

S/L 5
22.12.2023
Court No.25
SD

WPA 25197 of 2014

Guljar Alam
Vs.
State of West Bengal & Ors.

Mr. Prahlad Chandra Ghosh
Mrs. Kakali Samajpati

...for the Petitioner.

Mr. Lalit Mohan Mahato
Mr. Jagabandhu Roy

...for the State.

Mr. Saibal Kr. Acharyya

...for the Respondent No.8.

Md. Sarwar Jahan

...for the Respondent No.9.

Leave is granted to the petitioner to add the Principal Secretary, Education Department, State of West Bengal as party respondent to this writ petition.

Questioning the sustainability of the order dated 29.01.2013 passed by the District Nodal Officer, SSK/MSK Cell, Malda Zilla Parishad, Malda in deference to the order passed by a coordinate Bench of this Court on 12.10.2012 in WP. 16641 (W) of 2012 and seeking a further direction upon the concerned respondent to approve the engagement of the petitioner in the post of Samprasarak in Hatinda Shibir Madhyamik Siksha Kendra (in short, 'the Kendra'), this writ petition was instituted.

The capsulated form of the facts as projected in the writ petition is that the Managing Committee of the Kendra initiated a selection process to fill up the post of Samprasarak in Mathematics in 2009. In response to the advertisement and/or the notice, whereby the applications

from the intended and eligible candidates for such engagement were invited, the petitioner offered his candidature for the post. No candidates bearing the age of 25 years and above was available to teach Mathematics to the students of the Kendra. Consequently, to ensure smooth functioning of the Kendra, the petitioner was selected. The panel prepared for the post was approved by the Siksha Sanskriti Tathya-o-Krira Sthayee Samity of the concerned Panchayat Samity by adopting a resolution dated December 30, 2009.

After obtaining the approval of the panel from the aforesaid Panchayet Samity, the petitioner was initially engaged in the post from 30.12.2009 to 30.04.2010 and even an instrument in the style of an agreement was executed between the Managing Committee and the petitioner. On being so engaged, the petitioner rendered his service with utmost devotion and even, such agreement was renewed for another term.

In the midst thereof, the proposal for engagement of the petitioner in the post and the penal were forwarded to the office of District Nodal Officer for its financial approval but the District Nodal Officer by passing an order under his Memo dated March 31, 2010 disapproved the proposal for engagement of the petitioner in the post on the ground that at the time of initial engagement , the petitioner, whose date of birth was 04.04.1987, was below the prescribed age of 25 years at the time of his initial engagement and as per the Government order referred therein, the candidates having

age of 25 years could be engaged in the post when the Zilla Parishad concerned upon scrutiny of the papers and on being sure that persons of specified age group were not actually available.

The petitioner assailed the said order dated March 31, 2010 by preferring a writ petition being WP 16641 (W) of 2012. By an order dated 12.10.2012, a coordinate Bench of this Court disposed of the writ petition by directing the District Nodal Officer, Malda to dispose of the representation of the petitioner dated 22.5.2012 which was submitted before the Block Development Officer concerned by passing a reasoned order within the time stipulated therein after giving an opportunity of hearing to the petitioner and to the representatives of the respondent nos.4 to 8 thereto after verifying the records and without taking note of the Memo dated March 31, 2010.

In compliance with the order dated 12.10.2012, the file was put up by the District Nodal Officer on 29.01.2013 and on the same day by passing an order, the District Nodal Officer rejected the representation of the petitioner making an observation that at the time of engagement the petitioner was only 22 years of age. The Managing Committee has got no approval from the Zilla Parishad/Department in giving relaxation of age. It was spelt out in the memo. vide. no. 4578 dated 05.10.2007, candidates having age of 25 years and above may be engaged in the post.

Mr. Ghosh, learned advocate appearing for the petitioner submits that petitioner has no deficiency in his

competency for being engaged in the post and petitioner has academic qualifications to teach Mathematics to the students of the Kendra. As there was no candidate of having age of 25 years and above was available at time of giving initial engagement, the Kendra was constrained to engage the petitioner in the post and such engagement of the petitioner was approved by Sthayee Samity of the concerned Panchayat Samity.

He further submits that as on date, the petitioner has attained the age of 36 years. He contends that petitioner is having a family which is fully dependent upon him. Considering such aspects, the authority should have relaxed the minimum age limit and should have allowed the Kendra to re-engage the petitioner for smooth functioning of the Kendra. He further contends that the post is still lying vacant so there cannot be any impediment in giving further engagement to the petitioner in the post.

Placing reliance upon a judgment delivered in the case of *Syed Khadim Hussain vs. State of Bihar & Ors.* reported in (2006)9 SCC 195, Mr. Ghosh submits that in this case the petitioner filed an application seeking compassionate appointment at the age of 13 years but at the time of consideration of his application, he crossed the minimum age of 18 years and hence, the Hon'ble Court was pleased to direct the concerned authority to give appointment to the petitioner on compassionate ground. He submits that following the ratio, a direction can be given to

the concerned respondent to validate the engagement of the petitioner and to re-engage the petitioner in the post.

Mr. Acharyya, learned Advocate appearing of the respondent no.8 submits that since no candidate having age of 25 years and above was available, the Kendra was forced to engage the petitioner to run the Kendra smoothly. Consequently, The engagement of the petitioner was approved by Sthayee Samity of the concerned Panchayat Samity and hence, the petitioner was allowed to render his service in the post.

Mr. Acharyya submits that the service of the petitioner was satisfactory. He submits that the petitioner has sufficient academic qualifications to teach the students of the Kendra. He submits that necessary direction can be given to re-engage the petitioner. He further submits that there is a scarcity of teacher in Mathematics in the locality and the students of the Kendra are suffering since there is no suitable teacher in the Kendra to teach Mathematics to the Students.

Mr. Jahan, learned Advocate appearing for the respondent no.9 drawing my attention to the memo. dated 05.10.2007 (Annexure-R-9/1 to the affidavit-in-opposition used on behalf of respondent no.9) submits that initially, the prescribed minimum age for the post was 40 years and above. The State Government, on receipt of specific proposal, relaxed the minimum age limit up to 30 years. Subsequent thereto, it came to the notice of the Government that in some areas the candidates of 30 years and above

were not available for engagement in the post and hence, in partial modification of the existing guidelines, where eligible candidates are not available, Kendra was empowered to engage the candidates having age of 25 years and above as Samprasarak if such recommendation is made by the Zilla Parishad upon being sure that no such candidates are available.

He submits that at the time of initial engagement, the petitioner was of only 22 years and 8 months. Consequently, he was not eligible for the said post and his engagement cannot be claimed to a valid engagement.

Lastly, he submits that, now there is a change of the Administrative Authority who is responsible for taking decision regarding such engagement and he informs that at the present moment, the Principal Secretary, Education Department, Government of West Bengal is the ultimate authority to give relaxation of age limit and to validate such sort of engagement.

Mr. Mahato, learned Advocate for the State submits that after 2012, the State has completely stopped such sort of engagement in any Kendra of the State.

In reply, Mr. Ghosh submits that persons who were engaged prior to 2012 have been discharging their duties without any interruption and now, the practice of yearly engagement has been discontinued. He submits that persons who were engaged in the posts prior to 2012 have been given assurance that no such candidate shall be thrown away till he attains the age of 60 years.

Heard learned Advocates for the parties. Perused the materials on record.

It is trite law that if any Court of law directs any authority to act in a particular manner, the said authority has no way out to consider the said matter in a different manner or in a different way. The settled proposition of law is that one order of the court is to be complied with in letter and spirit. Admittedly, in the order dated 12.10.2012 passed in W.P. no. 16641(W) of 2012, the concerned respondent was directed to consider the petitioner's representation dated 22nd May, 2012 without taking note of the order dated 31st March, 2010 but to speak the truth, the concerned respondent has passed the same order but with different words.

Mr. Ghosh and Mr. Acharyya have conjointly voice that when the selection process was initiated, no eligible candidates having age of 25 years and above were available in the Gram Panchayat and its surrounding locality where the Kendra is located. Mr. Acharyya submits that for this reason, the Kendra was constrained to engage the petitioner in the post. There cannot be any doubt that petitioner has academic qualifications for being engaged in the post. From the Kendra, it has been submitted that petitioner's service was satisfactory and the post is still lying vacant.

Considering all these aspects and considering the submissions made on behalf of the respective parties, the order dated 29.01.2013, which is nothing but reproduction of the order dated 31st March, 2010 with different words, is set

aside and the writ petition is disposed of by directing the petitioner to submit a comprehensive representation before the Principal Secretary, Education Department, State of West Bengal within three weeks from date and if such representation is made within the time stipulated hereinabove, the Principal Secretary, Education Department, Government of West Bengal shall consider the representation of the petitioner after affording opportunity of hearing to the petitioner or his authorized representative and the representatives of the Kendra and Mission Director, if deputed, in light of the order passed by in WP 16641(W) of 2012 and also in light of the judgment of *Syed Khadim Hussain (supra)* .

While considering the representation, the Principal Secretary shall adopt a human approach as in the given case no prejudice would be caused either to the Kendra or to the State or to the Students in taking such approach.

However, it is clarified that if petitioner's claim succeeds, the Principal Secretary shall take next follow up for re-engagement of the petitioner in the post but if the petitioner's representation is decided against him, a reasoned order shall be passed and copy of such reasoned order shall be communicated to the petitioner.

The entire exercise shall be completed within two months from the date of receipt of the representation from the petitioner.

With these observations and directions, WPA 25197 of 2014 is disposed of. There shall be no order as to costs.

All parties are to act on the website copy of this order.

(Partha Sarathi Chatterjee, J.)