

02.08.2024

sayandeep

Sl. No. 37

Ct. No. 08

**FMA 387 of 2010
With
ASTA 1 of 2010 (Old No. ASTA 59 of 2010)**

Motiur Rahaman
Vs.
The State of West Bengal & ors.

Mr. Md. Nurezaman
Mr. Somen Bose
..... for the appellant
Mr. Jayanta Samanta
Ms. Indumouli Banerjee
.... for the State
Mr. Md. Sarwar Jahan
Ms. Mousumi Mitra
Ms. Tapati Sarkar
..... for the respondent No. 5
Mr. Gausul Alam
.... for the respondent No. 10

The stale claim is sought to be resurrected in the instant appeal when in the earlier round of litigation, the appellant could not succeed in getting a favourable order. The dispute pertains to the recruitment process for an appointment of a Samprasarak in Bengali and History in Char Bathanpara MSK. The private respondents applied for the said post but they were thrown out of the zone of consideration despite having a requisite qualification in terms of the said notice inviting applications and the appellant being a pass graduate was considered as Samprasarak for History subject. The challenge was made by the unsuccessful candidates being the private respondents before this Court in WP 6475 (w) of 2008. It goes without saying that the appellant was arraigned as respondent No. 10

in the said writ petition. The said writ petition was disposed of on 22.05.2009 with the categorical finding that the appointment in the concerned Madhyamik Siksha Kendra by the President of the Managing Committee is wholly illegal and directed the District Magistrate of the concerned District to hear out the parties, allow them to adduce evidence and thereafter take a conscious decision. The Single Bench further observed that since the appointment of Samprasarak is initially for a period of one year which expired on the said date, the District Magistrate was further directed to consider whether the services of the appellant as Samprasarak in History subject can be extended or not.

Pursuant to the said direction, the District Magistrate arrived at the conclusion that the manner in which the appellant was appointed is wholly illegal and the private respondents were illegally deprived of being appointed as Samprasarak in Bengali and History subjects respectively. However, the District Magistrate directed the aforesaid applicants to be appointed as Samprasarak in the respective subject and further directed not to disburse any honourarium or remuneration to the appellant henceforth.

It appears that the parties who appeared before the Court including appellant herein took several objections including that the application filed by the respondent No. 10 herein was received by the authority beyond the period provided in the said Notification and,

therefore, his candidature at the very inception is liable to be thrown out of the zone of consideration. It appears from the order of the District Magistrate that the aforesaid contention does not appear to be factually correct.

Challenging the said order of the District Magistrate, the appellant moved the writ petition before this Court. the Single Bench found that the evidence adduced before the District Magistrate as well as discerned from the record revealed that the private respondents therein have a better academic records than the appellant and the moment the notice indicates that the preference would be given to the person having higher academic qualification or experience, appointment of the appellant being a pass graduate is wholly illegal. Ultimately, the Single Bench found the order of the District Magistrate to be just and in accordance with the directions passed by this Court and refuses to interfere therewith.

The appellant has approached to this Court and contends that the one of the private respondent was already working as a para-teacher in the different school and, therefore, he cannot apply for the post of Samprasarak nor he can make declare that he is unemployed. We could have ventured to consider the aforesaid stand provided a complete bar is created in the Notification inviting application for appointment of a Samprasarak in a respective subject. The notification

included in the paper book does not reveal any such embargo and, therefore, even if for the argument sake, the contention of the appellant is taken to be true, we do not find any bar in applying the candidature despite having been rendering services as a para-teacher in a different school. The authorities cannot impose the restrictions and/or conditions after the recruitment process has reckoned as the rule of the game cannot be permitted to be changed after the same is played. In absence of any restrictions in offering the candidature, such restriction cannot be perceived nor can act as a deterrent into a person offering his candidature.

We thus do not find any justification in the stand of the appellant that the private respondent was denuded of offering his candidature having discharging duties as para-teacher in another school. So far as the declaration as unemployed in an aforementioned portion is concerned, any such declaration which appears to be factually incorrect to the knowledge of the applicant has to be considered on the anvil of an intention to deceit or in other words to gain something on the basis of such wrong declaration unless the motive behind the false declaration is evident and discerned in course of the hearing it would not be proper for the Court to discard the claim based on other factors. As indicated hereinabove, there is no embargo in the advertisement that a person rendering services as para-teacher in another school cannot apply for the

post of Samprasarak in the respective subject. Had such declaration being made for which we have no conclusive prove in this regard, it does not take away the right of the said deponent to offer his candidature for the post of Samprasarak in the respective subject. For the purpose of clarity, though in paragraph 19 of the writ petition it was averred that one of the private respondent is working as para-teacher in a particular school but there was no supporting documents produced before the writ Court. Apart from the same, we do not find any reflection in the impugned order that such point was taken and in absence of any cogent evidence, we do not find any infirmity and/or illegality in the order of the Trial Court.

Both on facts and the law, we do not find any illegality in the impugned order.

Accordingly, the appeal and application are hereby dismissed without any order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)