

07.07.2023
Item No.10
Court No.22
Avijit Mitra

WPA 25831 of 2022 (Assigned)

Md. Abdul Jabbar & ors.
-versus-
The State of West Bengal & ors.

Mr. Golam Mostafa,
Mr. Samirul Sardar
....for the petitioners

Mr. Supriyo Chattopadhyay,
Mrs. Sayantani Bhattacharya
....for the State

Mr. Shamim Ul Bari
....for the D.P.S.C., Malda

The respondents are not called for.

Mr. Mostafa, learned advocate appeared for the petitioners.

The petitioners contended that through the jurisdictional Employment Exchange the names of the petitioners were forwarded for a selection process for the post of Primary School Teacher as **“Exempted Category Candidates”** in the year 2009, 2010 and 2012 respectively.

The petitioners did not receive any appointment having due qualifications. The petitioners applied before this Court under Article 226 of the Constitution of India by filing a writ petition being **WP 5754 (W) of 2015**. In the said writ petition, a coordinate Bench passed its order dated June 01, 2015, **Annexure P-5 at Page 51 to the**

writ petition. The said writ petition was disposed of by a coordinate Bench with the following observations :

“Considered the submissions made by the learned counsel appearing for the petitioners. It appears that the petitioners were duly selected as exempted category candidates but they were not given employment. Considering the special facts and circumstances, authorities are directed to issue appointment in their favour. Accordingly, the Chairman, Malda District Primary School Council is directed to recommend petitioners’ name before the Commissioner of School Education by two weeks from the date of communication of this order. The Commissioner is directed to grant approval within two weeks and send approval to Chairman of the Council. On receipt of such approval, Chairman is directed to issue appointment letter in favour of the petitioners by two weeks. In the special facts and circumstances of this case this order is passed. However, this order would not be treated as precedent in any other case. This writ petition is, thus, disposed of. There would be no order as to costs”.

Learned counsel for the petitioner submitted that the respondent State authorities failed to carry out the directions of the said coordinate Bench as quoted above and the petitioners filed a contempt proceeding. The contempt proceeding was not pursued and by the time the petitioners had attained the age of superannuation. The petitioners contended that had the employment been given to the petitioners pursuant to the said direction of the said coordinate Bench dated June 01, 2015, the petitioners would have their life of employment for about 5 to 6 years and having not done so the State authorities had deprived the petitioners from their legitimate right for receiving their

employment. The petitioners contended that for the said period of 5 to 6 years, had the employment been given to them, they could have earned the regular employment benefits which would have an effect even during their retired life by receiving the superannuation benefit accordingly. Having not done so the State authorities had committed a breach of duty on their part and the petitioners had suffered damages. The petitioners thus were entitled to receive compensation from the State authorities.

In such facts and circumstances, the instant writ petition was filed claiming the following reliefs :

“(a) a writ in the nature of a writ of Mandamus commanding the respondents to look into the grievances and thereby compensate the loss of the petitioners by paying Rs. 20,00,000/- (twenty lacs) to each of the petitioners and do justice to the petitioners at the earliest.

(b) a writ in the nature of a writ of Certiorari directing the respondents to certify and transmit to this Hon’ble Court the records of the case at the time of hearing of the case including the previous records of the case so that conscionable justice may be done by perusing the same.

(c) Rule NISI in terms of prayers (a) and (b) hereinabove.

(d) an ad-interim order directing the respondents to look into the grievances of the petitioners and thereby after making proper calculation of the service period of the petitioners compensate the loss of the petitioners at the earliest.

(e) to make the rule absolute.

(f) to issue any other appropriate writ or writs, order or orders as to which the petitioners are entitled.

(g) cost or costs.”

Learned counsel for the petitioners submitted that this Court in exercise of its equitable jurisdiction should allow the writ petition awarding compensation to the petitioners, as claimed. In support, learned counsel for the petitioners had relied upon a decision of the Hon'ble Supreme Court ***In the matter of : State of Uttar Pradesh and ors. Vs. Ali Hussain Ansari and anr.*** reported at ***(2020) 3 SCC 99.***

Considering the submissions made on behalf of the writ petitioners and considering the materials on record, this Court at the threshold perused the reliefs in the writ petition. From the reliefs claimed in the writ petition it appeared that, the claim of the petitioners are nothing but in the nature of damages by way of claiming compensation. The averments made in the writ petition would demonstrate that the petitioners had quantified the compensation on the basis of their alleged entitlement benefit of the employment, had the same been granted to the petitioners. To assess such damages by way of compensation in the facts of this case several fact finding enquiries are required to be carried out which is not the job of a Writ Court and without conducting a proper course of trial no Court can determine the actual damages, if any,

suffered by the petitioners for which the petitioners can be compensated.

Inasmuch as no appointment letter was issued in favour of the petitioners. Merely selecting the names of the petitioners in a selection process could not give any right in favour of the petitioners to claim an employment. The relevant observations of the Hon'ble Supreme Court in the judgment rendered **In the matter of : State of Uttar Pradesh and ors. (supra)** is quoted below :

"4. Thereupon, the first respondent was issued appointment letter and was appointed as Assistant Professor on 30-06-2006 after the competent authority, that is, the District Inspector of Schools, Deoria had issued order dated 31-7-2006. The first respondent retired from service on 30-6-2009 on attaining the age of superannuation.

5. On or about 1-5-2008, the first respondent had filed Writ Petition No.22102 of 2008 before the High Court seeking payment of arrears of salary from 8-6-1987 till 30-6-2006. The writ petition was disposed of by order dated 1-5-2008 of the learned Single Judge with a direction to the District Inspector of Schools, Deoria to consider and decide the representation made by the first respondent. The District Inspector of Schools, Deoria vide order dated 20-5-2009 rejected the representation for payment of arrears of salary on the principle of 'no work no pay'. Aggrieved, the first respondent had preferred Writ Petition No.11131 of 2010 which was disposed of vide judgment dated 4-1-2018 directing that the first respondent would be entitled to consequential benefits including pension benefits with effect from 8-6-1987. We have already referred to the order in State of U.P. V. Ali Hussain passed by the Division Bench which has dismissed the appeal holding inter alia that the respondent would be entitled to retirement benefits treating him to be in service with effect

from 8-6-1987 with seniority and benefit of promotion(s), if any, for the purpose of payment of retirement benefits. However, actual salary was not to be paid on the principle of 'no work no pay'.

6. From the fact recorded above, it is apparent that Shesh Mani Shukla upon selection and appointment had filed a Writ petition in 1988 and worked as an Assistant Professor till 2004. This was in view of the interim directions issued by the High Court. The salary was also paid to Shesh Mani Shukla as the Assistant Professor. The first respondent though recommended for the vacant post of Assistant Teacher was never issued an appointment letter and was not appointed and had not worked till he joined the post on 30-6-2006. After working for three years, he retired on 30-6-2009. Keeping in view the aforesaid peculiar factual position, we would modify the directions given by the Court on the payment of retirement benefits with a direction that the first respondent would be paid an amount of Rs. 4,00,000 (Rupees four lakhs only) as compensation. This compensation would be in addition to any other benefits which would be payable to the first respondent in accordance with law treating his date of appointment as 30-6-2006. The aforesaid sum of Rs. 4,00,000 (Rupees four lakhs only) would be paid by the appellant within a period of six weeks from the date of this order and in case of delay of payment, the appellant would be liable to pay interest @ 10 % p.a. from the date of this order. The appeal is accordingly disposed of.

In the facts of the case **In the matter of : State of Uttar Pradesh and ors. (supra)** the appointment letter was issued in favour of the first respondent who was appointed as Assistant Professor and the first respondent then retired from his service and ultimately was awarded Rs. 4,00,000/- by way of compensation by the Hon'ble Apex Court, such is not the fact in the instant writ petition

as the petitioners in the instant writ petition were not issued with any appointment letter and as such the question of joining in the employment did not arise. Hence, the ratio decided by the Hon'ble Apex Court in the matter of ***State of Uttar Pradesh and ors. (supra)*** would be of no assistance to the petitioners in the facts of this case.

Inasmuch as, the relief granted **In the matter of : *State of Uttar Pradesh and ors. (supra)*** by the Hon'ble Supreme Court in exercise of its discretionary power in a peculiar factual situation, which is not the case herein.

For the foregoing reasons and discussions this Court is of the firm view that, this writ petition is totally devoid of any merit, misconceived, frivolous and not maintainable in law at all.

In view of the above, this writ petition, **WPA 25831 of 2022** stands **dismissed** with an assessed cost of Rs.5,000/- to be paid by the petitioners in favour of the benevolent fund of the Bar Association, High Court, Calcutta.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Aniruddha Roy, J.)