

29.07.2024
Court No.13
Item No.2 to 7
sp

FMA 1658 of 2019

Dipak Kumar Mahata

Vs.

The State of West Bengal & Ors.

With

FMA 1659 of 2019

Manoranjan Das

Vs.

The State of West Bengal & Ors.

With

FMA 1660 of 2019

Uma Sankar Pal

Vs.

The State of West Bengal & Ors.

With

FMA 1663 of 2019

Rabindranath Baila

Vs.

The State of West Bengal & Ors.

With

FMA 1664 of 2019

Bijoy Kumar Mahata

Vs.

The State of West Bengal & Ors.

With

FMA 1665 of 2019

Ganga Rani Sen

Vs.

The State of West Bengal & Ors.

Mr. Tulsi Das Maiti,
Mr. Pradip Kumar Ghosh,
Ms. Namita Basu,
Mr. S. Bala

..for the appellants

Mr. Ranjan Saha,
Ms. Ankita Saha

..for the DPSC, Paschim Medinipur

1. Since all the aforesaid appeal challenge the same judgment dated 11th January, 2018, they are taken up and heard analogously and are dealt with by the common judgment.

2. The subject appeal arises out of the same judgment and order passed by a Single Bench of this Court dated 11th January, 2018 in WP 16313 (W) of 2016, WP 16315 (W) of 2016, WP 16287 (W) of 2016, WP 16290 (W) of 2016, WP 16309 (W) of 2016, WP 16310 (W) of 2016, WP 16308 (W) of 2016 and WP 16304 (W) of 2016.

3. Learned counsel for the appellants submits that his clients are aggrieved by a small portion of the judgment and are otherwise satisfied with the rest of it. The portion that they are aggrieved is the denial of back wages for the period from 27th July, 2016 till their respective dates of reinstatement and/or superannuation. The appellants claim that since the order of termination of the appellants' service dated 27th July, 2016 has been held to be illegal, they are entitled to full wages and salary from 27th July, 2016 till their actual reinstatement in service and/or superannuation.

4. The facts of the case that are relevant for the purpose of the instant appeal are that the appellants were appointed sometime in the year 1996 by the then Medinipur District Primary School Council. They were sponsored by the Employment Exchange as General Candidates. They never claimed to be in any reserved category. Yet they were appointed by the DPSC, Paschim Medinipur in the SC category. The appellants

obtained higher marks than the cut off marks of the last appointed candidate in the General Category. They were otherwise therefore entitled to be appointed in the General Category under the selection process of the year 1996. The appellants were appointed and continued to serve till the year 2016.

5. The selection process of year 1996 came to be challenged in several rounds of litigation. A Single Bench of this Court had quashed the entire recruitment process in WP 5137 (W) of 1996. The order was carried in appeal and the Division Bench set aside the order of the Single Judge on 21st February, 2014 in MAT 278 of 2013.

6. An enquiry was, however, directed to be conducted in respect of the appointment of 56 candidates including the appellants. The enquiry was directed to ascertain as to whether the appellants, in fact, belonged to the SC category. They were actually appointed in the vacancies reserved for the SC category. The order of Division Bench was confirmed by the Hon'ble Supreme Court.

7. The DPSC, now sub-divided Paschim Medinipur conducted an enquiry. It found no evidence that the appellants had applied in the SC category. It also did not find the evidence that the appellants had misrepresented to the DPSC in any way. In fact, their

recommendation of appointments could not even be traced out by the DPSC. It was, however, found that the appellants were not in the SC category and could not have been therefore engaged in the SC category. Their appointments stood cancelled by the order of the DPSC dated 27th July, 2016. By this time, the appellants had all rendered at least 20 years of service. Some of them were on the verge of superannuation or had already superannuated.

8. The Single Judge found the order dated 27th July, 2016 cancelling the appellants' service to be ex facie illegal. What weighed with the Single Judge was that the appellants were not responsible for any misrepresentation or any action which led to there being appointed in the SC category despite they having been sponsored by the Employment Exchange in the General Category. This Court is in complete agreement with the views of the Single Judge in this regard. It would be grossly unfair, arbitrary and inequitable to cancel appointments to the persons who have rendered about 20 years of service for no fault of theirs.

9. The Single Judge, however, directed that the appellants would be treated notionally as on service from 27th July, 2016 till their date of superannuation.

10. Learned counsel for the appellants Mr. Tulsi Das Maiti would argue before this Court that since the

appellants have rendered about 20 years of unblemished service and the order of cancellation of their appointments having been set aside, they are entitled to full salary and emoluments from the date of cancellation till the date of their superannuation. But for the illegal order they would have been working. They were always ready and willing to render service. They were prevented by the impugned illegal order dated 27th July, 2016 from rendering any such service.

11. The impugned judgment is challenged only to the limited extent that the appellants ought to be paid salary for the period that they were prevented from rendering service by the DPSC.

12. Learned counsel for the DPSC, Paschim Medinipur opposes the prayer of the appellants and submits that since the appellants did not render any service post 27th July, 2016, they cannot in law claim any salary or emolument on the principles of 'no work no pay'.

13. This Court has carefully heard the arguments advanced by the learned counsel for the appellants and the DPSC, Paschim Medinipur.

14. The principle of 'no work no pay', is normally applied when the service is not rendered at the instance of an employee. However, there is no straight jacket formula for payment of back wages, salary and

emoluments for service not rendered by an employee on account of the fault of an employer.

15. In several decisions, the Hon'ble Supreme Court in cases relating to workmen, whose service has been reinstated after orders of dismissal and/or termination have been set aside by Tribunals and Courts, has held that full back wages are not *ipso facto* payable to such employees/workmen. It would essentially depend on the facts and circumstance of each case. The hardship faced by a workman is at higher than that of a teacher. Even in cases of workman, the employee has been compensated to the extent 30% to 50% of back wages for wrongful termination or illegal dismissal.

16. Counsel for the appellants relies upon a recent decision of the Hon'ble Supreme Court dated 3rd January, 2024 in the case of **Radhey Shyam Yadav & Anr. Vs. State of U.P. & Ors.** being Civil Appeal Nos. 20-21 of 2024 arising out of SLP (Civil) Nos. 3877-3878 of 2022 where 50% of back wages have been allowed to teachers similarly circumstanced as in the instant case.

17. In the backdrop of the above, while this Court is in agreement with the impugned judgment dated 11th January, 2018, this Court directs that 50% of the salary and emoluments that they would have been entitled to, had they been rendering continuous service

from 27th July, 2016 till the date of their superannuation or joining of duties would be payable to them. The other portions of the judgment that the appellants shall be entitled to notional benefits for the entire period remains undisturbed except to the extent modified hereinabove.

18. For the reasons stated hereinabove, the impugned judgment dated 11th January, 2018⁵ shall stand partly modified. It is ordered that the arrears of salary to the extent of 50% as indicated above be released to each of the appellants within a period of 2 months from date by the Chairman, DPSC, Paschim Medinipur.

19. All MATs being MAT 877 of 2018, MAT 880 of 2018, MAT 875 of 2018, MAT 878 of 2018 and MAT 879 of 2018 are allowed in part and disposed of accordingly.

20. The Registry and the parties may communicate this order to the Court below.

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

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)