

Item-13. 22-01-2024

sg Ct. 8

FMA 1690 of 2019
CAN 1 of 2019 (CAN 12517 of 2019)

Tapati Banerjee
Versus
The State of West Bengal & Ors.

Mr. Anirban Mitra, Adv.
...for the appellant
Mr. Pinaki Dhole, Ld. AGP.
Mr. Sayan Datta, Adv.
...for the State

1. By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.
2. The appellant claimed to be in service as a casual employee since the year 1993. She was an unapproved Class-IV staff. Since her service was not approved by the concerned respondent authority, she preferred a writ petition before this Hon'ble Court being W.P. 19667(W) of 2010 which was disposed of by a learned Single Judge on 2nd November, 2011 directing the concerned authority to allow the petitioner to participate in the selection process for the said post considering her length of service, subject to compliance of the eligibility criteria of the petitioner, provided the petitioner applied for the post within the prescribed time limit.
3. It appears that after seven years from the date of passing of the said order, the Joint Secretary, Government of West Bengal in the School Education Department rejected the said claim of the petitioner on two counts narrated below:
 - (i) In view of the relevant recruitment rules framed under the School Service Commission Act of 1997,

there is no provision to appoint any candidate on a non-teaching post on casual basis.

(ii) As per the relevant recruitment rules, above the age of 40 years general category candidates are not entitled to offer their candidature and the petitioner was found to be over-aged.

4. This was communicated to the petitioner. This order is not under challenge. However, the petitioner in the latter writ petition has claimed benefit of a Memo dated 23rd April, 2010 pertaining to casual workers.
5. The learned Single Judge dismissed the writ petition on the ground that in view of the recruitment rules framed under the School Service Commission Act, 1997 from time to time, the petitioner does not have any legally protected right claiming regularization of service since the initial appointment of the petitioner was dehors the recruitment rules and at present the petitioner is over-aged.
6. The question that arises for consideration is whether the school was justified in appointing the petitioner in the year 1993. If there is justification for an appointment in the year 1993 and the very fact that she worked till her superannuation in December 2023, prima facie it establishes her requirement in the school and a consideration of her claim. The school only can justify her initial appointment and need of a Class-IV staff. Depending upon the school justifying its stand, the authority concerned may consider post-facto approval of the petitioner as at the relevant point of time the 1997 Act was not in force and there were

different set of guidelines for approval of non-teaching Class-IV staff.

7. In the event of the school justifying its stand the authority concerned is directed to take a reasonable stand with regard to her service. The very fact that she worked thereafter for almost thirty years, the authority concerned may consider her prayer for retiral benefits in terms of the Memo dated 23rd April, 2010 or any other memo as may be applicable.
8. On such consideration, the Commissioner of the School Education is directed to consider the matter afresh in the light of the aforesaid observation within a period of eight weeks from date of communication of this order. The special facts and circumstances of this case may also be taken into consideration in deciding the entitlement of the appellant.
9. The impugned order is set aside. The appeal is allowed. In view of the disposal of the appeal, the application is also disposed of accordingly.
10. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)