

03.04.2023

WPA 12762 of 2019

Court : 15
Item : 27
Matter : WPA
Status : DISMISSED
Bench ID : 265704
Transcriber: nandy

Sibupada Ghorui
Vs.
The State of West Bengal & Ors.

Mr. Malay Dhar, Advocate
Mr. Biswajit Sarkar, Advocate

.....for the Petitioner

The writ-petition is presented, inter alia, challenging the order dated October 16, 2012, whereby the concerned District Inspector of Schools (SE), Hooghly, spurned the prayer of the School Authority to approve the panel for appointment in the post of Group-D.

At the outset, having seen the date of the impugned order passed by the concerned District Inspector of Schools, this Court has made a query to the learned Advocate representing the petitioner on the maintainability of the writ-petition in view of the delay in approaching the Court by the petitioner in questioning the validity of the order which was passed by the District Inspector of Schools on October 16, 2012 whereas the present writ-petition has been instituted seven years after the order was passed by the District Inspector of Schools.

In answer to such query, Mr. Malay Dhar, learned Advocate representing the petitioner submits that a writ-petition being WPA 25270 of 2012 was taken out by the Teacher-in-charge of the School in question praying for cancellation of the decision of the District Inspector of Schools dated October 16, 2012. In the said writ-petition, the petitioner filed one application for impleadment as party being CAN 9544 of 2018 and the same was allowed on April 5, 2019 adding the present petitioner in that writ-petition as petitioner.

According to the petitioner, unfortunately the said writ-petition being WPA 25270 of 2012 was dismissed by a coordinate Bench vide order dated June 10, 2019 which triggered the present writ-petition. It is also contended on behalf of the petitioner that after the panel for appointment in the post of Group-D was prepared by the School Authority, he was allowed to function as a Group-D staff of the said School not on substantive basis. Therefore, such induction of the petitioner confers right upon the petitioner to approach this Court seeking issuance of mandamus upon the respondents to permit him to function as Group-D staff on substantive basis upon approval of the said panel on setting aside the impugned decision of the District Inspector of Schools dated October 16, 2012.

Having heard the learned Advocate representing the petitioner and on perusal of the materials-on-record, it appears that the District Inspector of Schools decided not to approve the panel which was prepared by the School Authority for appointment of Group-D staff on the basis of interview held on November 22, 2009 citing certain reasons. Such decision was taken by the concerned District Inspector of Schools vide memo dated October 16, 2012 whereas the present writ-petition has been instituted on July 10, 2019, nearly seven years after taking decision by the concerned District Inspector of Schools. While explaining the delay, it has been submitted that the petitioner took steps for being added as a party in the writ-petition filed by the Teacher-in-charge of School and eventually the petitioner was added as party in the writ-petition.

This Court cannot ignore the situation that it was not the writ-petition filed by the present petitioner but by the

Teacher-in-charge of the School challenging the decision of the District Inspector of Schools dated October 16, 2012. For vindication of the grievance of the petitioner, he was required to take independent legal steps being a candidate who stood second in the panel praying for giving effect to the panel prepared by the School Authority. Contemporaneous steps were required to be taken.

Moreover, it does not escape the notice of this Court the observation made by the coordinate Bench in the order dated June 10, 2019 which runs infra:-

“This writ petition is, therefore, dismissed with liberty to file afresh on the selfsame cause of action. Dismissal of this writ petition shall not be construed to be any reflection on the merits of the writ petition or any application for the addition of party which has been made herein and the same may be renewed in the fresh writ petition, if so advised.”

It appears that pursuant to the leave granted by the coordinate Bench at best present petitioner could file application for addition of party in connection with the writ-petition if the same would have been taken out by the petitioner in WPA 25270 of 2012 in terms of the order dated June 10, 2019. In absence of such writ-petition, benefit of restricted leave granted to the present writ-petitioner cannot be derived.

Today while considering the writ-petition, not a single document has been produced before this Court wherefrom it appears that the petitioner approached the State-respondents including the concerned District Inspector of Schools by making representations questioning the decision of the District Inspector of Schools dated October 16, 2012.

Discharging duty as an unapproved Group-D staff on the basis of a panel prepared by the School Authority which was not approved by the State-respondent does not confer right upon the petitioner to continue in the said post on substantive basis.

It has been succinctly decided by the Apex Court in ***Shiv Dass Vs. Union of India & Ors.*** reported in **2007 (9) SCC 274** in paragraph 10 that if the petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted if petition would have been filed within reasonable period of about three years.

Placing reliance upon the decision in **Shiv Dass** (supra), this Court finds that there is an inordinate delay on the part of the petitioner in instituting the present writ-petition questioning the order passed by the concerned District Inspector of Schools which was passed approximately seven years before.

Accordingly, the writ-petition stands dismissed. However, there shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)

