

g.b.
M/L
320

03.04.
2024
Ct. No.24

WPA 15101 of 2023

**Sk. Sadik Uddin
Vs
The State of W. B. & Ors.**

**Mr. Siddhartha Sankar Mandal
Ms. Arunima Das Sharma
.....For the Petitioner**

None appears for the respondents

Affidavit of service filed by the petitioner is taken on record.

The order dated 4th July, 2022 passed by the Commissioner, Directorate of Panchayats and Rural Development is impugned in the instant writ petition.

It appears that the said order was passed allegedly in compliance of the direction passed by this Court on 2nd February, 2022 in WPA 8177 of 2020 filed by the petitioner. In the said order the Court directed the Commissioner, Directorate of Panchayats and Rural Development to grant an opportunity of hearing to the petitioner as also the concerned Block Development Officer and to pass a reasoned order in consultation with all documents filed by the petitioner and the relevant circulars issued by the Government from time to time applicable to casual workers. The Court directed the Commissioner to consider the

matter in its true letter and spirit.

The Commissioner afforded an opportunity of hearing and took note of all the documents placed at the time of hearing. The Commissioner was of the opinion that fixation of remuneration of the petitioner in accordance with the relevant circulars of the Government has become imperative. Before fixation of remuneration of the petitioner along with the time line, as mentioned in the Memo No. 4011-F dated 20th May, it is necessary, as a precondition to formally decide and settle the issue of eligibility of the petitioner and to come under the fold of Memo No.9008-F dated 16th September, 2011.

The Commissioner was of the opinion that being the head of the Directorate, the Commissioner does not have the jurisdiction to decide the prayer regarding the entitlement of the petitioner. The power of according final approval on such application/prayer has been vested on the Additional Chief Secretary/Principal Secretary/Secretary.

The Commissioner opined that once the decision on the question of being covered is taken by the head of the department, question on subsequent fixation of enhanced remuneration may be determined by the department. The Commissioner referred the entire case records to the head of the department, Panchayats and Rural Development for

final disposal of the prayer of the petitioner.

The petitioner submits that the Commissioner ought to have taken a decision without referring the matter to the head of the department.

The petitioner relies on an order of the District Magistrate and Collector, Purba Medinipur, Tamluk wherein the District Magistrate and Collector in terms of the G. O. No. 9008-F (P) dated 16th September, 2011, and in consultation with the subsequent Government Orders directed payment of enhanced remuneration to the employees.

It has been submitted that if the District Magistrate and Collector can take a decision relying on the said Government Orders, there is no reason as to why the Commissioner could not take a decision in the matter.

From the document annexed to the writ petition it appears that, the Court vide order dated 2nd February, 2022 in the earlier writ petition filed by the petitioner being WPA 8177 of 2020, specifically directed the Commissioner, Directorate of Panchayats and Rural Development to decide the issue. The Commissioner ought to have acted in accordance with the direction passed by the Court. If the Commissioner was of the opinion that the same is to be decided by some other officer, then leave ought to have been obtained from the Hon'ble Court for

modification of the said direction. In the absence of a formal direction, it was absolutely improper for the Commissioner to refer the matter to the head of the department of Panchayats and Rural Development. When the Court, after hearing the submission made on behalf of the parties, directed the matter to be decided by the Commissioner, he ought to have decided the issue himself and should not have referred the same to any other authority.

The petitioner ought not to have been directed to be kept waiting for subsequent order to be passed by the head of the department.

Assuming that the Commissioner, in terms of the subject Memo decided to refer the matter to the head of the department, then the Commissioner ought to have made sure that the head of the department decides the issue and reverts it to the Commissioner for passing final order. The Commissioner has simply shrugged off his responsibility and shifted the burden of consideration upon somebody else. The same ought not to have been done.

In view of the above, the Commissioner, Directorate of Panchayats and Rural Development is directed to either consider the issue himself or to obtain the order from the concerned officer and revert the conclusion to the petitioner upon final

consideration of his prayer.

The Commissioner shall act in terms of the direction passed hereinabove at the earliest but positively within a period of four weeks from the date of communication of this order. The reasoned order shall be communicated to the petitioner immediately thereafter.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on urgent basis after completion of all necessary formalities.

(Amrita Sinha, J.)

