. 9 days

September, 1981 .. 4 days

October, 1981 .. 1 day

November, 1981.. 1 day

School authority submitted a prayer for sanction of special leave in favour of Sri Satyanarayan Agarwal to the Secretary, West Bengal Board of Secondary Education vide their letter No.2223 dated 25/01/1982.

But no reply has yet been received by the school. Petitioner joined at school on 30/09/1983 and served upto January ‘86. Afterwards the petitioner remained absent without any intimation.

(ii) Petitioner claimed that he did not take any action against the school authority regarding his so called prevention to join at his post of assistant teacher. Even he did not prayed for any relief to any authority for consideration of his case. The document submitted by the petitioner as Annexure ‘A’ page No.12 & 13 is not acceptable as these are not signed by the petitioner and receipt copies.

(iii) Petitioner was asked to submit copies of voter Identity Card, Pan Card and copies of Income Tax return for the year 1981 to 2004 for verification of his employment elsewhere as per Hon’ble Court’s order.

But he did not submit the documents except voter Identity Card.

(iv) The absence periods with effect from 04/04/75 to 30/06/2004 is not settled by the West Bengal Board of Secondary Education who is the authority concerned this regard. As the petitioner as well as the school authority did not take any action regarding the settlement of the absence period to the West Bengal Board of Secondary Education who is the authority to settle the matter, no relief can be granted in favour of the petitioner.

Thus the matter is disposed of.”

The said reasoned order dated **February 24, 2015**

has been assailed through this writ petition and the

consequential relief has been claimed for making payment to the petitioner in prayer (b) to the writ petition.

Mr. Manish Sen, learned counsel appearing for the petitioner referring to the said order dated **April 9, 2014** submits that, after considering everything and all the facts and after considering the argument made on behalf of both the school authorities and the State respondents, the **order was passed by the coordinate Bench with a specific finding** as quoted above to the effect that, **the petitioner must be paid with all back wages.** Referring to the impugned reasoned order dated **February 24, 2015** Mr. Sen submits that, despite the said specific finding being there in the order of the coordinate Bench dated **April 9, 2014**, the D.I. in clear deviation thereof has given its own finding and proceeded thoroughly in an erroneous and illegal manner while rejecting the claim of the petitioner. The D.I. had no authority to deviate from the direction of the coordinate Bench.

Learned counsel further submits that the **coordinate Bench decision was never carried into in any appeal and the same still remains in force and binds the parties.** Mr. Sen also submits that the finding of the D.I. and the observations made by him in the impugned order is thoroughly immaterial and irrelevant in the light of the finding of the coordinate Bench dated **April 9, 2014.**

Mr. Pinaki Bhattacharyya, learned State counsel has confirmed that the said order dated **April 9, 2014** was never carried into in any appeal. He further submits that, ***unless the unauthorised absence of the petitioner, as mentioned in the impugned order, is regularised by the respondent no.2, the D.I. had no authority to direct any payment to be made to the petitioner for such period of unauthorised absence of the petitioner.*** Accordingly, he submits that, ***there is no error in the impugned order dated February 24, 2015 and the same was passed in accordance with law.***

After considering the rival contentions of the parties and upon perusal of the materials-on-record this Court is convinced that, ***since there is no appeal carried out from the order dated April 9, 2014, the order binds the parties and the order is operative on the issue. The D.I. cannot and could not deviate therefrom.***

The coordinate Bench has made a ***specific finding*** to the effect that, the ***petitioner is allowed to get back wages from the time when the petitioner was prevented from joining his service till his retirement at the age of 60 years, i.e., June 30, 2004 in the revised scale*** as prayed for by the petitioner.

Accordingly, ***a specific direction was made upon the respondents to dispose of the claim of the petitioner for his back wages in the revised scale***

from the date he was prevented from joining his service till his retirement upon satisfaction that the petitioner had not been employed elsewhere during that period. The said finding of the coordinate Bench clearly makes it evident that, the ***D.I. could only travel to the extent to arrive at his satisfaction that, during the period for which the petitioner was directed to pay his back wages, he had not been employed elsewhere and not beyond that.***

In exercise of jurisdiction in judicial review under Article 226 of the Constitution of India, the constitutional court has a very limited authority and jurisdiction to assess the impugned order. The writ Court will ***only*** look into the ***infirmary in the decision making process of the deciding authority*** and ***whether there is any glaring perversity on the face of the impugned order.***

In the light of the said settled principle of law, this Court proceeds to scrutinize the said impugned order dated February 24, 2015 and in course of such scrutiny, this Court finds that, ***the D.I. had travelled beyond the authority fixed by the coordinate Bench in its order dated April 9, 2014*** as would be evident from the observation and finding of the D.I. as quoted above.

The ***specific direction of the coordinate Bench was to pay back wages to the petitioner for the relevant period unless the petitioner was found to have been employed in another employment.***

There is ***no finding by the D.I. that, the petitioner was employed in any other employment.*** The order and the finding of the coordinate Bench dated ***April 9, 2014 has arrived at its finality and binds the parties.*** The D.I., thus, has ***acted erroneously*** while passing his impugned order ***by travelling beyond the scope of his authority fixed by the coordinate Bench.***

The impugned ***order dated February 24, 2015,*** therefore, ***suffers from serious infirmity and the perversity is clear on the face of it.***

In view of the foregoing reasons and discussions, the ***impugned order dated February 24, 2015, Annexure-P4 at page 54*** to the writ petition ***stands set aside and quashed.***

The respondent nos. 5 and 6 ***positively*** within a period of ***two weeks*** from the date of communication of this order by the advocate-on-record for the petitioner, shall produce all the records and documents pertaining to the petitioner before the jurisdictional D.I. being the ***D.I., Purba Burdwan.***

Upon receiving such records from the school authority, the ***jurisdictional D.I. then shall take all necessary steps to release the payment to the petitioner strictly in terms of the direction made by the coordinate Bench on April 9, 2014 at page 47 to the writ petition and send the necessary records and***

documents at the office of the respondent no.2 positively within a period of three weeks from the date of receiving the records from the school authority and then **shall transmit, communicate and send such sanction to the office of the jurisdictional D.I. positively within a period of three weeks** from the date of receiving the recommendation from the office of the jurisdictional D.I.

The **jurisdictional D.I., Purba Burdwan then shall disburse the payment to the petitioner** after obtaining the **bank account details from the petitioner positively within a period of two weeks** from the date of receiving the sanction from the respondent no.2.

It is further made clear that, since there being an order already passed on **April 9, 2014** in favour of the petitioner for making payment but the petitioner has not yet received such payment, this Court in exercise of its equitable jurisdiction **directs the jurisdictional D.I. to calculate while calculating the back wages of the petitioner and pay interest @ 6% per annum to the petitioner since April 10, 2014 till today, i.e., September 19, 2023.**

In view of the above, this writ petition, **WPA 7469 of 2016 stands allowed**, without any order as to costs.

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

(Aniruddha Roy, J.)