

26 **09.07.**
2024

Ct. No. 08

ab

FMA 789 of 2024
IA No. CAN 1 of 2024

Smt. Binapani Kanrar
Vs.
The State of West Bengal and others.

Mr. Amiya Gayen,
Ms. Ashrulina Amiya Gayen.
... for the appellant.

Mr. Bhaskar Prasad Vaisya,
Mr. Ranjan Saha.
... for the State.

Mr. Subir Sanyal,
Mr. Ratul Biswas,
Mr. Kaushik Chowdhury.
... for the DPSC.

Initially, we were astonished as to why the writ petitioner/appellant has assailed the order passed by the Single Bench on 13th March 2024, but after hearing the Counsels appearing for the respective parties, we find that the writ petitioner/appellant has a genuine grievance, which needs to be addressed in the instant appeal.

The basic facts discerned from the record relates to an appointment as Assistant Primary School Teacher in the district of Howrah, wherein the writ petitioner/appellant was thrown out from the zone of appointment for the reasons, which were not accepted when an approach was made to the Court. Ultimately, the Division Bench on 21st August 2002 put at rest to all the litigation and directed that the persons, who have secured more than cut off marks i.e. 34, are entitled to be included in the panel.

Admittedly, the writ petitioner/appellant secured more than 34 marks, but was kept out of the said panel, which led the writ petitioner/appellant to approach the Court. Ultimately, the writ petitioner/appellant was

appointed as Assistant Teacher on and from the month of December 2011 yet the writ petitioner/appellant felt aggrieved against the decision of the authorities for giving effect to such appointment from the date of joining the said post.

A writ petition being WP 5900 (W) of 2013 was filed before this Court raising such grievance, as, according to the writ petitioner/appellant, her appointment should be counted from the date on which the last empanelled candidate was appointed. The said writ petition was disposed of on 7th September 2018 with the following observations:

“In view of the aforesaid facts, this writ petition is disposed of by directing the District Primary School Council Howrah to accord post-facto approval to the appointment of the petitioner and accord notional benefits in her favour from the date on which appointments were given to the other empanelled candidates in terms of the order 21st August 2002 passed by the Hon’ble Division Bench. Steps to comply this order shall be taken by the respondent authorities within a period of three months from the date of receipt of a copy of this order.”

Apropos the aforesaid direction passed by this Court, the writ petitioner/appellant was given a notional benefit on and from 10th April 2003 together with the financial benefits attributable to the said notional benefits was also extended to the writ petitioner/appellant with effect from 7th September 2018.

The grievance still continued as the writ petitioner/appellant was under expectation to get the actual financial benefits from the month of December 2011, though the post-facto approval was granted on 7th September 2018.

A writ petition also came to be filed i.e. WPA 24356 of 2019 before this Court raising the aforesaid issues. At the time of entertaining the writ petition, the report was sought for from the respondent authorities, which, in

fact, was filed before Single Bench. Though it is indicated in the said report that all the financial benefits attributable to such notional benefits have been given to the writ petitioner/appellant, but in course of hearing, Mr. Subir Sanyal, learned Advocate appearing on behalf of the District Primary School Council, submits that such financial benefit was given on and from 7th September 2018 i.e. the date when the post-facto approval was granted by the competent authority.

The order under challenge is explicit to the extent that the Single Bench perceived the submissions/grievances of the writ petitioner/appellant to be such that the writ petitioner/appellant is seeking the actual cash benefits on and from 10th April 2003, which she is not entitled to in view of the order passed by the Single Bench in an earlier round of litigation. The Single Bench does not appear to have addressed the actual issue raised in the writ petition as the writ petitioner/appellant never claimed the actual cash benefits on and from 10th April 2003, but from the month of December 2011, when she was actually appointed and was serving and discharging her duties as Assistant Primary School Teacher.

The report submitted before the Single Bench by the authorities evidently interpreted the expression “notional benefit” to mean the basic salary; meaning thereby any other component of the said post or the service does not come within the ambit of the notional benefit. There appears to be a fallacy in the aforesaid stand of the State. The notional benefit would mean such benefit, which an employee is entitled from an anterior date, though not entitled to get on actual basis. It is for the purpose of computation of the length of service and all benefits extended on the basis of the tenure of rendering services shall be computed though not actually paid to such employee. It cannot be restricted only to a basic salary, but all other benefits attached to the said

post, otherwise the person, who has been found to have done wrong may rip the benefits of his own wrong. Any other interpretation would give a premium to a wrong doer to deprive a person, who suffered because of such wrong being done and, therefore, in our opinion, the stand of the State in denying the just and reasonable entitlement in the garb of interpreting the notional benefit in a conservative manner is not acceptable.

The writ petitioner/appellant actually served on and from December 2011, but was not paid the other component of salary or allowances or benefits, which she would be entitled on her actual appointment reckoned from 10th April 2003. The State respondents have paid all financial benefits to the writ petitioner/appellant from the date of post-facto approval and not from the date when the writ petitioner/appellant was actually appointed and, therefore, we feel that such stand of the State cannot withstand on the test of reasonability.

We, therefore, modify the impugned order to the extent that the writ petitioner/appellant is entitled to get the actual financial benefits on and from December 2011 and not from 7th September 2018 and the differential amount shall be paid to the writ petitioner/appellant within four weeks from date.

With these observations, the appeal and the connected application being CAN 1 of 2024 are disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

