

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

WPA 2222 of 2022

Dipak Biswas

Versus

State of West Bengal & Ors.

Mr. Rudranil De

Mr. Debajit Kundu

.....For the Petitioner.

Mr. Hirak Barman

Ms. Bedashruti Bose

.....For the State.

Hearing Concluded On : 15.06.2023

Judgment on : 24.07.2023

Krishna Rao, J.:

1. This present writ application is directed against the order passed by the Director of Public Instruction, State of West Bengal dated July 22, 2022 wherein the claim of the petitioner for grant of benefit of the

Memorandum No. 2081-Edn (CS)/10M-83/2019 dated December 23, 2019 is rejected.

- 2.** On June 12, 2018, the Officer-in-Charge of ABN Seal College, Cooch Behar had published a notice for walk-in-interview for the posts of Teaching-cum-Learning Assistant. The petitioner had participated in the said walk-in-interview process and the petitioner was selected for the said post.
- 3.** The Joint Secretary to the Government of West Bengal by a Memo dated September 3, 2019 intimated to the Director of Public Instruction, State of West Bengal to request the Principals/Teacher-in-Charges/Vice Principals/Officer-in-Charges to submit the details of the Government approved Part Time Teachers (PTTs), Government approved Contractual Whole Time Teachers (CWTTs) and Guest Teachers (GLs) engaged prior to July 13, 2019 to restructure the service conditions and other benefits.
- 4.** As the name of the petitioner was not sent, the petitioner had made request to the respondent to take necessary steps for sending the name of the petitioner for the purpose of restructuring of the service condition. Though the name of the petitioner was not sent, the petitioner along with others have directly made the request to the District Magistrate, Director of Public Instruction and the Joint Secretary of Higher Education Department requesting for consideration of the case of the petitioner.

5. On receipt of the representation of the petitioner, the Director of Public Instruction requested the Officer-in-Charge of Acharya Brojendra Nath Seal College, Cooch Behar to send the status report of the petitioner and others and accordingly the Officer-in-Charge had forwarded a status report to the Director of Public Instruction.
6. The petitioner has also made representation to the President of the College Authority for inclusion of his name as State Aided College Teacher and for sending the name of the petitioner through portal but the name of the petitioner was not included and being aggrieved with the said act, the petitioner has filed a writ petition before this Court being WPA No. 455 of 2022 along with others and the said writ petition was disposed of by the Coordinate Bench of this Court on March 7, 2022 by passing the following order:

“The college duly forwarded the detailed status report in January 2020. The petitioner is yet to be made aware as to whether the benefit in terms of the aforesaid Memo has been awarded in his favour or not.

As it appears that presently all the documents of the petitioner is available in the office of the Director of Public Instruction, accordingly, the instant writ petition is disposed of by directing the Director of Public Instruction to take a decision with regard to the prayer of the petitioner for grant of benefit in terms of the Memorandum dated 23rd December, 2019 strictly in accordance with the said Memo at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order.

The said respondent shall pass a reasoned order and communicate the same to the petitioner immediately thereafter.

The petitioner is directed to forward a copy of his representation made to the Director of Public Instruction

along with all documents in his support to aforesaid respondent at the time of communicating the order of this Court.”

7. In compliance of the order by this Court dated Mach 7, 2022, the Director of Public Instruction, State of West Bengal by an order dated July 22, 2022 has passed the impugned order which reads as follows:

“The letter issued under Memo No. 356/18 dated 18.07.2018 by the Teacher-in-Charge of ABN Seal College, Cooch Behar is the purported letter of appointment. It appears there from that Mr. Dipak Biswas was intimated that he was selected as ‘Teacher cum Learning Assistant’ in the department of Education of ABN Seal College, Cooch Behar to be remunerated @ 150 Per Class, and he was asked to join within 5 days.

While uploading the detailed particulars of all the Government Approved Part Time Teacher (PTTs) Government Approved Contractual Whole Time Teacher (CWTTs) and Guest Teacher (GTs) in the Higher Education Department’s portal and shown in the list furnished on 25.09.2019, in the name of the Petitioner Dipak Biswas as Guest Teacher was not included. The Teacher-in-Charge of the said College assigned the following two reasons for such non-inclusion.

- i. The concept of Teacher cum Learning Associates did not mean PTT/CWTT/GT.*
- ii. The internal Quality Assistant Cell (IQAC) of the College engaged the Teacher cum Learning Assistant and remunerated @ Rs. 150/- per class out of the fund of the ABN Seal College Parent-Teacher Association, a registered Trust formed as per recommendation of the NAAC. The Teacher-in-Charge of the said College failed to take note of another factor that in Government Colleges only the retired or serving University/College Teachers could only be engaged as Guest Teacher in the Government College and in no case fresh candidate was allowed to be engaged as Guest Lecturer vide*

Higher Education Department's Memo No. 1185-Edn(A)/10M-34/16 dated 17.06.2016, No. 1186-Edn(A)/10M-34/16 dated 17.06.2016 and 893-Edn(A)/10M-18/03 dated 24.08.2004. because the Teacher-in-Charge of the concerned College was well aware of this emebergo on engagement of fresh candidate as Guest Lecturer or Teacher, he did not upload the name of the Petitioner Dipak Biswas as the Guest Teacher within cut-off date.

From the report of the Teacher-in-charge of the said College it appears that the post of 'Teacher cum Learning' was created by the ABN Seal College Parents Teacher Association, a registered trust formed as per recommendation of NAAC and remunerated out of the Trust Fund. Had such remuneration been paid out of the College Fund, such payment to Dipak Biswas would have been reflected in the acquittance roll of payment of salary/remuneration like other PTTs/CWTTs. No such document in forthcoming to establish this fact. So, the case of Dipak Biswas, the Writ petitioner does not stand the test of scrutiny in the light of the said Memo dated 23.12.2019 and he cannot in any way be brought within the nomenclature of PTT/CWTT/GT and as such Dipak Biswas, the Writ Petitioner is not entitled to any benefit of the said Memo dated 23.12.2019.

Hence the prayer of the Petitioner Dipak Biswas is rejected on proper consideration in view of the discussion made herein above. The case is thus disposed of."

8. Mr. Rudranil De, learned Advocate representing the petitioner submits that without going into the relation between the petitioner and the students have taken unreasonable decision by denying to consider the case of the petitioner for restructure of the service and other benefits of the petitioner.

- 9.** Mr. De submitted that the petitioner has collected the names of some guest lecturers who are serving now as State Aided College Teacher in Lady Bourne College who were appointed in the said College only in the year 2018/2019/2020/2016 and at the time of their appointment, neither they were retired College/University teacher nor serving at any College/University.
- 10.** Mr. De submitted that various colleges similar placed like petitioner's Colleges have appointed Guest Lecturers but the case of the petitioner has not been considered for restructuring.
- 11.** Mr. De submitted that Internal Quality Assurance Cell (IQAC) of the College is to maintain the internal quality and in the present case, the petitioner has been teaching the students since his joining as Teacher-cum-Learning Assistant but the respondents have discriminated the petitioner with the other Guest Teachers.
- 12.** Mr. De submitted that the designation of the petitioner as Teaching-cum-Learning Assistant is equivalent to Guest Teacher and since inception, the petitioner is teaching the students and the petitioner has performed his duty as invigilator of the examination as well as has checked the answer script and did all the duties that has been assigned to the petitioner by the College authority.
- 13.** Mr. De submitted that the respondent authorities have not understood the proper perspective of issuing circular by the State of West Bengal. He submits that the authorities have only consider the word as used in

the notification without taking into consideration the intention of the legislature which practically have given all the teachers in any nomenclature who are teaching their students in the College.

14. Mr. De submitted that the memorandum dated December 23, 2019 speaks about restructuring of the service conditions and other benefits of the Government approved Part Time Teachers, Government approved Contractual Whole Time Teachers and Guest Teachers in any nomenclature engage in any different Government/Government Aided School in the State of West Bengal uptill July 7, 2019 and the petitioner is coming under the said category but the respondents have not considered the case of the petitioner.
15. Mr. Hirak Barman, learned Advocate representing the respondents submitted that like all other Government/Government Aided Colleges in the State of West Bengal, the then Authority of Acharya B.N. Seal College, Cooch Behar uploaded the details of all the Guest Teachers including all other Government Approved PTTs and CWTTs through the official portal of Higher Education Department, Government of State of West Bengal but the details along with the documents of the petitioner had never been uploaded by the then Authority of ABN Seal College Cooch Behar.
16. Mr. Barman submitted that the then Officer-in-Charge of ABN Seal College submitted the “Candidates List of ABN Seal College” wherein it was stated that no other Guest Teacher/Government approved

CWTTS/PTTs engaged in the College prior to July 13, 2019 and no Guest Teacher in any description has been engaged in the College after July 13, 2019.

- 17.** Mr. Barman submitted that the Principal of ABN Seal College had submitted a detailed report on September 25, 2020 stating that they did not upload the details of the petitioner in the official portal of the Higher Education Department for the approval of SACT as per relevant Government order. He submits that the then Officer-in-Charge of ABN Seal College has stated that the petitioner along with two other members were engaged as Teaching-cum-Learning Assistants.
- 18.** Mr. Barman submitted that the concept of Teaching cum Learning Assistant does not mean “Part-Time Teacher or Guest Lecturer or CWTTS”. He submits that the Internal Quality Assurance Cell (IQAC) of the College is the creator of the said concept and they had taken the action in this regard. He submits that the source of remuneration is the ABN Seal College Parent-Teacher Association (ABNSCPTA) which is a registered Trust and the same was formed following the recommendation of NAAC Peer Team relating to the 1st cycle NAAC visit in the year 2007. He submits that they have been rendering the subjective and objective contribution towards the College through the said capacity since 2018.
- 19.** Heard the learned Counsel for the respective parties and perused the materials on record.

20. The Memorandum dated December 23, 2019 reads as follows:

“Memorandum

The matter of restructuring of service conditions and other benefits for Government approved Part Time teachers (PTTs). Government approved Contractual Whole time teachers (CWTTs) and Guest teachers, in any nomenclature, engaged in different Government/Government aided colleges in the State of West Bengal upto 13.07.2019, was under active consideration of the State Government for sometimes past. After careful consideration of the matter, the Governor is hereby pleased, in suppression of all previous orders in this regard, to restructure the service conditions along with the change of nomenclature of the aforesaid category of teachers commensurate with their qualifications and period of service rendered in the following manner:-

1. *Part Time Teachers, Contractual Whole Time Teachers and Guest Teachers having qualification for being appointed as teachers in the colleges as prescribed by the University Grants Commission and as followed by the West Bengal College Service Commission, on the date of issuance of this order, will be renamed as **State Aided College Teacher, Category-I**, and will be entitled for the following remuneration:*
 - A. *Rs. 31,000/- (consolidated) per month for those served the college less than 10 years;*
 - B. *Rs. 35,000/- (consolidated) per month for those served the college more than 10 years;*
2. *Part Time Teachers, Contractual Whole Time Teachers and and Guest Teachers don't having qualification for being appointed as teachers in the colleges as prescribed by the University Grants Commission, and as followed by the West Bengal College Service Commission on the date of issuance of this order, will be renamed as **State Aided College Teacher, Category-II** and will be entitled for the following remuneration.*

- C. Rs. 20,000/- (consolidated) per month for those served the college less than 10 years;
 - D. Rs. 25,000/- (consolidated) per month for those served the college more than 10 years;
- 3. *Remuneration of existing Government approved PTTs and CWTs, who are getting higher remuneration at present, shall be protected.*
- 4. *Remuneration of above mentioned category of teachers will be enhanced @ 3% of the total remuneration per year on 1st July of every year.*
- 5. *Such category of teachers will be entitled for Rs. 5.00 Lakh (Five Lakh) only on attaining the age of 60 years, provided the teacher concerned has rendered service for a period not less than 10 years.*
- 6. *State Aided College Teacher, Category-II, on acquirement of UGC qualifications subsequently will be considered as State Aided College Teacher, Category-I with effect from the date of acquiring such qualification, subject to the approval of DPI, West Bengal.*
- 7. *General conditions in respect of approval of all the State Aided college Teachers mentioned above:-*
 - I. *Fresh letter of engagement will be issued by the college authority to all category of teachers mentioned hereinabove after obtaining approval of the Director of Public Instructions, West Bengal.*
 - II. *Notional vacancies are to be created to accommodate all State Aided College Teachers who are engaged as per 7(I) above and these posts would be treated as personal and supernumerary ones.*

- III. *Both the above two category of teachers (i.e. State Aided College Teacher, Category-I & Category-II) will be allowed to continue their engagement till they attain the age of 60 years. However, service of any particular teacher of above categories may be terminated by the Governing Body, with the approval of the State Government for non-performance, incapacitation, delinquency, misconduct, involvement in any criminal case or any other culpable offence, in such manner as may be prescribed by the State Government.*
- IV. *The above category of teachers will be required to take classes, along with works related to examination etc, as per the following schedule:-*
 - a. *State Aided College Teacher, Category-I: 15 Hours per week.*
 - b. *Stat State Aided College Teacher, Category-II: 15 Hours per week.*
- V. *The benefit of this Order shall be allowed to the Part Time Teachers, Contractual Whole Time Teachers and Guest Teachers who were engaged in the college on or before 13.07.2019.*
- VI. *If required, the above category of teachers may be deployed in any other Govt. aided colleges in the interest of public service.*
- VII. ***The final benefit will however, be effective from the 1st day of January, 2020."***

The order is issued with the concurrence of Finance Department Vide their U.O. No. 1232/1 dt. 16.08.19 and U.O. No. 1644 dt. 19.11.19.

*By order of the Governor,
Joint Secretary to the
Government of West Bengal.”*

The Memorandum is issued for restructuring of service conditions and other benefits of the Government approved Part-Time Teachers (PTTs), Government approved Contractual Whole Time Teachers (CWTTs) and Guest Teachers, in any nomenclature in different Government/Government aided Colleges in the State of West Bengal.

The petitioner admittedly was engaged as Teaching-cum-Learning Assistant. He is not PTT, CWTT and Guest Lecturer. The claim of the petitioner is that Teaching-cum-Learning Assistant is equivalent to Guest Lecturer and the petitioner is performing the work to that of the Guest Lecturer.

To decide the issue to see what is the work is to be performed by the Teaching-cum-Learning Assistants. The Learning Assistants have been used in lecture to assist with facilitation of peer instruction during use of personal response system. They circulate class (as does the instructor), making sure all the students are engaged in discussion, promoting useful dialogue, answering student questions, and providing feedback to the instructor on the student understanding. The Learning Assistants have been used to facilitate group work in a variety of ways in both introductory and upper-division courses, such as in lecture tutorials and worksheets, group work in required recitations, and group work in optional co-seminars. The Learning Assistants are being used to facilitate upgraded, voluntary oral assessment offered prior to exam. Oral assessment last one hour, and

offered for prior to the course exam. Orals are geared to improve student understanding and allow instructors to work with the students on individual basis to address misunderstandings.

21. In the report submitted by the Officer-in-Charge of the College clarified that:

- a. *There is no other Guest Teacher/ Govt. appd. PTT/ Government approved CWTT/engaged in the College prior to July 13, 2019;*
- b. *No Guest Teacher in any description has been engaged in the College after July 13, 2019.*

As per the report of the College, the post of Teaching-cum-Learning was created by the Parents-Teachers Association of the College, a registered Trust formed as per recommendation of NAAC and the remuneration is being paid out of the College fund.

The petitioner has relied upon the routine for undergraduate BA (Program and General) Course and submitted that the petitioner has taken classes as teacher but other than the said document, there is no other document to establish that the petitioner is performing his duty to that of the Guest Teachers. The College Authority has also stated that the Teaching-cum-Learning post was created by the Parent Teacher Association which is a registered Trust of the College and there is no document or evidence to establish that the post of Teaching-cum-Learning is to that of the Guest Lecturer.

- 22.** The job of the Teaching-cum-Learning is enumerated in paragraph 19 supra wherein it is categorised that the Learning Assistants have been used in lecture to assist with facilitation of peer instruction during use of personal response system and other work not for teaching to that of Guest Teacher.
- 23.** In the Memorandum dated December 23, 2019, it is categorically mentioned that the said memorandum is issued for restructuring of service conditions and other benefits for Government approved Part-Time Teachers, Government approved Contractual Whole Time Teachers and Guest Lecturer in any nomenclature engaged in different Government/Government Aided Colleges in the State of West Bengal West Bengal. Considering the above this Court finds that the post of Teaching -cum-Learning Assistant is not coming under the purview of as Guest Lecturer or any other category as required in the said Memorandum.
- 24.** In view of the above, this Court finds that the order passed by the Director of Public Instruction dated July 22,2022 require no interference.
- 25. WPA 2222 of 2022** is thus **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)