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WPA 13647 of 2021

Kartick Mal
Vs.
The State of West Bengal & Ors.

Mr. Victor Chatterjee
Mr. Bornamoy Basak
... For the petitioner.

Mr. Sambuddha Datta
Mr. Shamit Dutta
... For respondent no. 6.

Mr. Subhrangsu Panda
Ms. Mithu Singh Mahapatra
... For respondent no. 4.

Mr. Anil Kr. Gupta
... For UGC.

The matter has been called on several earlier occasions. As usual, the State is not represented even today.

The petitioner was appointed to the post of Laboratory Attendant at Maheshtala College, Kolkata on April 10, 2000.

It appears that the governing body of the college resolved to form a selection committee for the purpose of filling up a Group-D post of Physics Laboratory Assistant in the year 2000. On February 02, 2000, the college made a requisition before the concerned employment exchange for sponsoring the names of the eligible candidates to fill up the said post. The

post was kept reserved for a Schedule Caste candidate.

In addition to that, the college also published an advertisement inviting applications from the eligible candidates for filling up the said post.

The name of the petitioner was not sponsored by the employment exchange, but he made an application following the advertisement published in the newspaper. Accordingly, the petitioner was allowed to participate in the selection process along with the candidates sponsored by the employment exchange.

On April 07, 2000, a panel was prepared by the selection committee for the said post and the petitioner figured at no. 1 position in the said panel.

The college on April 10, 2000 issued an appointment letter to the petitioner and the petitioner joined his duty on April 12, 2000. Thereafter, the college by a letter dated April 17, 2000 sought approval of fixation of pay of the petitioner from the Director of Public Instruction, West Bengal.

By the impugned order dated September 21, 2020, the Director of Public Instruction, West Bengal declined to approve the pay of the petitioner to the post of Laboratory Attendant.

It appears that the writ petitioner approached this Court on earlier occasion by filing a writ petition

[W.P. 16231 (W) of 2008] on which the following orders were passed by a Co-ordinate Bench on December 09, 2019.

“This petition has been pending since 2008. It is fairly submitted on behalf of the parties that the matter can be remanded to the Director of Public Instruction, Government of West Bengal, Higher Education Department being the respondent no. 3 herein to consider the case of the petitioner and adjudicate as to whether the petitioner is entitled to the approval of pay to the post of Library Attendant.

The aforesaid exercise is to be completed within a period of six weeks from the date of communication of this order.

It is needless to mention that the respondent no. 3 will give a right of hearing to the petitioner as well as all affected parties and pass a reasoned order in considering the case of the petitioner.”

Following the order, the Director of Public Instruction, West Bengal, by the order impugned rejected the claim of the petitioner for approval of his pay primarily on two grounds:

- (a) There was no prior sanction from the State for relevant post in question,*
- (b) In carrying out the recruitment process, the college authority made an advertisement in the newspaper inviting the application from the prospective candidates whereas at the material point of time the Government Order No. 830-Edn(CS)/10M- 47/95 dated October 31, 1995, provided for calling for the name from the Employment Exchange(s).*

In my view none of the grounds can be sustained.

The law related to the calling of names from the employment exchange has been settled by the Supreme Court long ago by the judgment reported at **(1996) 6 SCC 216 (Excise Superintendent, Malkapatnam, Krishna District – Andhr vs. K.B.N. Visweshwara Rao & Ors.)**. It was held that restricting the scope of employment amongst candidates sponsored by the employment exchanges violates the mandate of Article 14 of the Constitution of India. The Supreme Court held that in addition to the names sponsored by the employment exchange, an open advertisement should be made in newspapers inviting the applications from the eligible candidates to ensure fair play in public employment.

Therefore, it cannot be said that the college acted illegally in publishing the advertisement in newspaper inviting the applications from the prospective candidates for the post in question.

Regarding the non-sanction of the relevant post, the learned advocate for the college has referred to page 18 of the affidavit-in-opposition filed by the college.

It appears that by a letter dated Calcutta, December 03, 2000, the college was given the permission by the Department of Higher Education to

fill up the said post of Laboratory Attendant. From a close scrutiny it appears that though the date of the said letter was typed as December 03, 2000, the same was issued to the college only on January 03, 2000.

Therefore, the college initiated the process of selection after obtaining the permission.

Be that as it may, the fact remains that the petitioner was appointed against a sanctioned post.

In that view of the matter, the order of the Director of Public Instruction dated September 21, 2020 cannot be sustained.

The college admits that the petitioner was given appointment by the college way back on April 10, 2000 and since then he has been working to the said post without his legitimate pay.

In the aforesaid facts, this writ petition is disposed of giving a direction upon the Director of Public Instruction to approve the pay scale of the petitioner giving him the seniority from his date of joining service i.e., April 12, 2000 within two weeks from the date of communication of this order. The petitioner shall also be entitled to get 50% arrear salary as his back wages after adjusting the remuneration received from the college. Such payment should be made within two months from the date of communication of this order.

With the aforesaid directions, **WPA 13647 of 2021** is disposed of.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)