

14-03-2023
Item No.17
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.13773 of 2012
Asit Kumar Roy
-vs-
The State of West Bengal & Ors.

Mr. Sankar Halder
Mr. Sarthak Burman ...for the petitioner

Ms. Chaitali Bhattacharjee
Mr. Manas Kumar Sadhu ...for the State

Md. Sarwar Jahan
Ms. Mousumi Mitra
Mr. Asif Mehdi ...for respondent no.3

The writ petitioner states that in response to an advertisement issued by the managing committee of Nityanandapur Madhyamik Siksha Kendra, Bablari, Nabadwip, he applied for engagement as a Samprasarak in the Madhyamik Siksha Kendra. He participated in the interview conducted by the selection committee and ultimately he was selected to be engaged as a Samprasarak in the subject Geography in the Siksha Kendra. After he was selected to be engaged as a Samprasarak, the managing committee of the concerned MSK by issuing the appointment/engagement letter dated December 24, 2009 engaged him as a Samprasarak in the said subject. Though the petitioner worked as a Samprasarak since his engagement, no honorarium was disbursed to him by the authority concerned.

Being aggrieved by the inaction on the part of the authority concerned, the writ petitioner approached this court by way of a writ petition being WP No.16634(W) of 2010 seeking for direction upon the authority concerned to

release the honorarium to which was admissible to him.

By an order dated September 3, 2010, a learned single Judge of this court in the above-mentioned writ petition directed the concerned authority to consider the petitioner's representation within a specified time. Ultimately, in compliance of the order dated September 3, 2010, the Block Development Officer, Nabadwip by his order dated January 10, 2011 rejected the claim of the petitioner assigning the reasons as noted therein.

By preferring the instant writ petition, the petitioner seeks a direction upon the concerned respondents to approve his engagement as Samprasarak immediately.

As it appears from the documents on record, the petitioner having requisite qualification applied for engagement as a Samprasarak in the subject of Geography in Nityanandapur Madhyamik Siksha Kendra (MSK), Bablari, Nabadwip. The managing committee of the Siksha Kendra by a resolution selected the petitioner to engage him as a Samprasarak in the Siksha Kendra.

As it is evident, the proposal for engagement of the petitioner in the Siksha Kendra was transmitted to the concerned Gram panchayat samity, but the proposal as made by the managing committee of the Siksha Kendra was not approved by the Shiksha Sanskriti Tathya O Krira Sthayee Samity of the Panchayat Samity because of coming into force of a Government Order dated 1st January 2010.

It appears that the learned single Judge by an order dated September 3, 2010 disposing of the writ petition directed the authority concerned to consider the petitioner's representation by passing a reasoned order within a time frame.

By the order dated January 10, 2011 the Block Development Officer, Nabadwip rejected the representation of the petitioner with the following observations:-

"Petitioner was present before the B.D.O. Nabadwip as scheduled.

Heard the petitioner.

Consulting documents Vix (i) notice of advertisement inviting application for Samprasarak for Nityanandapur MSK under Bablari G.P of Nabadwip Block by the Secretary of the MSK concerned ii) Panel of appeared candidates iii) appointment letter dt. 24.12.2009 iv) Joining Letter dt. 29.12.2009 of Asit Kumar Roy and V) Intimation to this Matter to the Nabadwip Panchayat Samity which was received by the Panchayat Samity on 26.12.2009. Shiksha Sanskriti Tathya O Krira Sthayee Samity of the Panchayat Samity decided to recommend the engagement of Asit Kumar Roy as Samprasarak in its meeting on 25.01.2010, though an order vide no. 5671-PN/O/I/O-7/2009dt. 01.01.2010 of the Principal Secretary to the Government of West Bengal, Panchayat & Rural Development, which states that no appointment could be approved by the Panchayat Samity with effect from 01.01.2010, was received. Since the Panchayat Samity received the intimation of engagement on 26.12.2009 and bar approval by it started from 01.01.2010, and then meeting could not possibly be convened before 01.01.2010, the Panchayat Samity in its Shiksha Sanskriti Tathya O Krira Sthayee Samity could not approve but recommended the case and decided to send to the Officer-In-Charge MSK Cell, Nadia;

Accordingly, the recommendation of the Panchayat Samity for engagement of Asit Kumar Roy was sent to Officer-In-Charge, MSK Cell, Nadia;

Viewing all the aspects and facts, B.D.O, Nabadwip is of the opinion that the appointment will be confirmed if the higher authority approves the appointment;

Plain copy of this order is given to the petitioner Asit Kumar Roy."

As stated above, by preferring the instant writ petition, the petitioner seeks direction upon the authority concerned so that his engagement as a Samprasarak in the Siksha Kendra is approved.

Learned counsel for the petitioner submits that

since his engagement, the petitioner has been discharging his duties as a Samprasarak in the Siksha Kendra. The selection process and the proposal of the managing committee of the Siksha Kendra were transmitted to the panchayat samiti on time and before the Government notification dated 1st January 2010 came into force. As such, learned counsel submits that the engagement of the petitioner should be approved and honorarium as admissible to him be disbursed.

Per contra, learned counsels for the answering respondents (the State and the third respondent) by referring to a Government notification dated 1st January 2010 issued by the Panchayats and Rural Development Department, Government of West Bengal submit that after the notification came into force, the panchayat samity had lost its authority to approve the proposal of the managing committee of the Siksha Kendra after 1st January 2010. Learned counsels point out that if the panchayat samity approved the proposal by December 31, 2009, in that event the notification dated 1st January 2010 would not affect the engagement of the petitioner. Learned counsels further submit that the Government by a memo dated March 4, 2020 has decided that the said MSK, namely Samprasarak for Nityanandapur MSK under Bablari shall stand closed. On such score, learned counsels submit that the writ petition is liable to be dismissed.

Admittedly, the petitioner was selected as a Samprasarak in Geography in the aforesaid Siksha Kendra by the managing committee of the Siksha Kendra vide resolution dated December 22, 2009. It is the law that after the selection is made, the proposal for approval is transmitted to the concerned panchayat samity and the Shiksha Sanskriti Tathya O Krira Sthayee Samity of the

panchayat Samity approves the proposal. After the approval is made by the panchayat samity, the managing committee of the Siksha Kendra issues engagement letter to the concerned candidate.

But, what I find, before the approval was received from the panchayat samity, the managing committee of the Siksha Kendra issued the engagement letter in favour of the petitioner on December 24, 2009 and engaged him as a Samprarak in Geography in the month of December 2009. Since the proposal for engagement of the petitioner was not approved by the panchayat samity, the engagement as made by the managing committee on December 24, 2009 is vitiated with illegality.

However, in compliance with the order dated September 3, 2010 of the learned single Judge passed in the previous writ petition, the Block Development Officer considered the petitioner's representation, but he turned down the representation citing the reasons as quoted above. It appears that the panchayat samity received the proposal of engagement of the petitioner on December 26, 2009, but, soon thereafter on 1st January 2010 the notification issued by the Panchayats and Rural Development Department came into force and because of the rigour of the notification, no approval was accorded to the proposal mooted by the managing committee.

In such context, the Government notification dated 1st January 2010 may be referred. This notification, inter alia, reads that engagement of Samprasarak/Samprasrika, Mukhya Samprasarak/Mukhya Samprasrika in any vacancy of Mdhyamik Siksha Kendra is stopped with effect from 1st January 2010 until further orders. However, the panel already approved by the

panchayat samity till December 31, 2009 will not come under the purview of this order.

As found above, the proposal of engagement of the petitioner was not approved by the panchayat samity till 31st December 2009. Therefore, the engagement of the petitioner cannot be termed as lawful in any manner.

In its report in the form affidavit submitted by the fourth respondent, it is stated that the said Siksha Kendra, namely Nityanandapur Madhyamik Siksha Kendra (MSK), Bablari, Nabadwip, has now stood closed. I find that such averment in the report is substantiated by a government memo dated March 04, 2020 issued by the Panchayats and Rural Development Department, Government of West Bengal.

In view of the above, I find that there is no merit in the writ petition.

Accordingly, the writ petition stands dismissed on contest. 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 any, shall be made available to the parties.

[Rabindranath Samanta, J.]

