

07.12.2023
Item No. ml. 124
Crt.No.22
b.r.

WPA 23954 of 2019

Sunil Kumar Koley
-vs-
The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. Ambu Bindu Chakraborty
Ms. Mrinmoyee Roy Chowdhury
..... for the petitioner.

Mr. Pinaki Bhattacharyya
..... for the respondent nos. 1 to 4.

Mr. Ashim Kumar Halder
.... For the respondent nos. 5 and 6.

The petitioner claimed to have been appointed as an **Assistant Teacher** of one **Kankrai Gangadhar Sikshayatan, District- Howrah** (for short, the School) by the **Managing Committee of the School** as would be evident from the appointment letter dated **September 25, 1997 annexure p-1 at page 23** to the writ petition. The petitioner contends that he has received the ten years benefit, which was duly approved by the **respondent no.3**. The petitioner now claims **eighteen years** benefit in terms of the relevant and applicable **ROPA Rules**.

Mr. Ekramul Bari, learned counsel, appears for the petitioner relying upon a **Government Memorandum No. 181-SE(B)/SB-1/09 dated, the 8th October, 2009**, submits that the petitioner is eligible to

receive such eighteen years benefit since he has completed eighteen years continuous service. Referring to **annexure p-6 at page-28** to the writ petition, learned counsel for the petitioner submits that, the **respondent no.3** way back on **July 14, 2018** requested the School authorities to produce the relevant documents, the School authority failed to do so.

Referring to the communications dated **January 9, 2018** and **May 20, 2017 annexure p-9 at pages 31 and 32** to the writ petition, Mr. Bari submits that the School authority was not in a position to take any decision, as according to the School authority it was not clear how one post was held by both the petitioner and one Shri N.K. Hazra **from September 26, 1997 to April 30, 2003**.

Mr. Bari then submits that after the continuous service rendered by the petitioner for about twenty six years since about 1997, the plea taken for rejection of the claim of the petitioner for eighteen years benefit in 2017 is not tenable in law and should be rejected. The petitioner should immediately be granted the eighteen years benefit.

Mr. Ashim Kumar Halder, learned advocate, appears for the respondent nos. 5 and 6, the School authority. In course of the hearing, he placed the approval of appointment for the petitioner dated

January 14, 1998 issued by the **respondent no.3** wherefrom, it appears that the petitioner was appointed with effect from **September 26, 1997** and the approval was made against the retirement of one Shri N.K. Hazra. A copy of the said document is taken on record. Referring to **page 32** to the writ petition being the communication dated **May 20, 2017**, he submits that the School authority has already informed that Shri N.K. Hazra had retired on **April 30, 2003**. He submits that if Shri N.K. Hazra had retired on April 30, 2003, how the petitioner was appointed in 1997. Hence, the approval of appointment for the petitioner issued by the respondent no.3 is wholly illegal and a result of *mala fide*. He submits that the petitioner was appointed for the post which was not even existed as on the date of the issuance of the appointment letter dated **September 25, 1997**. He submits that the benefit claimed by the petitioner was rightly not decided by the school on the plea mentioned in the said two communication dated **May 20, 2017 and January 9, 2018**.

Mr. Bari in reply further submits, at this belated stage after allowing the petitioner to work for twenty six years, such plea cannot be taken. The school authority has not challenged the approval granted by the District Inspector of Schools in for the appointment of the

petitioner. By a resolution of the Managing Committee, the petitioner was appointed as a **Teacher-in-Charge**.

Mr. Pinaki Bhattacharyya, learned State counsel, appears for the respondent nos. 1 to 4.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that the approval of appointment was issued by the respondent no.3.

Whether such approval was granted rightly or wrongly or following the due process of law and whether the petitioner is eligible to his claim for 18 years benefit, to examine the issue, several factual factors are required to be taken in to account by way of a detailed fact finding enquiry. To do such fact finding enquiry is not the job of the writ Court. The writ Court will only assess if there is any infirmity in the decision making process of the authority or if there is any glaring perversity on the face of it. Since a serious dispute has been raised by the school today with regard to the appointment of the petitioner and same had already been raised by the school in 2017-2018, the necessary fact finding enquiry is required to be conducted.

The petitioner is really aggrieved by the decision of the school authority that the school was not in a position to decide the issue. It is also admitted by the

petitioner that the approval was made in favour of the petitioner for his employment by the respondent no.3. Otherwise, the petitioner could not have received the employment. Since the petitioner was appointed by virtue of the approval issued by the Respondent no.3, it would not be correct to entrust the Respondent no.3 to decide the issue raised by the petitioner as the school authority submits that the approval was illegal.

For those forgoing reasons and discussions and to sub-serve justice, this Court directs the respondent no.2 to decide the issue on the basis of the existing records and documents pertaining to the petitioner with regard to the eligibility of the petitioner to receive the **eighteen years benefit** upon giving at least seven days prior hearing notice to the petitioner, the respondent nos. 5 and 6 and the respondent no.3 and then after giving them an opportunity of hearing he shall pass a reasoned order in accordance with law.

The entire exercise as directed above shall be carried out and completed by the **respondent no.2 positively within a period of six weeks** from the date of communication of this order.

The **respondent no.2** then shall communicate its reasoned order to the petitioner, respondent no.3, respondent nos. 5 and 6 positively within a further

period of **two weeks** from the date of the said reasoned order to be passed.

It is made clear that, this Court has not gone into the merits of the claim of the petitioner or the merits of the contentions raised before this Court by any of the parties in any manner and the parties shall be at liberty to urge whatever points they wish to urge for deciding the issue of **eighteen years benefit** and whether the petitioner is eligible to receive the same in accordance with law by relying upon the documents and records before the **respondent no.2**.

Since affidavits are not called for, the allegations made in this writ petition are deemed not have been admitted by the respondents.

It is made clear that while deciding the issue, the **respondent no.2** shall do the same with his independent mind in accordance with law and without being influenced by any observation, if made by this Court.

It is also made clear that this order shall not create any right or equity in favour of the petitioner, if the petitioner is not eligible to receive his claim strictly in accordance with law.

If the reasoned order goes in favour of the petitioner, the **respondent no.2** shall take all necessary consequential steps to give effect to it forthwith but

positively within a period of **four weeks** from the date of the said reasoned order to be passed.

On the above terms and with the above observations, this writ petition being **WPA 23954 of 2019** stands **disposed of**, without any order as to costs.

(Aniruddha Roy, J.)