

Court No. 22
01.5.2023
(Item No. 83)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 16023 of 2017

Tapas Kumar Bhowmick
VS
The State of West Bengal & Ors.

Mr. B. N. Ray
Ms. Shetparna Ray
... for the petitioner
Ms. Chaitali Bhattacharya
Mr. Kartik Chandra Kapas
... for the State

This is a hearing matter after completion of affidavits.

The petitioner was initially appointed as an organizing Teacher at **Alipara Ambedkar Siksha Niketan Junior High School, District – 24 Parganas (South) (for short, the first school)** in the year 2019. The petitioner was not approved then. Claiming regularization of his appointment the petitioner filed a writ petition being **W.P. 27418 (W) of 2007** (for short, the previous writ petition). The said writ petition was allowed by a co-ordinate bench by its order dated **June 5, 2013** at **page 29** to the writ petition, with the following observation:-

“In my view, the Government Memorandum which was applicable at the relevant point of time being Memorandum No. 117-SE(S)/4A-50/93 dated 24th February, 1995 is clearly applicable and the writ petitioner is entitled to be absorbed.

*Accordingly, the concerned D.I. is directed to grant approval in favour of the writ petitioner and to give the petitioner regular appointment on and from **this date** when the matter is being disposed of.*

*The entire exercise should be completed within a period of six weeks **from date**.*

The writ petition is allowed.

There would be no order as to costs.”

Pursuant to the said direction of the co-ordinate bench it appeared from a memo dated **July 18, 2014** issued by the Jurisdictional District Inspector of Schools, the authority decided to accord the provisional approval in favour of the petitioner with effect from **June 5, 2013** and the final approval was decided to be given after scrutinizing and/or verification of testimonials of the petitioner and after carrying out the departmental formalities, **Annexure P-2 at page 31** to the writ petition.

The Jurisdictional District Inspector of Schools then by its **memo No. 332/APT dated December 6, 2017, Annexure R-4 at page 15** to the supplementary affidavit affirmed by the petitioner on December 22, 2020, issued the final approval in favour of the petitioner for appointment for the post of Assistant Teacher in Science Group mentioning the date of appointment as **November 28, 2017**.

The petitioner was then transferred from the said first school to his present school at **Ramkrishnapur High School, District – South 24**

Parganas (for short the Second School), the same shall be evident from the document relating to the final approval being **Annexure R-4** at **page 15** to the said supplementary affidavit. Since then the petitioner had been and still has been working as such at the said second school.

The proposal for placement containing necessary document of the State authority shall appear from **Annexure P-10** to the writ petition at **page 41** thereof, which was dated **July 4, 2016**. The rest of the documents annexed to the writ petition being the documents of the State authority shall clearly demonstrate that, the State authority all along had acted in terms of the order of the said co-ordinate bench dated **June 5, 2013** passed in the said first writ petition.

Pursuant to the direction made by this Court on behalf of respondent No. 4 an affidavit-in-opposition was affirmed on November 3, 2022 and was filed.

The petitioner also filed its affidavit-in-reply thereto affirmed on January 5, 2023.

Mr. B. N. Ray, learned counsel for the petitioner submitted that, the State authority did not prefer any appeal or challenge the said order dated **June 5, 2013** and on the contrary had acted thereupon thoroughly and ultimately issued the final

approval in favour of the petitioner's employment dated **December 6, 2017** mentioning the date of appointment as **November 28, 2017**. He submitted that, this date of appointment should have been from the date of the said order passed in the first writ petition dated **June 5, 2013** and all consequential benefits should have been given to the petitioner in the like manner.

Mr. Kartik Chandra Kapas, learned State advocate appearing for respondent Nos. 1 and 4 referring to the order passed by a co-ordinate bench dated **December 1, 2003** in a writ petition being **W.P. 17062(W) of 2002, Annexure R-2** to the affidavit-in-opposition, submitted that, the first School was not in existence and as a result the co-ordinate bench directed not to pay any salary to any of its employee. He submitted that, the petitioner has been receiving the salary as per the prevailing rules and his appointment cannot be given effect from the date of the said order dated **June 5, 2013** passed in the first writ petition.

He submitted that, the petitioner did not work as on the date of **June 5, 2013** till his date of appointment mentioned in the said final approval, hence the petitioner would not be entitled to receive any benefit from June 5, 2013.

After considering the rival contentions raised on behalf of the appearing parties and upon perusal of the materials on records, it appeared to this Court that, the order dated **June 5, 2013** had not been challenged in any manner by which the petitioner was directed to be granted with the approval and the petitioner was directed to be granted the regular appointment on and from **that date**. The State authority, employer of the petitioner had carried out this order and acted there upon by issuing the final approval on **December 6, 2017, Annexure R-4** to the supplementary affidavit as referred to above mentioning the date of appointment as **November 28, 2017**. Having acted upon the said order and giving effect thereto partially without challenging the same, the State authority cannot claim anything to the contrary and is now estopped from claiming anything to the contrary. The State authority had acquiesced to the said order.

The explanations and defence sought to be raised by the State authority through its affidavit-in-opposition without challenging the said order dated June 5, 2013, would not be tenable in law. Mere raising of an objection, would not come in support of the authority unless the objection of the authority would come following the due process of law.

For the foregoing reasons and discussions, the State authorities are obliged and duty bound to comply the said order dated June 5, 2013 and accordingly are directed to regularize the appointment of the petitioner on and from **June 5, 2013** by giving all employment benefits on and from that day to the petitioner and while calculating the retiral benefit of the petitioner the date **June 5, 2013** shall be considered as the date of appointment for the petitioner and all consequential employment benefits should be paid and given to the petitioner as such.

The respondents are further directed to clear the arrears for the period from **June 5, 2013 till November 28, 2017** and pay the same in accordance with law, to the petitioner forthwith and positively within a period of eight weeks from the date of communication of this order with the Bank account details to be communicated by the petitioner.

With the above observations and on the above terms, this writ petition being **WPA 16023 of 2017** stands allowed.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)