

WPA 21619 of 2017

30.08.23
Sl-01
Ct.11
(S.R.)

Minati Kundu & Ors.

v.

The State of West Bengal & Ors.

Mr. Anjan Bhattacharya

Ms. Anita Shaw

... for the petitioners.

Mr. Sirsanya Bandopadhyay, Jr. Standing Counsel

Mr. Arka Kumar Nag

... for the State

By this writ petition, the petitioners prayed for cancellation of a memo vide dated 26th November, 2013 issued by the Commissioner of School Education, West Bengal.

The facts as unfurled in the writ petition are that the petitioners were the organising teaching and non-teaching staff of Beliara Junior High School (hereinafter referred to as the said school). After recognition of the school by the Govt. of West Bengal, the District Inspector of Schools (SE), Bankura approved the appointments of the petitioner *vide* a memo dated 3rd February, 1999. In the writ petition, it was claimed that the petitioners rendered their services in the school for the last 16 years, their service books were completed, they drew their salary and even benefits of ROPA were extended to them. Pursuant to the order dated 3.5.2002 passed in W.P. no. 10778(W) of 1999, Director of School Education, West Bengal passed a reasoned order whereby the petitioners

were declared to have been legally appointed as teaching and non-teaching staff of the school.

In 2003, the private respondent nos. 8 to 11 preferred a writ petitioner being W.P. no. 16826(W) of 2003 which was disposed of by Ashoke Kumar Dasadhikari J. (as His Lordship then was) on 31st July, 2012 holding that the petitioners' appointment were illegal and the private respondents were the organizing teachers and they were serving the school since beginning and order of the Director of School Education, W.B. was set aside and Director of School Education and District Inspector of Schools were directed to take appropriate action against the headmaster of the school for giving appointment of the writ petitioners illegally.

Claiming wilful violation of the order dated 31.7.2012, one contempt application was also filed. However, by an order dated 26.11.2013, the Commissioner of School Education directed the D.I. of Schools to cancel the approval of appointments of the writ petitioners and hence, assailing the order dated 26.11.2013, the present writ petition has been preferred.

During course of hearing, I am informed that the order dated 31.7.2012 passed in W.P. no. 16826(W) of 2003 was assailed by the writ petitioners in an appeal being FMA no. 473 of 2015 and the Headmaster concerned also by filing a separate appeal *vide* FMA no.

474 of 2015 challenged the said order passed in W.P. No. 16826 (W) of 2003. Both the appeals were heard analogously and disposed of by an order dated 17th April, 2015 by the Hon'ble Division Bench headed by the Hon'ble Justice Tapen Sen (as His Lordship then was) and the order impugned in the appeals was modified to the extent that the direction to take action against the Headmaster of the school was set aside but the decision that the petitioners were illegally appointed as teaching and non-teaching staffs of the school was upheld.

I am also informed that the judgement passed by the Hon'ble Division Bench in the appeals was assailed in a Special Leave Petition (C) Nos. 23562 of 2015) and by an order dated 17th February, 2017 the SLP was dismissed. So, it is cleared as day that the portion of the order passed in W.P. no. 16826(W) of 2003 whereby it was held that the petitioners were appointed illegally has attained its finality and the order dated 26.11.2013, which has been challenged in this writ petition, was passed by the Commissioner of School Education, W.B. in compliance with the order passed in W.P. no. 16826(W) of 2003.

In view of such facts, it cannot be held that the order passed by the Commissioner is illegal. The petitioners cannot be treated as legally appointed organizing teaching and non-teaching staff of the school.

During course of hearing Mr. Bhattacharya, learned advocate appearing for the petitioners strenuously contends that the present petitioners although appointed illegally but rendered their services without any blemish for almost 16 years and the concerned authority has deducted certain portion of money from their salaries and kept in provident fund accounts. He submits that liberty should be granted to the petitioners to approach the concerned authority for release of amounts deposited by the petitioners in provident fund accounts.

Mr. Banerjee, learned Junior Standing Counsel appearing for the State respondents vehemently opposes such prayer and submits that the appointments of the writ petitioners were illegal and hence, whatever they had obtained on the basis of such appointments are also illegal.

However, liberty is granted to the writ petitioners to approach the District Inspector of Schools (SE) Bankura by making representation praying for release the amounts, if deducted from the salary of the petitioners and deposited in provident fund accounts. If the representation is made, the District Inspector of Schools shall consider the same after giving an opportunity of hearing to the petitioners and the District Inspector of Schools shall take decision on such representation strictly in accordance with law and keeping in mind that it has

been consistently held that the appointments of the petitioner were not legal, the District Inspector of Schools (SE), Bankura shall decide whether or not any amount was deducted from the salaries of the petitioners and kept in any provident fund account or accounts and whether or not the petitioners shall be entitled to get the amounts. It is clarified that I have not gone into the merit as regards the claim of the petitioner.

With these observation and order, the writ petition stands disposed of.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee, J.)