

04 19.04.2023  
rkd Ct.15

W.P.A. 19324 of 2018

Susanta Kumar Saha

-vs-

The State of West Bengal & Ors.

Mr. Siddhartha Banerjee,  
Mr. Sudipto Das Gupta,  
Ms. Jyoti Rauth

....for the petitioner.

Mr. Pinaki Dhole,  
Mr. Pinaki Bhattacharya

....for the State.

The petitioner is seeking regularisation of service on the strength of appointment which was made in favour of the petitioner by Balupur B.M. Jr. High School, District- Malda vide letter dated 7<sup>th</sup> August, 1999. Reliance has been placed heavily on such appointment dated 7<sup>th</sup> August, 1999 which goes to show that the petitioner was appointed in the post of Clerk by the said school authority as per unilateral decision of the school authority without any prior permission from the concerned District Inspector of Schools (S.E.), Malda.

Another limb of submission made on behalf of the petitioner is applicability of principle of comity of decisions in view of the order passed by a coordinate Bench on a writ petition being WPA 16493 of 2004 which is at pages 86 to 88 of the writ petition.

According to the petitioner the order dated

24<sup>th</sup> December, 2010 attained finality; therefore without considering the contents of the order whether the same can be implemented or not the directions as contained in the said order need to be given effect by regularisation of service of the petitioner. It has also been submitted that petitioner has been serving in the post of Clerk for a considerable period of time that should be given credence while considering the claim of the petitioner for regularisation.

The State respondents are represented by learned advocates who have opposed the prayer of the petitioner on the ground that appointment of the petitioner in the post of Clerk in the aforesaid school was made *de hors* the recruitment rules therefore no right accrues in favour of the petitioner.

Having considered the submissions made on behalf of the respective parties, this Court finds that the petitioner was appointed unilaterally by the school authority without any prior permission being issued by the concerned District Inspector of Schools and the recruitment rules which was prevalent at the material point of time was not followed while inducting the petitioner as Clerk. There is nothing on record which indicates that the

appointment of the petitioner was against the sanctioned post.

It is true that an order was passed by a coordinate Bench on 24<sup>th</sup> December, 2010 but on perusal of such order it appears that the same was passed without considering the recruitment rules prevalent at the material point of time for appointment of non-teaching staff in a Government aided secondary school. It would have been the duty of the petitioner to bring into the notice of the coordinate Bench deciding the writ petition being WPA 16493 of 2004 the recruitment rules which was prevalent at the material point of time and whether at all the appointment was made in favour of the petitioner against the sanctioned vacancy or not.

In absence of consideration of these relevant aspects while deciding the right of the petitioner to be regularised in respect of a post of non-teaching staff in a Government aided secondary school it appears that the order passed by the coordinate Bench may not support the case of the petitioner which has been made out in the present writ petition.

In this regard, reliance has been placed on the judgment of the Hon'ble Apex Court delivered in

the case of Secretary, State of Karnataka & Ors. – vs- Uma Devi (3) & Ors., reported in 2006 Vol. 4 SCC 1.

In view of aforesaid discussion, it transpires that no enforceable right has been accrued in favour of the petitioner upon issuance of appointment letter dated 7<sup>th</sup> August, 1999 warranting issuance of mandamus in order to protect such right. Accordingly writ petition stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

**(Saugata Bhattacharyya, J.)**