

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

THE HON'BLE JUSTICE HARISH TANDON

&

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

MAT 818 of 2024

CAN 1 of 2024

DPSC, Bardhaman

Vs.

Abhishek Maddunay & Ors.

&

MAT 433 of 2024

CAN 1 of 2024

Achintya Chakraborty

Vs.

The State of West Bengal & Ors.

Appearance:

For the DPSC, Bardhaman	:	Mr. Saibal Acharya, Adv.
		Mr. Tanweer J. Mondal, Adv.
For the Writ Petitioners/Respondent	:	Mr. Gourav Das, Adv.
		Mr. Madhumanti Das, Adv.
For the Respondent No. 10/Appellant	:	Mr. Krishnendu Banerjee, Adv.
		Mr. Md. Idrish, Adv.
		Mr. Ishan Ganguly, Adv.
For The State Adv.	:	Mr. Sirsanya Bandapadhyay,
		Ms. Tapati Samanta, Adv.
Judgment on	:	14.11.2024

Harish Tandon , J.

Both the appeals are filed by the Respondent no. 8 to 10 of the writ petition assailing the common judgment by which they were saddled with the compensation of Rs. 5 lakhs each to be paid to the petitioners within the stipulated period.

The appeals are restricted to the compensation awarded against them for their negligence, lapses and/or attributes which causes mental stress and agony to the writ petitioners who were deprived of the appointment to the respective posts for a considerable period of 7 years despite having successfully competing the recruitment examination.

Sworn of unnecessary details, the facts are more or less undisputed and we feel it to adumbrate the same in a concise way. The selection process for the post of a Lower Division Clerk was initiated by the erstwhile Burdwan District Primary School Council wherein one post was reserved for General (EC) and one was reserved for Ex-serviceman. The writ petitioners/respondent participated in the selection procedure and emerged successful in the written examination. Subsequently, they were called for the interview on June 12, 2015 but thereafter, no communication was made with them whether they have been selected for an appointment or not. Feeling uncertainty on the fate of the said recruitment process, the information was sought under the Right to Information Act, 2005 followed by several reminders and/or application which could only be responded on March 29, 2023. It was communicated to the writ petitioners that the panel

prepared by the authority is indicative of the fact that the petitioners were empanelled in the respective categories of posts and such panel was approved by the competent authority. There is no record available in the department on the issuance of the appointment letters to those writ petitioners/respondents. The approach was made to this Court by filing the writ petition being WPA 12343 of 2023 for a Writ of Mandamus upon the authorities to issue the letter of appointment together with the other consequential reliefs relating to the counting of the service and all benefits attached to the said posts.

On the conspectus of the said information so disclosed under the Right to Information Act, *inter locutory* orders were passed by the writ Court to disclose certain facts and the affidavits were filed by the contesting respondents including the appellants. The sum and substance of the disclosure made by the Respondent Authorities in their respective affidavits percolated the uniform stand that after the panel was duly approved by the Competent Authority, the letter of appointment is required to be issued by the Chairman of the said District Primary School Council which, in fact, was not done. During the relevant period, the Respondent no. 10 was the then Chairman of the said Council and found to have been negligent, dormant and showed no allegiance to his duties attached to his office and kept the said panel in suspended animation. The other appellant being the Respondent no. 8 categorically averred in the affidavits that after the approval of the panel, it is a primary duty of the Chairman to issue the appointment letter which appears to have not been done during his tenure.

After the disclosure of the aforesaid stand, the existing Chairman of the said District Primary School Council issued the letter of appointment extending the notional benefit from a retrospective date.

On the backdrop of the aforesaid facts discerned from the record, the Writ Court proceed to decide the writ petition within the limited contour as to whether the writ petitioners/respondents are entitled to a compensation for the loss of the prime period of their service career because of the lackadaisical and dormant attitude of the Council as well as the then Chairman. Ultimately, the Writ Court found that the then Chairman, the Respondent no. 10, acted as a major player in denying and/or delaying the right accrued to the writ petitioners and the negligence and/or dereliction in discharge of the duties being patent from his conduct, he should compensate the petitioners. The Writ Court further held that since the Council had a paramount obligation to take steps for appointment of the writ petitioner; it is also responsible to compensate the writ petitioners for the loss of the prime time in their service career.

As indicated above, the aforesaid appeals have been filed by the District Primary School Council and the then Chairperson of the Council assailing the portion of the order by which the compensation was awarded for the period between 2015 to September, 2021.

The Counsels appearing for the appellants argued before us which inculcated as sense of shirking their respective responsibilities on one another and, therefore, disputed the collective responsibilities held by the Writ Court. The affidavits filed by the appellants on its meaningful reading

does not instil any confidence in us that his conduct can be termed as “free from blame”. The shelter appears to have been taken on the demonstration at the Council office and the declaration of the Assembly Election in the year 2016 that does not appear to have any justiciable defense for the reason as what constrained him not to take steps after the Assembly Election of 2016 was over till he demitted office in the year 2021.

On the other hand, the lawyer for the DPSC submits that it is the duties and responsibilities of the Chairman to issue the letter of appointment and if there is any dereliction in discharge of his duties by the said Chairman, the Counsel cannot be saddled with the monetary compensation.

It is undeniable that the writ petitioners/respondents despite having emerged successful in the recruitment examinations and empanelled for an appointment which was also approved by the competent authority were deprived of the appointment to the said post for a considerable period of 7 years until new incumbent i.e., a present Chairman of the Council resurrected the panel and initiated the process resulting into issuance of the letter of appointment. To clarify the position, it is undisputed that the letter of appointment was issued during the pendency of the writ petition and it would not be wrong to say that the principal relief claimed in the writ petition was meted out.

However, the question is still boils down as to whether the writ petitioners/respondents are entitled to compensation for the loss of the period for which they were unreasonably and illegally deprived of. The law

relating to the compensation to be awarded in the writ proceedings has been elaborately dealt with by the Apex Court in case of ***Dwarkanath vs. Income Tax Officer & Anr. reported in AIR 1966 SC 81***. The Apex Court in unequivocal term held that the concept of compensation under the public Law for the injuries caused due to negligence, inaction or indifference of the public functionaries is well-known and engrained in the legal parlance of the country. The aforesaid ratio of law is reiterated and restated in a subsequent Constitution Bench decision of the Apex Court rendered in case of ***M.C. Mehta & Anr. Vs. Union of India & Ors., reported in (1987) 1 SCC 395*** to the effect that it is well-settled law that the writ court can award the compensation while exercising the extra-ordinary constitutional jurisdiction.

The immunity sought to be claimed by the District Primary School Council does not appear to hold water in view of the decision rendered by the Apex Court in ***N. Nagendra Rao & Co. vs. State of A.P., reported in (1994) 6 SCC 205***. It was held that the defence taking shelter under the Act of the State cannot be equated with the sovereign immunity and the old and archaic concept of sovereignty has been eroded and cannot survive after adopting the Constitution where the sovereignty vests into the people of the Country.

No civil society would permit an executive to play with the fate of the people of this country and claimed that they can act as a sovereign as they are bound to act within the circumference of the statutes and the Constitutions and their respective responsibilities enshrined therein. It is a hard reality that the country is grappling with the large section of the people

who are unemployed though the efforts and attempts are being made to generate the employment with an avowed object of providing livelihood being one of the facets of the fundamental rights enshrined under Part-III of the Constitution. It is no longer *res integra* that the Right to Life under Article 21 of the Constitution of India encompasses the right to livelihood and, therefore, any deprivation is construed as an infringement of such fundamental right and the Court cannot remain a mute spectator. It is a fundamental duty of the Writ Court to reach to the justice to be imparted to the people wherever it is found that the same is being violated. We do not find any fetter on the part of the Court in awarding the compensation by moulding the relief taking into account the change in the circumstances or the subsequent events happened in course of the judicial proceedings. The power to mould the relief is engrained into the system and, therefore, we do not find that the Writ Court has exceeded its jurisdiction in awarding the compensation after having made aware that the appointment was made during the pendency of the writ petition.

A plea is sought to be taken by appearing appellants that at the time an issuance of the appointment letter the writ petitioners/respondents have abandoned the claim of compensation does not appear to hold water in view of the judgment of this Court in ***Kalyan Kumar Chattopadhyay vs. The State of West Bengal & Ors. reported in (2006) 2 CAL LT 600*** wherein it is held:

“43. This Court further holds that since the declaration was taken from the petitioner by the concerned respondent

in excess of the statutory requirement, even such declaration cannot improve the defence of the respondents. As such, non-disclosure of such a declaration also cannot be fatal to the interest of the writ petitioner.”

The Apex Court in case of ***State of Uttar Pradesh & Ors. Vs. Ali Hussain Ansari & Anr. reported in (2020) 3 SCC 99*** was considering the identical case and awarded the compensation to the teacher who was never issued an appointment letter despite the recommendation having made in this regard in the following:

“The first respondent though recommended for the vacant post of Assistant Teacher was never issued an appointment letter and was not appointed and had not worked till he joined the post on 30-6- 2006. After working for three years, he retired on 30-6-2009. Keeping in view the aforesaid peculiar factual position, we would modify the directions given by the Court on the payment of retirement benefits with a direction that the first respondent would be paid an amount of Rs. 4,00,000 (Rupees four lakhs only) as compensation. This compensation would be in addition to any other benefits which would be payable to the first respondent in accordance with law treating his date of appointment as 30-6-2006.”

The law as enunciated above leaves no ambiguity that there is no fetter on the part of the Writ Court to award compensation by moulding the

relief necessitated by a changed circumstances during the pendency of a legal proceeding and, therefore, we do not find any ground warranting interference with the impugned order.

The appeal is dismissed.

Applications are accordingly dismissed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Harish Tandon, J.)

I agree.

(Shampa Dutt (Paul), J.)