

A-74 17.1.2024
Sc Ct. no.22

WPA 13660 OF 2019

Krishnendu Biswas

Vs.

The State of West Bengal & Ors.

Mr. Shamim ul Bari

Ms. Asmita Mitra.

....For the Petitioner

Mr. Gourav Das

....For the State

This is a hearing matter upon affidavits.

The school authority has filed affidavit-in-opposition.

The petitioner claims to be an Assistant Teacher at Bantra M.S. P.C. High School, District – Howrah. The petitioner claims that, initially he was granted with a medical leave which was subsequently extended from time to time. The petitioner claims that, after he became fit to serve the school, he produced all the medical certificates and relevant records before the school authority, but the school authority did not allow the petitioner to resume his employment.

The petitioner filed his first writ petition being **W.P. 2914 (W) of 2016** in which a coordinate Bench by its order dated **July 20, 2017 at page 34** to the writ petition, directed the respondent no.5 being the school authority to take a decision by passing a reasoned order. Pursuant to the said direction, the school authority passed its impugned order dated **August 11, 2017,**

Annexure-P7 at page 37 to the writ petition. The same is impugned in the instant writ petition. The school authority rejected the prayer for regularisation of leave of the petitioner.

Mr. Shamim ul Bari, learned counsel appearing for the petitioner submits that, the regularisation of leave can only be decided by the appointing authority and not the school. The respondent no.3 is the appropriate authority to decide the issue.

The instant writ petition was filed in 2019. Save and except the school authority the other respondents chose not to file their affidavit-in-opposition, despite direction.

In view of this, this Court is of the view that, no fruitful purpose shall be served by extending the time for filing affidavit-in-opposition or by keeping this writ petition pending any further.

Accordingly, to expedite the process to subserve justice, the ***Secretary of the West Bengal Board of Secondary Education*** (for short the Secretary of the Board) upon issuing a prior hearing notice of at least seven days to the petitioner, the respondent no.5 and the respondent no.8 shall decide the issue after giving them an opportunity of hearing by passing a reasoned order in accordance with law.

It is made clear that, the petitioner shall be at liberty to participate in the hearing before the Secretary of

the Board either by himself or by his duly authorised representative, as prayed for on behalf of the petitioner.

The respondent no.8 shall forthwith transmit all papers and documents directly to the Secretary of the Board positively within a period of **two weeks** from the date of communication of this order by the petitioner.

Similarly, the respondent no.5 shall also transmit the records and papers, if any, required to be done to the Secretary of the Board within a period of **two weeks** from the date of communication of this order by the petitioner.

The Secretary of the Board then shall carry out and complete the entire exercise, as directed above, positively within a period of **six weeks** from the date of receiving the records and documents, as directed above.

The Secretary of the Board then shall communicate its reasoned order to the petitioner, the respondent no.5 and the respondent no.8 positively within a further period of **two weeks** from the date of the 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, the respondent no.5 and the respondent no.8 shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the Secretary of the Board.

In the event the reasoned order goes in favour of the petitioner then the respondent no.5 and all other appropriate authorities shall give an immediate effect thereto but positively within a period of **two weeks** from the date of the reasoned order to be communicated to the respondent no.5.

It is further made clear that, this order shall not create any equity or right in favour of the petitioner if the petitioner is not eligible to receive his claim strictly in accordance with law.

It is needless to mention that, the Secretary of the Board shall decide the issue by applying his independent mind and strictly in accordance with law without being influenced by any observation, if made by this Court.

Consequently, the impugned order dated **August 11, 2017, Annexure-P7 at page 37** to the writ petition stands **set aside** and **quashed**.

On the above terms this writ petition, **WPA 13660 of 2019** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)