

Court No. 22
05.02.2024
(Item No. 17)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 11956 of 2019

Sanjib Naskar
VS
The State of West Bengal & Ors.

Ms. Seba Roy
Mr. B. Sengupta
..... for the petitioner
Mr. Amal Kumar Sen
Mr. Gourav Das
.... For respondent Nos. 1-4

This is a hearing matter upon affidavits.

On the prayer of Ms. Seba Roy, learned senior counsel appearing for the writ petitioner, time to file exception in the form of affidavit stands extended till today. The exception affirmed on January 15, 2024 filed in Court today is taken on record.

The petitioner claimed that in **2002** the petitioner was appointed as an **Assistant Teacher** after qualifying the selection process held by the West Bengal School Service Commission. The petitioner then resigned from the said employment and on **August 2, 2006** joined as a **Technical Assistant** of **Indian Association for Cultivation of Science**. The petitioner claimed **Pro rata Gratuity** for the period he served as an Assistant Teacher. The claim of the petitioner was initially rejected by the school education department, State of West Bengal.

This led the petitioner to apply in the first round of writ litigation being **W.P. 10565 (W) of 2018**. By an order dated **August 21, 2018** the co-

ordinate bench had set aside the two orders of rejection dated **April 7, 2016** and **August 9, 2016** by which the claim of the petitioner were denied. The co-ordinate bench directed the Secretary of the School Education Department to decide the issue by passing a reasoned order in the manner as directed in the order dated **August 21, 2018, Annexure P-28** at **page 82** to the writ petition.

Pursuant to the said direction of the co-ordinate bench the Secretary, School Education Department considered the case of the petitioner and rejected it by its impugned order dated **January 3, 2019, Annexure P-29** at **page 90** to the writ petition. The sole plea for rejection was the relevant provision of the **D.C.R.B. Scheme, 1981** does not permit the petitioner to receive the **Pro rata Gratuity** as claimed by the petitioner. However, in the last paragraph of the said impugned order the Secretary, School Education Department referred the matter before the Finance Department, State of West Bengal for **Further Consideration**.

From **Annexure R-1** at **page 10** to the said report in the form of affidavit affirmed on behalf of respondent Nos. 1 to 4 on December 15, 2023, it reveals that, the Assistant Secretary of the Finance Department by its communication dated **September 17, 2019** also rejected the claim of the petitioner being in agreement with the view taken by the

Secretary of the School Education Department as referred to above. In this circumstance, the instant writ petition was filed by the petitioner challenging the said impugned decision of the Secretary, School Education Department dated **January 3, 2019** and with a prayer for granting **Pro rata Gratuity** as claimed in **prayers (a) and (b)** to the writ petition.

Ms. Seba Roy, learned senior counsel appearing for the petitioner referring to **Clause 20(b)** from the **D.C.R.B. Scheme, 1981** submits that, the petitioner is entitled and eligible in law to receive **Pro rata Gratuity** as claimed by the petitioner.

Mr. Amal Kumar Sen, learned Additional Government Pleader being ably assisted by Mr. Gourav Das, learned State Counsel appearing for respondent Nos. 1 to 4 submits that, the said provision under **Clause 20(b)** of the **D.C.R.B. Scheme, 1981** shall not apply to the petitioner as the petitioner has joined as a Central Government employer and the relevant **D.C.R.B. Scheme, 1981** shall only apply for the State employee. Referring to **Clause 5(b)** from the **D.C.R.B. Scheme, 1981** Mr. Sen submits that, the expression **Educational Institution** as defined therein shall not include the Central Government Educational Institute in which the petitioner is presently working at.

Mr. Sen further submits that, the moment petitioner has resigned his State service and joined

the Central Government service, it amounted to forfeiture of his past service as mentioned in **Clause 7(k)** under **Chapter III** of the **D.C.R.B. Scheme 1981**. Mr. Sen in support of his contention has relied upon a judgment of the Hon'ble Supreme Court **In the matter of: Senior Divisional Manager, Life Insurance Corporation of India and Others Vs. Shree Lal Meena reported at (2019) 4 Supreme Court Cases 479**.

In reply Ms. Seba Roy, learned senior counsel for the petitioner, at the outset, has denied and disputed the submissions made by Mr. Sen. She refers to the said previous order of the co-ordinate bench dated **August 21, 2018** and submits that, the issue raised by the State that the **Indian Association for Cultivation of Science** is not an **Educational Institution** has already been decided by the said co-ordinate bench and since no appeal has been carried out there from, the State has accepted the said order dated **August 21, 2018** and in pursuance thereof the Secretary to the School Education Department has passed the impugned order dated **January 3, 2019** after being acted thereupon. She submits that, this point cannot be raised again in deciding the issue.

After considering the rival contentions raised by the parties and upon perusal of the materials on record it appears to this Court that, while passing the impugned order dated **January 3, 2019** the

Secretary, School Education Department specifically referred the issue before the Finance department for consideration once more. The said communication of the Finance department dated **September 17, 2019** does not contain any reason save and except a simpliciter acceptance of the view of the Secretary of the School Education department. The moment it was sent before the Finance department for **consideration**, it would automatically be presumed and implied that, the Finance department shall apply its mind and thereafter by showing its reason shall express its opinion on the issue. However, no such reason is available in the said communication of the Finance department dated **September 17, 2019**.

In as much, as to consider the issue by the Finance Department several factual elements may have to be gone into, which is not the job of a Writ Court at this stage.

For those foregoing reasons and discussions the decision of the Finance department in the communication dated **September 17, 2019** stands **set aside** and **quashed**.

To sub-serve justice the Secretary, Finance department, State of West Bengal shall decide the issue afresh by applying its independent mind in the light of the Rules and Law prevailing on the subject and without being influenced by any observation made by this Court or by the Secretary of the School

Education department in its impugned order dated **January 3, 2019** as referred to above by passing a reasoned order in accordance with law.

The Secretary, Finance department shall issue a prior hearing notice of at least seven days on the petitioner and then after granting an opportunity of hearing to the petitioner shall pass its reasoned decision strictly in accordance with law.

The petitioner shall be entitled to participate in the said hearing through its duly authorized representative also.

The jurisdictional District Inspector of Schools (SE), District – South 24-Parganas and the Secretary, School Education department shall transmit and produce all the relevant records before the Secretary of the Finance department positively within a period of **two weeks** from the date of communication of this order to them by the learned advocate on record for the petitioner.

The Secretary to the Finance department then upon issuing a notice of hearing as directed above shall commence the hearing and conclude the same positively within a period of **six weeks** from the date of the records to be produced before him as directed above.

The said Secretary then communicate its reasoned order to the petitioner and the jurisdictional District Inspector of Schools positively within a period

of further **two weeks** from the date of the said reasoned order to be passed.

It is made clear that, this Court has not gone into the merits of the claim of the petitioner in any manner and the petitioner shall be at liberty to urge whatever points he wishes to urge by relying upon whatever records and documents he wishes to rely upon before the Secretary, Finance department. The petitioner shall be also at liberty to file a written notes before the Secretary, Finance department.

In the event, reasoned decision goes in favour of the petitioner, the jurisdictional District Inspector of Schools shall immediately give consequential effect thereto by releasing the benefit in favour of the petitioner positively within a period of **three weeks** from the date of communication of the said reasoned order to him.

In the event, reasoned order goes in favour of the petitioner the impugned decision of the Secretary, Educational department dated **January 3, 2019** would **automatically** stand **set aside**.

On the above terms this writ petition being **W.P.A. 11956 of 2019** stands disposed of, without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)