

28.04.2023

MAT 690 of 2017
With
CAN 1 of 2023
CAN 2 of 2023

State of West Bengal & Ors.
-Vs-
Swapan Kumar Sahu

Mr. Biswbrata Basu Mallick
Mr. Sanjib Das
Mr. Biman Halder

... for the appellants

Mr. Pijush Chaturvedi
Mr. Arindam Ghosh
Mr. Tapati Samanta

... for the respondents

Party/Parties is/are represented in the order of their
name/names as printed above in the cause title.

CAN 1 of 2023

The appellant files an application, being CAN 1 of
2023, for condonation of delay in preferring the instant
appeal.

Heard the parties.

Cause shown is found to be sufficient.

Delay stands accordingly condoned.

CAN 1 of 2023 stands thus **disposed of**.

The appeal along with its connected application be
now taken on board.

MAT 690 of 2017 with CAN 2 of 2023

Under challenge in this appeal is the final order of the

Hon'ble Single Bench dated 2nd June, 2016 in the writ petition being WPA 9788(W) of 2016.

By the said impugned order the Hon'ble Single Bench directed the regularisation of the service of the writ petitioner/the respondent no.1 to this appeal holding, *inter alia*, that the writ petitioner had served regularly as an Assistant Teacher of the School in issue for long. Therefore, the writ petitioner qualifies to be considered within the *Exception* carved out by Paragraph 53 of the judgment reported in [(2006) 4 SCC 1 (*State of Karnataka & Ors. -v- Umadevi & Ors.*)] .

Mr. Basu Mallick, Learned Senior Counsel appearing for the appellant/State of West Bengal, submits that the Hon'ble Single Bench failed to appreciate that the writ petitioner was never substantially appointed to the post of Assistant Teacher of the School-in-issue.

It is pointed out that the writ petitioner relies upon the resolutions of the Managing Committee of the School-in-issue expressing their intention to appoint the writ petitioner as an Assistant Teacher of the School-in-issue in view of the higher academic qualifications attained by the writ petitioner during his service as a Clerk of the School-in-issue.

Mr. Mallick further points out that even assuming that the services of the writ petitioner can be regularised in the School-in-issue under the then applicable legal provisions which permitted the Managing Committee to appoint the writ petitioner as an Assistant Teacher upon approval of the

concerned District Inspector of Schools (D.I.), the writ petitioner has been unable to produce any document disclosing his substantial appointment by the Managing Committee of the School-in-issue to the post of an Assistant Teacher upon attainment of the higher qualifications.

It is finally submitted that the writ petitioner was only substantially appointed as a Clerk of the School-in-issue and such fact has been disclosed by the Staff Pattern of the School-in-issue.

Per contra, Mr. Chaturvedi, Learned Senior Counsel appearing for the respondent no.1/the writ petitioner, takes this Court to the several documents which were originally part of the writ petition and now part of the Stay application being CAN 2 of 2023 filed by the appellant in connection with this appeal.

From the documents, it is purported to be demonstrated before this Court that the Managing Committee time and again adopted resolutions indicating their desire to appoint the writ petitioner as an Assistant Teacher against a future vacancy of the School-in-issue in view of the higher qualifications attained by the writ petitioner.

It is also sought to be demonstrated before this Court that the Class Routine of the School-in-issue shows that the writ petitioner was allotted classes.

Mr. Chaturvedi also relies upon the decisions reported in (2015) 8 SCC 265 (*Amkant Rai Vs- State of Bihar & Ors.*) at paragraph 10; Law (SC) 2010 829 (*State of Karnataka -Vs-*

M. L. Kesari) at paragraph 6.

It is sought to be argued that *Umadevi* recognises the position that as a one time measure the list of casual and/or daily wages and/or ad hoc employees who are working for more than 10 years without intervention of Courts or Tribunals and such casual and/or daily-wages and/or ad hoc employees who are working against vacant/sanctioned post, can be allowed regularisation of their services.

It is also submitted that the law recognises that in the event the services of such ad hoc and/or daily wages and/or casual employees have been utilised by the employer/State for more than 10 years, as necessary, their services have to be regularised by the employer.

Having heard the parties and closely considering the materials placed, we find sufficient force in the stand of the appellant that the writ petitioner was never substantially appointed as an Assistant Teacher of the School-in-issue, even applying the law prevalent at the material point of time which permitted the Managing Committee of the School-in-issue to make such appointment with the approval of the D.I. of Schools.

To the mind of this Court, the materials produced only disclose the intention of the Managing Committee of the School-in-issue and the D.I. of School in issue to appoint the writ petitioner as an Assistant Teacher of the School, in the event future sanctioned vacancies arose.

To the further mind of this Court, such repeated

expressions of intention are not automatically transformed into a substantial appointment, unless such appointment is formalised by the Managing Committee with the approval of the D.I.

Furthermore, the Staff Pattern of the School-in-issue, as produced before this Court, discloses the writ petitioner to be in the non-teaching category.

For the reasons above, the Order impugned dated 2nd June, 2016 stands set aside.

MAT 690 of 2017 along with **CAN 2 of 2023** stand accordingly **allowed**.

Affidavit-of-service filed in Court today be retained with the record.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)