

47. 01.05.2023
bd. Ct.15

W.P.A. 15360 of 2018

Paly Ghosh (Pal)

-vs-

State of West Bengal & Ors.

Mr. Partha Sarathi Das

Mr. Hafiz Ali

Ms. Shanta Sarkar

... for the petitioner.

Mr. Tapas Kumar De

... for the State

Petitioner being the para teacher of Jawhari High School, District- Murshidabad, (hereinafter referred to as “said school”) has questioned the enquiry report prepared by the Additional District Project Officer, Sarva Siksha Mission, Murshidabad, dated 16th January, 2018 and the final order dated 12th March, 2018 issued by the District Project Officer, Sarva Siksha Mission, Murshidabad, and has prayed for resumption of duty as an additional para teacher of the said school.

On perusal of the enquiry report it appears that steps were taken by the concerned respondent authorities in terms of the procedure as prescribed in the solemn order dated 21st December, 2011 passed by a coordinate in the writ petition being WPA 20418 of 2009 (Lutfar Rahman -vs- The State of West Bengal & Ors.) in view of long unauthorised absence of the petitioner.

The enquiry report depicts petitioner in the first phase remained absent from 28th August, 2012 to 25th February, 2013 for a period of six months. The managing committee of the said school on 25th

August, 2012 sanctioned such leave. However, the concerned authority of Sarva Siksha Mission found that managing committee is not the appropriate authority to sanction such leave.

Thereafter, petitioner joined the said school on 26th February, 2013 and worked till 1st April, 2013. But on 31st March, 2013 petitioner again prayed for a leave for a period of six months with effect from 2nd April, 2013. However, in the second phase availing of unauthorised leave by the petitioner was not approved by the said school authority. On perusal of the enquiry report dated 16th January, 2018 it appears that the petitioner in spite of inability of the said school authority to sanction leave as prayed for, availed of such leave with effect from 2nd April, 2013 at the first instance for a period of nine months and thereafter she again applied for leave on 22nd January, 2014 for an indefinite period by extending such leave which she was availing of with effect from 2nd April, 2013.

As it appears from records that such prayer of the petitioner for extension of leave was rightly refused by the said school authority.

After a period of two years and five months of availing such unauthorised leave with effect from 2nd April, 2013 petitioner submitted an application on 8th September, 2015 to the said school authority permitting her to join which resulted in initiation of proceeding by the concerned respondent authorities against the petitioner. Additional District Project Officer, Sarva Siksha Mission,

Murshidabad, visited the said school and considered the statements made by the Headmaster as well as the petitioner for holding an enquiry and accordingly the report was prepared dated 16th January, 2018. The Additional District Project Officer has opined in the said enquiry report dated 16th January, 2018 that at best petitioner can take 12 days' casual leave in a year and 10 days' sick leave annually which can be carried forward to the next year but the number of days under sick leave shall not exceed 20 days. In addition thereto there is 180 days maternity leave. Accordingly, in view of such provisions relating to granting leave in favour of para teacher working in a Government aided secondary school the additional District Project Officer refused the contention of the petitioner by submitting a report dated 16th January, 2018 which was considered by the District Project Officer, Sarva Siksha Mission, Murshidabad, as it is reflected from the final order dated 12th March, 2018.

On perusal of such letter dated 12th March, 2018 it appears that the District Project Officer has considered the facts involved in this writ petition relating to availing of unauthorised leave by the petitioner in detail based on the report dated 16th January, 2018 and finally decided that the leave taken by the petitioner cannot be treated as authorised. Therefore, application of the petitioner for resumption of duty was spurned.

It also transpires from the final order of the District Project Officer, dated 12th March, 2018 that

copy of the enquiry report dated 16th January, 2018 along with relevant documents were supplied to the petitioner and thereby reasonable opportunity was granted to her to make deliberation upon the same. But the petitioner chose not to approach the concerned authority in order to substantiate her case as she prayed for resumption of duty vide application dated 8th September, 2015.

On posing query to the learned advocate representing the petitioner whether petitioner has responded to the enquiry report on receipt of such report along with supporting documents, notice of this Court has been drawn to letter dated 29th June, 2018. However, on perusal of such letter dated 29th June, 2018 it appears that this is not the letter of the petitioner but the letter of the learned advocate and the date of the letter is 29th June, 2018 which is after the final order passed by the District Project Officer, dated 12th March, 2018 which goes to show that at the material point of time when there was requirement to respond to the enquiry report prepared by the authority against her, on receipt of such report along with necessary documents the petitioner did not submit any representation in order to substantiate her claims.

In view of aforesaid situation which is emanating from records as well as submissions made by the learned advocates representing the petitioner and the State respondents it appears that there is no infirmity in the decision taken by the District Project Officer, Murshidabad, dated

12th March, 2018 based on the enquiry report dated 16th January, 2018. Opportunity was given to the petitioner to respond to the enquiry report on the same being supplied to the petitioner but petitioner decided not to make any deliberation on such enquiry report and thereafter final order was passed on 12th March, 2018.

This Court does not find merit in the writ petition and accordingly confirming the order passed by the District Project Officer, Sarva Siksha Mission, Murshidabad, the writ petition stands dismissed. However, there shall be no order as to costs.

Since affidavit-in-opposition has been filed on behalf of State respondents in the department and which is not available on record the learned advocate representing the State respondents has filed copy of such affidavit-in-opposition as well as copy of the affidavit-in-reply used by the petitioner, same are taken on record and these copies will be treated as original affidavits till the original affidavits are made available on record.

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

(Saugata Bhattacharyya, J.)