

16.05.2023
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AN/Ct. No.07

WPA 20558 of 2022

**Sri Subrata Paul
versus
The State of West Bengal & ors.**

Mr. Partha Sarkar
Mr. Abhijit Basu

... for the petitioner

Ms. Chaitali Bhattacharya
Mr. Mrinal Kanti Biswas

... for the State

The writ petitioner has challenged the order passed by the Director of the Local Bodies on 28.07.2022. The writ petitioner claims to have joined a School run by the Baidyabati Municipality as an Assistant Teacher in terms of the appointment letter dated 21.08.2007. The writ petitioner further claims that his father viz. Amar Paul died in harness on 21.10.2006 and the appointment was given to the petitioner on compassionate ground vide letter dated 21.08.2007. The petitioner claims to have joined the said School on 01.09.2007 and is still serving the said School as an Assistant Teacher. The petitioner claims that the appointment of the petitioner was approved by the Director of Local Bodies only on 19.11.2014. According to the petitioner, the date of his appointment ought to have been with effect from his date of joining i.e. with effect from

01.09.2007 and not from 17.01.2015 i.e. the date of issuance of appointment letter.

Learned counsel for the petitioner submits that the petitioner is serving the said School since 01.09.2007 and the petitioner is being deprived of the service benefits which a regular employee is entitled to for the said post for the period from 01.09.2007 till 16.01.2015.

Learned counsel for the petitioner relies upon a decision of the Coordinate Bench of this Court in W.P. 18863(W)/2007 passed on 26.06.2013 in support of his contention that the petitioner should be treated as a regular employee of the Municipality with effect from his date of joining i.e. with effect from 01.09.2007.

Ms. Bhattacharya, learned counsel for the State submits that the petitioner was appointed as an Assistant Teacher with effect from 01.09.2007 by the Chairman, Baidyabati Municipality on consolidated pay on temporary basis. She further submits that no prior approval was obtained from the Government before making any such appointment. She submits that in terms of order dated 19.11.2014, the petitioner joined the said post in the year 2015 and, therefore, the petitioner cannot claim benefits at par with that of the regular employees of the Municipality with effect from 01.09.2007.

Heard learned counsel for the parties at length.

It appears from the record that initial appointment of the petitioner vide letter dated 21.08.2007

was on temporary basis on a consolidated pay. Thereafter, pursuant to an order dated 17.06.2013 passed by a Coordinate Bench of this Court in W.P. 12701(W)/2011 in the case of Subrata Paul & ors. vs. Union of India & ors. directing the authorities to consider the case of the writ petitioners for appointment in a permanent post, the Director of Local Bodies by an order dated 19.11.2014, after duly considering the fact that the approval of appointment under the compassionate ground in die-in-harness category has to be considered according to the seniority ordered that the appointment of the candidates including all the writ petitioners be approved with effect from respective date of joining their post under Baidyabati Municipality subject to verification of necessary records by the Chairman of the Baidyabati Municipality. The Chairman of the Municipality, thereafter, appointed the petitioner in the post of Assistant Teacher on compassionate ground under die-in-harness category with effect from the date of joining the said post by the petitioner. The Chairman of the said Municipality by a letter dated 17.01.2015 directed the petitioner to join the said post which was offered by the Chairman specifically indicating therein that such offer will be cancelled without any further correspondence, in the event, the petitioner fails to join the said post within 7 days from the date of receipt of the said letter. It appears from the said letter dated 17.01.2015 that the petitioner was offered to join the

said post within the time limit indicated in the said letter and in compliance of the conditions contained in the said letter, the petitioner joined the said post.

The said appointment letter specifically states that the Municipality is pleased to appoint the petitioner to the post of Assistant Teacher on compassionate ground in died-in-harness category from the date of joining the said post. The date of joining has been specified to be the date of joining the post under the Municipality in the pay band scale. Such date of joining cannot be construed to be the date of joining as a teacher on consolidated pay as sought to be contended by the learned advocate for the petitioner. The petitioner joined the said post pursuant to the letter dated 17.01.2015.

After joining the said post pursuant to the offer made by the Municipality, the petitioner has now approached this Court with the prayer that he shall be allowed to enjoy the service benefits as that of a regular employee of the Municipality with effect from 01.09.2007. The petitioner having accepted the offer of appointment made by the Chairman vide letter dated 17.01.2015, cannot now turn around and contend that the appointment should be with effect from 01.09.2007.

The Director of Local Bodies, in the order dated 28.07.2022, after taking into consideration that the petitioner had joined the post in the year 2015 in terms of the appointment letter issued by the Chairman of the

Municipality and further taking note of the fact that there is no provision by which the contractual service can be treated to be a qualifying service, held that the period since 2007 when he was appointed as a contractual employee cannot be treated as qualifying service of a permanent post. Such finding does not suffer from any infirmity.

The decision of the Coordinate Bench in W.P. 18863(W)/2007 is of no assistance to the petitioner in the case on hand as it has not been held therein that the period of contractual service can be treated to be a qualifying service in a permanent post. The Coordinate Bench only observed that the period of service rendered by the regular employee while he was in contractual service can be taken into consideration for the purpose of computation of his retrial dues after attaining the age of superannuation. The petitioner has not claimed such relief in the writ petition. Therefore, the said decision does not have any manner of application to the case on hand.

It is well settled that the judicial review is not a review of the decision of the authority concerned but a review of the decision making process. This Court finds that there is no infirmity in the decision making process warranting interference of this Court under Article 226 of the Constitution of India.

For all the aforesaid reasons, this Court holds that this writ petition is devoid of any merit and the same

is liable to be dismissed and is, accordingly, **dismissed**, however, without any order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)