

133 14.12.2023
Sc Ct. no.22

WPA 31491 OF 2017

Santosh Kumar Seth

Vs.

The State of West Bengal & Ors.

Mr. Swapan Kumar Dutta
Mr. Prahlad Chandra Ghosh
Mr. Subir Hazra

....For the petitioner

Mr. Prasanta Kumar Giri

....For the State

Mr. Saibal Acharyya
Mr. Sukumar Sarkar.

....For the Respondent
Nos. 4, 5 & 6

Affidavit-of-service, filed in Court today, is taken on record.

Mr. Swapan Kumar Dutta, learned senior counsel appearing for the petitioner submits that, the petitioner had been working as a **Group-D** employee out of an arrangement between the school and him on a temporary basis since **April 8, 2004**, as would be evident from **Annexure-P15 at page 4** to the supplementary affidavit. Referring to the document from **pages 4 to 237** to the supplementary affidavit, Mr. Dutta submits that, the petitioner is still working. Mr. Dutta refers to **pages 238 to 345** to the supplementary affidavit and submits that, the petitioner is being paid by the school authority regularly for the service he is rendering. The petitioner claimed approval of his service. The petitioner filed a previous writ petition being **W.P. 25009 (W) of 2016**.

The coordinate Bench by its order dated **October 28, 2016** directed the respondent no.3 to consider the case of the petitioner. The respondent no.3 rejected the claim by its impugned order dated **July 25, 2017, Annexure-P14 at page 73** to the writ petition with the following observation :

“Considering the above facts and circumstances, the representation of the petitioner dated 03.08.2016 perused once again. As per para 2, 5 and 6 of the representation, the petitioner was asked to show the documents in support of his claim. He failed to show any documents. The Headmaster although issued certificate in favour of the petitioner on 9.8.2016 (page 34 of the writ petition), but he also failed to show any documents in support of his certificate. Moreover, the Head Master himself admitted that he joined the school after 2010. So he acted beyond his knowledge and capacity.

So, the present matter is quiet distinguishable with the case of Piyu Datta –vs,- State of West Bengal & Ors. as neither the petitioner nor the school authority could established the long experience of the petitioner. Moreover, if regularization is to be made as per rules, then the petitioner has to be applied to the School Service Commission when they advertise to fill up various posts of the aided institutions under their jurisdiction.

Thus the petitioner cannot be given any relief as prayed for. All concerned be informed accordingly.”

Challenging the said impugned order dated **July 25, 2017**, the instant writ petition was filed.

It is noted that, Mr. Dutta has submitted that, the post in which the petitioner is working is a **sanctioned and vacant post**.

Despite direction, the respondents fail to file affidavit-in-opposition.

Mr. Saibal Acharya, learned counsel appearing for the respondent nos. 5 and 6, the school authority, submits that, insofar as the joining and receiving of salary of the petitioner at the school are concerned, the submissions made by Mr. Dutta are correct.

Mr. Prasanta Giri, learned State counsel appears for the respondent nos. 1 to 3.

After considering the submissions made on behalf of the parties and upon considering the materials on record and on a scrutiny of the impugned order it appears to this Court that, the claim of the petitioner was rejected on the sole plea that, neither the petitioner nor the school authority could produce the relevant documents showing the service was being rendered by the petitioner since **2004**.

The supplementary affidavit discloses the thick bunch of documents, which apparently shows that the petitioner was appointed on **April 8, 2004** and he is being paid salary by the school regularly. These documents were not made available before the respondent no.3 when the impugned order dated **July 25, 2017** was passed.

Considering the above, to subserve justice, the impugned order dated **July 25, 2017** stands **set aside and quashed** and the **respondent no.3 is directed to revisit the issue** on the basis of the materials already on

record when the impugned order dated **July 25, 2017** was passed along with the records disclosed before this Court through the supplementary affidavit, affirmed by the petitioner on September 18, 2023.

The petitioner shall serve a copy of the supplementary affidavit along with a copy of the writ petition upon the respondent no.3.

Upon receiving the said supplementary affidavit the respondent no.3, **within three days** thereof, shall issue a prior hearing notice of at least seven days to the petitioner and the respondent nos. 5 and 6 and after granting them an opportunity of hearing shall decide the issue by passing a reasoned order.

The entire exercise, as directed above, shall be carried out and completed by the respondent no.3 positively within a period of **five weeks** from the date of receiving the supplementary affidavit from the petitioner. The respondent no.3 then shall communicate its reasoned order to the petitioner and the 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 and the respondent no.3 shall decide the issue with its independent mind strictly in accordance with law.

In the event the reasoned order goes in favour of the petitioner, the respondent no.3 and/or any other or

further authority shall give immediate effect thereto in accordance with law positively within a period of **three weeks** from the date of passing of the said reasoned order and its communication thereof.

It is further 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.

On the above terms, this writ petition, **WPA 31491 of 2017** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)