

53 15.01.2024
Sc Ct. no.22

WPA 21409 OF 2012

Rabindra Nath Saha & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Ekramul Bari
Ms. Tanuja Basak

...For the Petitioners

Mr. Malay Singh
Ms. Neelam Singh.

...For the State

Mr. Kanak Kiran Bandyopadhyay

....For the SSC/
Respondent Nos.4 & 5

The petitioners ultimately have received the approval for appointment by the respondent no.3 on April 20, 2011 and the date of appointment was mentioned as **December 17, 2010, Annexure – P10 at page 48** to the writ petition.

The matter has a checkered history of litigation.

The petitioners are working as Assistant Teachers. They, claim notional benefits from the year **2000**. They submitted a representation dated **January 31, 2012, Annexure – P11 at page 49** to the writ petition, *inter alia*, before the respondent no.6. The respondent no.6 by its decision dated **March 7/14, 2012, Annexure-P12 at page 51** to the writ petition rejected the claim of the petitioners on account of notional benefit.

The petitioners assailed the said decision for rejection of the respondent no.6.

Mr. Ekramul Bari, learned counsel for the petitioners submits that, the order galore passed on the issue in some of which these writ petitioners were parties and in some the petitioners were not parties but, however, the right of the petitioners was decided to receive employment and ultimately the petitioners have received their employment upon receiving approval from the respondent no.3, as narrated above.

Mr. Bari claims that, the petitioners should be granted notional benefits since **2000**.

Mr. Malay Singh, learned counsel appearing for the respondent nos. 1 to 3 and 6 to 8 submits that, the petitioners are not at all eligible to receive notional benefits. The appointments of the petitioners were made pursuant to the direction of the Court and the petitioners are working. He submits that, the rejection of the claim of the petitioners on account of notional benefit under impugned decision of the respondent no.6, ***Annexure-P12 at page 51*** to the writ petition was just and lawful.

Mr. Kanak Kiran Bandyopadhyay, learned counsel appears for the respondent nos. 4 and 5. He submits that, the job of the School Service Commission has been over, the moment the petitioners have received their appointments. He submits that, if any delay has been caused, it was due to the pendency of the litigations.

After considering the rival contentions of the parties and upon perusal of the materials on record this Court in

exercise of its power under judicial review shall have to scrutinise the impugned decision of the respondent no.6 dated **March 7/14, 2012, Annexure-P12 at page 51** to the writ petition. The reliefs claimed in the writ petition would show that, the petitioners claimed notional benefit. However, the claim for notional benefit made by the petitioners was rejected by the respondent no.6 by its impugned decision dated **March 7/14, 2012.**

On a close scrutiny of the impugned decision it appears to this Court that, the decision does not contain any reason at all, but a single sentence of rejection of notional benefit.

The respondent no.6 being the State authority ought to have given reasons why it had rejected the claim of the petitioners. In absence of any reason in the impugned decision of an executive, the same is bad in law and cannot sustain in law. Absence of reasons also leads to the fundamental breach of the principle of Natural Justice.

For all those reasons, the said impugned decision dated **March 7/14 of 2012, Annexure-P12 at page 51** to the writ petition cannot sustain in law and the same accordingly stands **set aside** and **quashed.**

However, to subserve justice, the **Principal Secretary**, Secondary Education Department, State of West Bengal (for short the Principal Secretary) shall revisit the issue on the basis of the claim made by the

petitioners in their representation dated **January 31, 2012, Annexure-P11 at page 49** to the writ petition upon giving a prior hearing notice of at least **seven days** to the petitioners, the respondent no.3, the jurisdictional District Inspector of Schools, Kalimpong (since after bifurcation of the District – Darjeeling, the present authority) and the respondent no.4 and after giving them an opportunity of hearing shall decide the issue by passing a reasoned order.

The entire exercise, as directed above, shall be carried out and completed by the Principal Secretary positively within a period of **six weeks** from the date of communication of this order. The Principal Secretary then shall communicate its reasoned order to the petitioners, the respondent no.3, the jurisdictional District Inspector of Schools, Kalimpong and the respondent no.4 positively within **a further period of two weeks** from the date of the reasoned order to be passed.

It is made clear that, the petitioners shall be at liberty to participate in the hearing before the Principal Secretary through their duly authorised representative.

It is made clear that, this Court has not gone into the merits of the claim of the petitioners in any manner.

The petitioners and all other relevant parties, as directed above, shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and

documents they wish to rely upon before the Principal Secretary and the Principal Secretary then after application of its independent mind shall decide the issue by passing a reasoned order in accordance with law.

In the event, the reasoned order goes in favour of the petitioners then, all consequential steps shall be taken by the jurisdictional District Inspector of Schools and/or any other appropriate authority forthwith.

It is further made clear that, this order shall not create any right or equity in favour of the petitioners if the petitioners are not eligible to receive their claim in terms of their representation dated **January 31, 2012, Annexure-P11 at page 49** to the writ petition, strictly in accordance with law.

The petitioners shall serve a copy of this order along with a copy of this writ petition upon the Principal Secretary and after receiving the same the time shall start running on the part of the Principal Secretary for concluding the process.

The office report dated **July 8, 2013** shows that, despite there being a direction dated **January 11, 2013**, no affidavit-in-opposition was filed.

This Court thinks it fit that, no fruitful purpose shall be served by keeping this writ petition pending any further.

Accordingly, on the above terms, this writ petition, **WPA 21409 of 2012** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)