

September 25, 2023

ARDR (7)

MAT 1436 of 2012
+
CAN 1 of 2013 (Old CAN 5518 of 2013)
CAN 2 of 2013 (Old CAN 5523 of 2013)

The West Bengal Council of
Rabindra Open Schooling & anr.

Vs.

Purbasha Chatterjee & ors.

Mr. L. K. Gupta, Sr. Adv.,
Mr. Subir Sanyal,
Mr. Ratul Biswas,

...for the Appellants.

Mr. Ekramul Bari,
Mr. S.M. Ali,

...for the writ petitioner/respondent.

Mr. Arjun Roy Mukherjee,
Ms. Tapati Samanta,

...for the State.

RE : CAN 1 of 2013 (Old CAN 5518 of 2013)

Sufficient cause being shown for not being able to file
the memorandum of appeal within the period of limitation.

The delay of 355 days in filing the memorandum of
appeal is condoned.

Accordingly, the application for condonation of delay
is allowed and disposed of.

Re : MAT 1436 of 2012

We have heard Mr. L. K. Gupta, learned senior
Advocate representing the appellants, Mr. Ekramul Bari
learned Advocate for the writ petitioner and Ms. Tapati
Samanta, learned Advocate for the State.

The issue pertains to the appointment of a temporary
employee in Rabindra Open Schooling constituted under
the Rabindra Mukto Vidyalaya Act, 2001. The private
respondent moved the writ petition for a direction upon the

school authority to absorb her permanently under in a teaching post in which she was working. Learned single Judge has proceeded on the basis that the President of the Rabindra Open Schooling had confirmed that she was selected through proper selection process and she was appointed in a sanctioned post. There is also recommendation for regularisation of her service. On the basis of the said submission of 3rd August, 2011, Director of School Education was directed to indicate in which post she was working within a time frame.

Due to non implementation of the said order, a contempt application being WPCRA 239 (W) of 2013 in which an order passed on 26th June, 2013 directing the Secretary, School Education Department to consider and dispose of the case as per the order dated 3rd August, 2021.

Mr. Bari has submitted that on 6th May, 2014 the Secretary, Director of School Education for immediate compliance of the order passed by the Hon'ble High Court and to furnish an action taken immediately.

Rabindra Open Schooling has not implemented the direction of the Secretary this has resulted in a fresh writ proceeding being WP 32083 (W) of 2014.

In the writ petition the petitioner has prayed for a direction to implement the order passed by the learned single Judge and also recommendation of the Secretary.

We have carefully read the recommendation dated 6th May, 2014.

On consideration of the material and submission made before the Secretary, School Education Department, the Secretary made the following observations:

“(a) That she was engaged by the Director of the West Bengal Council of Rabindra Open Schooling as a tutor on contractual and purely temporary basis on and from 01.04.2005 against the post sanctioned under G.O. No.3-SE (Apptt) dated 01.01.1999 with the concurrence of the Finance Department under their U.O. No.Gr. B 638 dated 14.12.1998 wherein it has been specifically mentioned that the appointment of the posts will be either on deputation or contract basis. Such contract will initially be for a period of 2 years and will be extended thereafter by one year at a time.

(b) That there is no policy of the State Government in School Education Department to regularise the appointment of a temporary staff. However, in respect of the Paschim Banga Sarba Siksha Avijan, the temporary employees appointed against temporary posts through prescribed procedures have been allowed to be reengaged for one year at a time with fixed salary subject to renewal upto the age of 60 years with the concurrence of the Finance Department, Government of West Bengal.

(c) That the School Education Department, Government of West Bengal is not the appropriate appointing authority in respect of employees of the West Bengal Council of Rabindra Open Schooling.

12. Since, the West Bengal Council of Rabindra Open Schooling is the appointing authority in respect of the

petitioner, the said Council take appropriate decision for immediate compliance with the order of the Hon'ble High Court and furnish an action taken report immediately. Thus, the matter is disposed of. All concerned be informed accordingly".

On the basis of the recommendation made by the Secretary, the writ petition can be considered on the basis of the scheme permitting a contractual employee to be reengaged approving continuance of her service as contractual employee up to 60 years with financial benefits as permissible.

In view of the aforesaid order concurrence of the finance department may not be required. The West Bengal Council of Rabindra Open Schooling being the appointing authority shall pass necessary order confirming the service of the writ petitioner on contractual basis 60 years with financial benefits within four weeks from date following the direction passed in this matter.

The order under challenge is modified to the aforesaid extent. The appeal for reason above, is partly allowed.

By consent of the parties, WP 32083 (W) of 2014 is treated as on day's list and is disposed of in terms of the aforesaid order.

The Computer Section shall make note of this and the said writ petition shall not be shown as pending on the basis of this order.

WP no. 32083 (W) of 2014 is also disposed of.

We make it clear that in view of the aforesaid order, question of regularisation of the writ petitioner does not arise.

However, there shall be no order as to costs.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)