

**HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 22587 of 2024

Swapna Khatun & Ors.

Vs.

State of West Bengal & Ors.

For the petitioners : Mr. Kamal Mishra
Mr. Pratap Sanfui

For the State : Mr. Dipanjan Datta
Mr. Sayan Datta

For the respondent no. 4 : Md. Sarwar Jahan
Ms. Mousumi Mitra
Ms. Tapati Sarkar

Heard on : 11.11.2024

Judgment on : 11.11.2024

JAY SENGUPTA, J:

Petitioners have come up with the present writ petition claiming to be treated as Sahayak/Sahayika in Sishu Shiksha Kendra instead of para teacher.

By an order dated 19.09.2024 this Court directed that if any of the petitioners were going to attain the age of 60 years in the meantime, they shall nevertheless be allowed to continue with the employment till the next

date of hearing. They shall also not be forced to decide whether to fill up any form in question or not in the meantime.

It has been submitted by the learned advocate representing the petitioners that in terms of notification dated 18th December, 2019 passed by the School Education Department, Government of West Bengal they exercised option to function as para teachers not as Sahayak/Sahayika. However, petitioners have subsequently found that for a considerable period of time scheme was not introduced and ultimately vide memorandum dated 29th August, 2024 issued by the Additional Secretary to the Government of West Bengal, Department of School Education benefit of EPF Scheme is only extended from 1st April, 2024 in the event Sahayak/Sahayika of Sishu Shiksha Kendras opted for engagement upto the age of 60 years. It is submitted by the learned advocate representing the petitioners that such scheme which has been introduced vide memorandum dated 29th August, 2024 is found to be not beneficial to them since same has been introduced with effect from 1st April, 2024 and petitioners want to be treated as Sahayak/Sahayika without giving effect to the options which they have exercised. In support of such contention reliance is placed on an order dated 16th March, 2023 passed by a coordinate Bench on a writ petition being WPA 4525 of 2023 (Bidhan Chandra Naskar & Ors. Vs. The State of West Bengal & Ors.) Learned counsel for the petitioners further contends that they had not filled up any form in respect of the notification dated 04.09.2024. Reliance is placed on an order passed by a Co-ordinate Bench on 25.09.2024 in WPA 22612 of 2024.

Paschim Banga Rajya Sishu Shiksha Mission (for short, PBRSSM) and the State-respondents are represented by learned advocates.

It has been submitted specifically on behalf of PBRSSM that the situation which was prevailing prior to issuance of memorandum dated 29th August, 2024 is altered after 29th August, 2024. Therefore, at present petitioners have no other choice but to come under the said memorandum dated 29th August, 2024 based on options they have exercised. In the same breath it has also been submitted on behalf of PBRSSM that since the benefit of EPF is extended to the Sahayak/Sahayika with effect from 1st April, 2024 it may not be beneficial to those Sahayak/Sahayika who have less than two years left if they are to retire at the age of 60 years at par with para teachers.

Having considered the respective submissions made on behalf of the parties this Court finds that there is memorandum dated 29th August, 2024 issued by the Additional Secretary to the Government of West Bengal deciding to extend benefit of EPF to Sahayak/Sahayika with effect from 1st April, 2024 which appears to be not beneficial to the petitioners as a result whereof they are praying before this Court for a direction to be treated as Sahayak/Sahayika not as para teachers by not giving effect to the options which they have exercised. Similar benefit has been extended by a coordinate Bench by passing order dated 16th March, 2023 on a writ petition being WPA 4525 of 2023 in the case of Bidhan Chandra Naskar (Supra). Placing reliance on the ratio of Bidhan Chandra Naskar (supra) this Court has passed several orders directing the authorities not to treat

Sahayak/Sahayika as para teachers on giving credence to the options which they have exercised. Only difference today is issuance of memorandum dated 29th August, 2024 whereby State authority has decided to extend the benefit of EPF to the petitioners with effect from 1st April, 2024 which is found not to be beneficial so far these petitioners are concerned since with the benefit of EPF at the fag end of their service tenure they have to retired at the age of 60 years instead of 65 years. If the petitioners are treated as Sahayak/Sahayika they can function upto the age of 65 years which according to them is more beneficial than to function as para teachers till the age of 60 years accepting the condition as stipulated in the memorandum dated 29th August, 2024.

Since in the writ petitions which have been decided prior to issuance of memorandum dated 29th August, 2024 permitting those petitioners to be treated as Sahayak/Sahayika without giving credence to the options which they exercised this Court finds no impediment in extending same benefit to the present petitioners. Mere issuance of memorandum dated 29th August, 2024 should not act as fetter so far present petitioners are concerned to be treated as Sahayak/Sahayika without giving credence to the options which they have exercised.

In view of aforesaid discussions the writ petition stands allowed directing the concerned State authorities including PBRSSM authority to treat the petitioners as Sahayak/Sahayika and the options which they have exercised shall be treated as cancelled.

It is also clarified that in future they cannot claim the benefits as para teachers.

Learned advocate representing the petitioners submits that the deficit Court fees has been put in and in support of the same document is produced before this court and the same is taken on record.

Accordingly, the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J)