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22.05.2024
Ct. No. 15
adeb

W.P.A. 14456 of 2015

**Dr. Himangshu Kumar Barman
Vs.
The State of West Bengal & Ors.**

Mr. Arijit Dey

...for the petitioner

Mr. Srijan Nayak
Ms. Rituparna Maitra

...for the State

Writ petition is heard in presence of the learned advocates representing the petitioner and the State-respondents.

In the writ petition order dated 26th February, 2015 issued by the Principal Secretary to the Government of West Bengal, Panchayat and Rural Development Department is under challenge. The learned advocate representing the petitioner submits that in terms of the memorandum dated 27th February, 2009, under annexure-I Clause (b) petitioner is entitled to get non practicing allowance being the Medical Officer of Dakshin Dinajpur Zilla Parishad.

On behalf of the petitioner reliance has been placed on other documents which according to the petitioner support his prayer for grant of non practicing allowance. It is also contended that in terms of the order passed by a coordinate Bench on 7th June, 2013 on a writ petition being WPA 13981 of 2013 a decision was

taken by the Principal Secretary being respondent no. 2 but the same is devoid of cogent reasons. Petitioner has prayed for cancellation of the order dated 26th February, 2015 of the respondent no. 2 and passing necessary directions accordingly.

The writ petition is opposed by the learned advocate representing the State-respondents and submissions have been made to defend the decision of the respondent no. 2.

However, it has been candidly submitted on behalf of the State-respondents that in spite of leave granted by another coordinate Bench on 29th August, 2019 by passing order in this writ petition till date no affidavit-in-opposition has been used on behalf of the State-respondents.

Having heard the learned advocates appearing for the parties and on perusal of the impugned order dated 26th February, 2015 it appears that the respondent no. 2 simply observed that no valid ground was found based on which the petitioner being the Medical Officer working in Zilla Parishad was entitled to receive non practicing allowance. What are the reasons for negating the contentions of the petitioner has not been elaborated in the said order dated 26th February, 2015.

During course of submissions reliance has been placed on memorandum dated 27th February, 2009 issued on behalf of the Department of Panchayat and

Rural Development, Government of West Bengal wherein it has been provided under Annexure-I that non practicing allowance is payable to the Medical Officers working in the concerned department. Why such memo dated 27th February, 2009 is not applicable in case of the petitioner, while deciding his eligibility to draw non practicing allowance, has not been discussed in the impugned order dated 26th February, 2015. It appears that the said impugned order dated 26th February, 2015 is bereft of reasons.

Accordingly, the order dated 26th February, 2015 issued by the Principal Secretary being respondent no. 2 stands set aside.

Principal Secretary, Panchayat and Rural Development Department, Government of West Bengal being respondent no. 2 is directed to revisit the issue and pass a reasoned order within a period of 8 (eight) weeks from the date of communication of the order after granting opportunity of hearing to the petitioner or his representative and representative of Dakshin Dinajpur Zilla Parishad.

The respondent no. 2 is required to pass reasoned decision and the same shall be communicated to the parties within 1 (one) week thereafter. In the event it is found that the petitioner is not entitled to receive non practicing allowance the reasons are required to be

assigned in the order to be passed by the respondent no. 2.

Petitioner shall be at leave to rely upon other relevant documents apart from the memorandum dated 27th February, 2009 before the respondent no. 2 while making deliberations.

With the aforesaid observations and directions the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)