

03.10.2023
Item No. 37
Crt.No.22
b.r.

WPA 18009 of 2023

Biren Hansda & Anr.
-vs-
The State of West Bengal & Ors.

Mr. Saibal Acharya
Mr. Shahan Shah
Mr. Anindo Bhattacharyya
Mr. S. Barman
.... For the petitioners.

Mr. Tapan Kumar Mukherjee, Ld. AGP.
Ms. Tuli Sinha
.... For the State.

Md. Sarwar Jahan
Ms. Mousumi Mitra
Mr. S.N. Thander
... for the Resp. no.4.

This order shall be effected only upon payment of Court Fees by two individual writ petitioners in accordance with law.

The petitioners were appointed as **Samprasarak and Samprasarika** respectively at one **Madhyamik Siksha Kendra (MSK)** known as **Changual Saradamoni Madhyamik Siksha Kendra** pursuant to a notice for selection dated **August 1, 2009 annexure P-1 at page 22** to the writ petition.

The qualification and terms for appointment at the relevant point of time was governed under the terms

and conditions mentioned in the said notice for selection dated **August 1, 2009**.

The petitioners applied and got selected upon due verification of their respective records and documents and finally received the appointments at the said **Siksha Kendra**. The appointment letters issued by the **Siksha Kendra** in favour of the petitioners were both dated **August 31, 2009 at pages 28 and 29** to the writ petition. The appointment was granted pursuant to the approval made by the concerned **Siksha Sthayee Samity, KGP-II, Panchayat Samity dated August 28, 2009 at page-30** to the writ petition. Following the said selection procedure and following the appointment being made, the petitioners have been working at the said Siksha Kendra, such fact would also be evident from **annexure p-5 at page 53** to the writ petition.

Mr. Saibal Acharya, learned counsel for the petitioners drawing attention to the two communications dated **March 27, 2023 and March 28, 2023 annexure p-7 at pages 55 and 56** to the writ petition submits that, since the date of their respective appointments in 2009, the appointment of the petitioners were not approved by the respondent no.5 and the representations were kept pending by the **respondent no.5**. The consequential steps were also not taken by the concerned respondents. Learned counsel

submits that in absence of such approval of such employment, the petitioners have not received any honorarium or remuneration to which they are entitled to in law since the date of their appointment **since 2009.**

Learned counsel for the petitioners submits that a first round of writ litigation arose at the instance of the petitioners in **WPA 9648 of 2023.** A co-ordinate Bench by its order dated **April 28, 2023 annexure P-8** at **page 61** to the writ petition, **disposed of** the said writ petition by granting liberty to the petitioners to make a comprehensive representation before the respondent no.5 and the respondent no.5 was then directed to consider the issue after granting an opportunity of hearing to the petitioners.

In terms of the direction of the co-ordinate Bench, the petitioners submitted a joint comprehensive representation dated **May 3, 2023 annexure P-9** at **page 65** to the writ petition before the respondent no.5 with all the relevant documents.

The respondent no.5 then passed its impugned order dated **May 24, 2023, annexure p-10,** the relevant portion is available **at page 73** to the writ petition. The claim of the petitioners were rejected by the respondent no.5 with the following observation:-

“ 24.05.2023. Biren Hansda & Malibika Palmal (petitioner), Executive Officer, Kharagpur-II Panchayat Samity. Samity Education Officer, Kharagpur-II Panchayat Samity, Secretary & President, Administrative Committee, Mukhya Samprasarak-in-Charge, Changuai Saradamoni Madhyamik Shiksha Kendra were present for hearing. District Nodal Officer heard all of them one by one.

After going through their reply it is revealed that Biren Hansda and Malabika Palmal were engaged as Samprasarak/Samprasatika at Changuai Saradamoni Madhyamik Shiksha Kendra by Secretary & President of Administrative Committee and Mukhya Smaprasarak-in-Charge of Changuai Saradamoni Madhyamik Shiksha Kendra and as it reveals that at the time of engagement the age of Biren Hansda was 26 years 3 months 26 days and Malabika Palmal was 31 years 11 months 21 days and as per Memorandum No. 4578-PN/O/1/4P-2/2001 dated 5th October, 2007 where eligible candidates are not available in Gram Panchayat where MSK is situated and its surrounding Gram Panchayat and Municipality, candidates having age of 25 years and above may be engaged as Shiksha Samprasarak/Samprasatika and the Zilla Parishad after careful

scrutiny of the paper and on being sure that persons of specified age group are not actually available in the area will recommend for relaxation of age in such case, but it is found that there is no such proposal received from Kharagpur-II Panchayat Samity to Zilla Parishad for relaxation of age approval whereas the order vide no.4578-PN/O/I/4P-2/2001 dtd 05.10.2007 was still existed in force.

Keeping in view of the above it hereby ordered that since entire process of engagement is not in order, so the question of approval of engagement of Biren Hansda as Bengali Samprasarak and Malibika Palmal as Life Science Samprasarak at Changua Saradmoni Madhyamik Shiksha Kendra does not arise.

Let the copy of this order be served upon all concerned.”

The said decision of the respondent no.5 dated **May 24, 2023 at page 73** to the writ petition has been assailed through the instant writ petition.

Mr. Acharya submits that after verification of all the records and documents, the petitioners received their appointment in terms of the letter of appointment dated **August 31, 2009** and since then the petitioners are working as **Samprasarak and Samprasarika** respectively at the said Shiksha Kendra. There was no

discontinuation of employment nor any disciplinary steps taken by the relevant Shiksha Kendra as against the petitioners but still then neither the appointment of the petitioners were approved nor the petitioners have received their honorarium and/or remuneration which they are eligible to receive in law, since the date of their appointment for last about **14 years**.

Mr. Acharya submits that the obligation on the part of the petitioners were fulfilled the moment the petitioners have received an appointment and the further administrative works were have to be carried out by the **respondent no.5** for granting approval of the employment of the petitioners and to pay the necessary honorarium to them. The relevant Siksha Sthayee Samity has also approved the selection of the petitioners **at page-30** to the writ petition, in pursuance whereof the petitioners were appointed. On the one hand, the petitioners have been rendering their services and on the other neither their appointments have been approved nor the necessary honorarium have been paid. The plea for rejection as would be evident from the impugned order dated **May 24, 2023** was that the petitioners were under aged at the relevant point of appointment. Referring to the **Memorandum No. 4578-PN/O/I/4P-2/2001 dated October 5, 2007 at page 75** to the writ petition, Mr. Acharya submits that the age

relaxation was possible in certain situation as mentioned therein. He submits that following the said Memorandum when the petitioners were appointed they were within the zone of relaxation of age bar in terms of the said Memorandum. The petitioners were allowed to work for last 14 years and their employment benefit was obtained and received by the respondents without any objection or demur. The petitioners had no role to pay in it.

In the light of the above submissions, Mr. Acharya submits that the impugned order dated **May 24, 2023** should be set aside and the appointment of the petitioners should be approved by the respondent no.5 and an immediate direction be made for payment of the honorarium to the petitioners, since their appointment.

Mr. Sarwar Jahan, learned counsel, appears for the respondent nos.3 and 4. The respondent no.3 has already filed its report in the form of affidavit affirmed on September 14, 2023. The stand taken by the respondent no.4 in her affidavit is quoted below:-

“2a) Sri Biren Hansda and Smt. Malabika Palmal, both petitioners claimed that they have been appointed as a teacher of Changua Saradamoni MSK, in the year 2009 with the approval of the Managing Committee of Changua Saradamoni MSK and Sthayee Samity of Kharagpur-II Panchayat Samity on 28-08-2009.

- b) *As per P & RD Department Memo No. 4578-PN/O/I/4P-2/2001 dated 05-10-2007, where the eligible candidates are not available within the Gram Panchayat and surrounding Gram Panchayat where the MSK is situated, candidate having age of 25 years and above may be engaged after careful scrutiny of the papers by the concerned Zilla Parishad and on being sure that the suitable candidate of specified age group are not actually available in the areas then only recommend for engagement after relaxation of age by the P& RD Department.*
- c) *That in the instant case the petitioners were under aged at the time of engagement, so age relaxation were required to be obtained from the P&RD Department before proceeding any engagement procedure but no such proposal received by the Paschim Medinipur Zilla Parishad from the Kharagpur-II Panchayat Samity according to the reasoned order passed by the District Nodal Officer, Paschim Medinipur Zilla Parishad on 24-05-2023.”*

Ms. Tuli Sinha, learned counsel led by Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader, appears for the respondent nos. 1 and 2.

Controverting the stand taken by the respondent no.4, the petitioners have filed its exception to such report in the form of affidavit affirmed on September 25, 2023.

After considering the rival contentions of the parties and on perusal of the materials on record, this Court is convinced that, the admitted position is that the petitioners are working and rendering their services since 2009 till date without any remuneration. The record shows that the selection of the petitioners has taken place in terms of the notice for selection dated August 1, 2009. There have been no charges against the petitioners raised by the respondent no.4 in its affidavit report. The sole and only plea taken against the appointment of the petitioners was that the petitioners were under aged as on the date of their appointment on August 31, 2009. The impugned order dated May 24, 2023 has also proceeded on the same plea while rejecting the prayers of the petitioners for approval of their appointment by the respondent no.5 and consequently the payment, necessary honorarium have not been paid to the petitioners, since 2009 when they were appointed. While passing the impugned order, the respondent no.5 has also failed to take into consideration the said Government Memorandum dated **October 5, 2007 at page 75** to the writ petition to the effect that under what circumstance the age bar could be relaxed. There was no rebuttal to the appointment procedure of the petitioners under which the petitioners were appointed. The selection of the

petitioners were duly approved by the Siksha Sthayee Samity at **page-30** to the writ petition. The recommendation was made before the **respondent no.5** immediately after the appointment of the petitioners. Since then, the respondent no.5 did not pay any heed on the issue and kept it pending till May 20, 2023. Then pursuant to the direction of the co-ordinate Bench as stated above, the impugned order was passed on May 24, 2023 rejecting the claim of the petitioners on the alleged plea of irregular appointment.

The law is well settled. A Constitutional Court in exercising its power under judicial review has a limited authority to assess the impugned order passed by the authority when there is a glaring perversity on the face of it and infirmity in the decision making process.

On the overall assessment and consideration of the materials available before this Court, this Court proceeds to scrutinize the said impugned order.

This Court is of the firm view that, the obligation of the petitioners came to an end after receiving their respective appointments in 2009. The selecting authority having been satisfied with all the records and documents produced by the petitioners at the relevant point of time and after being satisfied with the fulfillment of the terms and conditions of selection

mentioned in the said notice for selection dated **August 1, 2009**, appointed the petitioners and the appointment letters were issued dated August 31, 2009 after receiving the necessary approval for the selection of the petitioners from the relevant **Siksha Sthayee Samity at page 30** to the writ petition. Since then, the respondents have received the service rendered by the petitioners without raising any objection or demur whatsoever. The respondent no.5 kept the approval process for appointment of the petitioners pending without paying any heed thereto since 2009 till 2023 when the impugned order was passed. To consider the approval of the petitioners where within the executive domain of the respondents on which the petitioners had no role to play. The document being **annexure p-5 at page 53** to the writ petition shows the services were duly rendered by the petitioners at all material times.

The respondents after receiving the said uninterrupted service from the petitioners are now estopped from contending or taking any other plea to negate the appointment of the petitioners which has taken place around 14 years back in 2009 and the respondents had received the benefit of the services rendered by the petitioners for about last 14 years. The plea of the respondents are barred by the

principles of equity, acquiescence, estoppel and waiver.

When the petitioners have joined in their services pursuant to the letters of appointment dated **August 31, 2009**, a **legitimate expectation** was created in favour of the petitioners that their appointments will be approved by the respondent no.5 in accordance with law. The petitioners were allowed to carryout with their employment for about 14 years without any objection being raised by the respondents. The respondents have received the benefit out of the services rendered by the petitioners. The respondents at this belated stage cannot take any stand to the contrary. More so, the State memorandum which is also an executive instruction suggests under what circumstance the age bar can be relaxed. It is deemed that when the petitioners were appointed at their respective ages of **26 years and 31 years** which were less than **40 years but above 25 years**, the selecting authority had considered the situation prevailing at that point of time and then only issued the appointment letter in favour of the petitioners. The respondents cannot take any plea at this belated stage on the ground of alleged age bar.

In view of the forgoing reasons and discussions the order impugned dated **May 24, 2023 at page 73**

to the writ petition passed by the **respondent no.5** stands **set aside and quashed**.

The **respondent no.5** is directed to approve the services of the petitioners from the date of their respective joining at the **Siksha Kendra** being dated **September 12, 2009** as mentioned in the appointment letter dated **August 31, 2009 at pages 28 and 29** to the writ petition and issue the necessary communication to the petitioners approving their services positively within a period of **10 working days** from the date of communication of this order.

The **respondent no.5** then shall calculate the honorarium payable to the petitioners since **September 12, 2009 till September 30, 2023**, and shall release the said arrears positively within a period of **four weeks** from the date of communication of this order.

The **respondent no.5** then shall regularly pay the current honorarium to the petitioners on and from **October 1, 2023** without any interruption henceforth payable to the petitioners in accordance with law.

With the above observations and directions, this writ petition **WPA No. 18009 of 2023 stands allowed**, without any order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Aniruddha Roy, J.)