

26.06.2024.
Court No.13
Item No. 12
pk

W.P.A. No. 18904 of 2023

**Smita Ghosh
Versus
The State of West Bengal & Ors.**

Mr. Sudip Ghosh Chowdhury,
Ms. Shreyeta Mitra
...For the petitioner.

Mr. Biswabrata Basu Mallick,
Ms. Mrinilini Majumdar
...For the State.

Mr. Avishek Prasad
... for the DPSC, Malda

1. This Court is shocked and surprised at the luxury enjoyed by the writ petitioner. The petitioner is an Assistant Teacher under the DPSC Malda since 14th February, 2006. She was admittedly absent from duty from 27th August, 2018 until May, 2022 (about four years) at Mahadevpur P.P. Primary School, Malda Circle.

2. After four years, she went to join the school-in-question but was prevented. She filed WPA 19159 of 2022 which was disposed of by order dated 15.09.2022 directing the Chairman, DPSC, Malda to give an opportunity of hearing to the petitioner.

3. Upon hearing, the Chairman, DPSC, Malda passed an order dated 16th June, 2023 proposed disciplinary proceedings against her in terms of G. O. No. 906-SE (Pry) dated 9th July, 2001.

4. The writ petitioner thereafter filed the instant writ petition challenging the said order dated 16th June, 2023. By an interim order dated 1st December, 2023 the Chairman, Malda, DPSC was directed to allow the writ petitioner to join the school forthwith. No reasons appear to have been recorded for passing of the interim order.

5. Learned Counsel for the petitioner submits that his client had to leave Malda to be in Calcutta for four years to oversee speech therapy for her autistic child.

6. While this Court has sympathy for the condition of the petitioner's child, it appears that the petitioner did not care or bother about her students. She abandoned the school children with disdain and complete disregard for their learning and instruction.

7. The DPSC, the School and the State have been put to uncertainty and hardship by the petitioner's unauthorized absence.

8. It is submitted by Counsel for the DPSC that, even before 27th August, 2018 the petitioner was regularly absent and the same was regularized on many occasions.

9. When an employee has been absent for more than four years, the same constitutes abandonment of service akin to resignation. The question of any disciplinary proceeding after such abandonment does not and cannot arise since there is no master servant relationship.

10. In view of the above, the writ petitioner's service with the DPSC Malda and the State shall be deemed to have come to an end with effect from 27th August, 2018.

11. The impugned order dated 16th June, 2023 shall be kept in abeyance. The petitioner would not be entitled to any other benefit of service except for her own contribution to provident fund.

12. Let the aforesaid amount be calculated and paid to the petitioner within a period of one month from date by the D. I. of Schools (PE), Malda.

13. The writ petition is disposed of.

14. There will be no order as to costs.

(Rajasekhar Mantha, J.)