

18-04-2023
Item No.14
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction
Appellate Side

WPA No.10473 of 2015
Smt. Shefali Das

-vs-

The State of West Bengal & Ors.

with

CAN No.1 of 2016
(Old CAN No.11019 of 2016)

and

CAN No.2 of 2023

with

CPAN No.1551 of 2016

Mr. Indranil Roy
Mr. Sunit Kumar Roy ...for the petitioner

Mr. Sarwar Jahan
Ms. Mousumi Mitra
Mr. Asif Mehdi
Mr. S.N. Thander ...for respondent no.3

The petitioner states that in response to an advertisement made by the managing committee of Paikbar Sishu Siksha Kendra (SSK) inviting applications from the eligible candidates to engage a Sahayika, she applied for the same. After the interview was conducted by the managing committee of the said SSK, a panel was prepared and her name figured as the first candidate. The petitioner complains that though she was empanelled as the first candidate, the authority concerned did not engage her as Sahayika in the Siksha Kendra. As against such action of the State authority she preferred a writ petition being WP No.11074(W) of 2010 seeking direction upon the concerned authority to engage her as Sahayika. By an order dated June 16, 2010, a learned single Judge of this court disposed of the writ petition directing the

concerned respondents to take necessary action regarding engagement of the petitioner in accordance with law. Ultimately, the concerned authority engaged her as Sahayika in the Shiksha Kendra. Though the petitioner was engaged as Sahayika and discharged her duties, but no honorarium was paid to her. Feeling aggrieved by such act on the part of the concerned authority, the petitioner by filing a writ petition being WP No.7301(W) of 2011 as second round of litigation sought direction upon the concerned respondents to release her unpaid honorarium from July 12, 2010 to May 30, 2011.

The petitioner states that assailing the order dated November 2, 2011 passed by a learned single Bench in WP No.7301(W) of 2011, the State and the Panchayat Samiti preferred two separate mandamus appeals before the Division Bench which were dismissed being barred by limitation and as withdrawn. Thereafter, the authority concerned released the unpaid honorarium to the petitioner. But, again the authority concerned stopped disbursing the honorarium to her.

After the order dated November 2, 2011 was passed in WP No.7301(W) of 2011, the Sub-Divisional Officer, Kharagpur took a hearing of the petitioner and all the concerned persons. By an order dated March 17, 2015, the SDO held that since the entire process of engagement of the petitioner was not in order, the question of payment of honorarium both outstanding and current did not arise.

Challenging the decision of the SDO, the petitioner again by way of a third-round litigation approached this court by filing this writ petition seeks that the impugned order dated March 17, 2015 be quashed and the honorarium which is due to her be disbursed to her.

By an order dated June 10, 2016 passed by this court in this writ petition, the operation of the impugned order dated March 17, 2015 of the SDO was stayed and the respondents were directed to disburse the unpaid honorarium to the petitioner for the period from April 2015.

In a report in the form of affidavit filed by the Paschim Banga Rajya Sishu Siksha Mission in connection with CPAN No.1551 of 2016, this answering respondent states that since the engagement of the petitioner was not approved by the Panchayat Samiti, her engagement as Sahayika is illegal ab initio. However, the respondent states that it disbursed the honorarium to the tune of Rs.1,32,966/- to the petitioner for the period from April 2015 to February 2017. Besides, it disbursed the honorarium of Rs.57,420/- to her on January 30, 2015 for the period from July 2010 to May 2011. It is the contention of the answering respondent that since the engagement of the petitioner is vitiated with illegality, she is not entitled to get any honorarium.

Admittedly, the petitioner by preferring the writ petition being WP No.11074(W) of 2010 sought for a direction that she be engaged as Sahayika in the aforesaid SSK. It appears from the order dated June 16, 2010 that the concerned respondents (respondents no.11 and 13) were directed to take action regarding engagement of the petitioner in accordance with law. Undisputedly, in compliance with the order passed by this court in the aforesaid writ petition, the petitioner was engaged as a Sahayika, but no honorarium was paid to her. Again, by an order dated November 2, 2011 passed in WP No.7301(W) of 2011, the concerned respondents were

directed to release the unpaid honorarium to the petitioner within a stipulated period. Interestingly, instead of releasing the disbursement in compliance with the order, the SDO after conducting a hearing made the impugned order saying that since the entire process of engagement of the petitioner was not in order, the question of payment of honorarium to her did not arise. Challenging this order, this writ petition has been filed.

By an order dated June 10, 2016 passed in this writ petition, the operation of the impugned order dated March 17, 2015 has been stayed and the concerned authority was directed to disburse the current honorarium to the petitioner admissible to her.

Now, the question which falls for determination is whether the impugned order dated March 17, 2015 passed by the SDO is tenable in law.

The authority concerned engaged the petitioner as a Sahayika in the SSK in compliance with the order dated June 16, 2010 passed in WP No.11074(W) of 2010. Since no honorarium was paid to her, the petitioner approached this court by filing WP No.7301(W) of 2011. As I find, this court after hearing both sides directed the respondent concerned to release the honorarium to the petitioner as admissible to her.

As stated above, the State and the Panchayat Samiti preferred two appeals against the order dated June 16, 2010 which were dismissed – one barred by limitation and another as withdrawn. Therefore, the order dated November 2, 2011 passed by this court has attained finality.

What I find, while the petitioner presented her case before the learned single Bench, no contention was raised on behalf of the State challenging the engagement of the petitioner as illegal. Since the State omitted to ventilate this issue before the coordinate Bench, the State is now barred by the principle of constructive res judicata to raise this issue before this Bench. However, since the appeals of the respondents were dismissed, the order dated November 2, 2011 has attained finality. Therefore, viewed from all aspects of the matter, the State is now estopped from raising the plea that the engagement of the petitioner is illegal ab initio.

Learned single Judge while passing the order dated November 2, 2011, never directed the SDO to consider the claim of the petitioner giving an opportunity of hearing to her. But, going far beyond the periphery of the order, SDO passed the impugned order whimsically and arbitrary holding that the engagement of the petitioner was not in order and she was not entitled to get any honorarium.

Having heard learned counsels for the respective parties and in view of the observations as above, I find that the impugned order dated March 17, 2015 passed by the SDO, Kharagpur is vitiated with illegality and the order is liable to be quashed.

Since the petitioner has been engaged as Sahayika in compliance with the order of this court, her engagement cannot be questioned by the authority concerned.

In view of the above, the writ petition is disposed of by the following order.

The order dated March 17, 2015 passed by the

Sub-Divisional Officer, Kharagpur, Paschim Medinipur is hereby quashed.

The respondents concerned are directed to disburse the honorarium to the petitioner which is payable to her after adjustment, within six weeks from the date of communication of this order.

All connected pending applications, if any, are disposed of. No order as to costs.

All parties are to act on the server copy of this order, duly downloaded from the official website of this court.

Certified copy of this order, if applied for, shall be made available to the parties.

[Rabindranath Samanta, J.]

