

04.04.2024
Item No.8
Ct. No.11
CHC
(disposed of)

W.P.A. 6376 of 2009

**Tapan Kumar Das
Vs.
The State of West Bengal & ors.**

Mr. Kalyan Kumar Panda,
Mr. Uttam Kumar Roy
...for the petitioner

Mr. Somraj Dhar,
Mr. Biswajit Dutta
...for the State

This present writ petition has been preferred throwing a challenge to the legality of the order dated 12th February, 2009 passed by the D.I. of Schools (S.E.) in deference to the order dated April 8th, 2008 passed by a coordinate Bench of this Court in W.P. 1986 (w) of 2006.

Shorn of unnecessary details, the facts which are required to be adumbrated for effective adjudication of the writ petition are that the petitioner is a Group-D staff of the Churamanipur High School (in short, the school) and following his implication in a criminal case, which was started with a complain of his alleged commission of offences punishable under Sections 498A/306/34 of the Indian Penal Code, the petitioner was arrested on 12th April, 2001 and lodged in judicial custody till 10th June, 2001. The petitioner was enlarged on bail on 11th June, 2001.

Facts remains that the petitioner was not placed under suspension nor was any disciplinary proceeding initiated against him.

Therefore, immediately after being released on bail, the petitioner requested the school authority to accord permission to enable him to join his duties but to no avail and the petitioner was kept out of the service. Aggrieved thereby, the petitioner approached this Court with a writ petition being W.P. No. 17882 (W) of 2001, which was disposed of by directing the Secretary of the Managing Committee to consider the grievances of the petitioner ventilated in his representation. Eventually, the petitioner was allowed to join on 01.03.2002 and since then the petitioner has been rendering his service in the school without any blemish.

Subsequent thereto, by a judgment and/or order dated 27th April, 2005, the petitioner was acquitted of all charges. After his acquittal, the petitioner approached the school authority with a prayer for release of his arrear salary. Despite being so approached, the school authority maintained a deceptive silence and as such, the petitioner was constrained to file a writ petition being W.P. NO. 1986 (W) of 2006, which was disposed of by directing the D.I. of Schools to decide the issue. Pursuant thereto, the District Inspector of Schools in his order vide. no. 20/1/(4)/2/S dated 12.02.2009 took the following decision:-

“In this circumstances as there is no alternative to redress the grievances of the petitioner, it is decided that the petitioner will approach to the School authority for sanctioning leave for the period from 26.6.01 to 28.2.02 and the School will take appropriate steps to sanction the leave from the credited leaves accounts of the petitioner. If there is no sufficient credited leave for this purpose they would approach to the West Bengal Board of Secondary Education for necessary permission to sanction the leave in anticipation that the said leave will be adjusted in future.”

The order of the D.I. of Schools dated 12.02.2009 is under challenge in this writ petition.

Despite service, the Board and the School authority are unrepresented.

The State has filed affidavit-in-opposition, as directed but no reply thereto has been filed by the petitioner.

Mr. Kalyan Kumar Panda, learned advocate appearing for the petitioner submits that by passing an order the D.I. of Schools directed the School authority to grant leave for the period for which the petitioner was not allowed to perform his duties. He submits that such decision cannot be sustained. He contends that though in terms of the Clause (b) of a notification dated 19th January, 2007, the School authority was duty bound to permit the petitioner to join the school but the School authority by withholding such permission without any cogent reason has acted illegally and as such, it was the school authority which kept the petitioner out of service from 12th June, 2001 to 28.2.2002. In his view, in such conspectus, it would be unjustified to direct

adjustment of that period against the leave accumulated in his leave accounts as the petitioner was not on fault.

Placing reliance upon a decision rendered in case of Shiv Nandan Mahto –vs- State of Bihar & ors., reported in (2013) 11 SCC 626, he argues that in an identical situation where one employee was kept out of service without any fault on his part, the Hon'ble Apex Court was pleased to direct the employer to pay all the back-wages for that period. He submits that the authority concerned be directed to release all the arrears salary along with its consequential benefits in favour of the petitioner forthwith.

Mr. Somraj Dhar, learned advocate appearing for the State submits that the State in its affidavit had taken a specific stand that issue should be resolved keeping in mind that the period for which the petitioner was in custody should be treated as deemed suspension.

Taking stock of chronological events and resume and giving my anxious consideration to the reason for which the petitioner was kept out of service, I am unable to express my agreement to the decision taken by the D.I. to the effect that the period for which the petitioner was kept in out of service shall be adjusted against the leave accumulated in his leave accounts. Resultantly, the decision taken by the D.I. concerned dated 12.02.2009 is set aside.

In such conspectus, the writ petition is disposed of by granting liberty to the petitioner to make a comprehensive representation ventilating all his grievances therein to the

Secretary of the West Bengal Board of Secondary Education who upon receipt of such representation shall consider the same and decide the fate of period of absence of the petitioner after affording an opportunity of hearing to the petitioner or his authorized representative and the school authority. It is made clear that if the issue is decided in favour of the petitioner, the Board shall take next follow up actions in accordance with law. If any decision is taken which is prejudicial to the interest of the petitioner, then a reasoned order shall be passed and the same must be communicated to the petitioner.

The entire exercise shall be completed within two months from the date of receipt of the representation.

The parties shall be at liberty to produce all the documents, rules, regulations, judgments etc. in support of their respective contentions before the Secretary which, if produced, shall be considered while deciding the issue.

With these observations and order, this writ petition is, thus, disposed of, however, without any order as to costs.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Partha Sarathi Chatterjee, J.)