

23 & 24 19.07.2024
tbsr Ct. 17

WPA 2280 of 2023

Mrinal Kanti Khawas
Vs.
State of West Bengal & Ors.

With
WPA 25282 of 2022

Premchand Mahato & Ors.
Vs.
State of West Bengal & Ors.

Mr. Saibal Acharjee
Mr. Ambu Bindu Charkraborty
....for the petitioner in WPA 2280 of 2023

Mr. Saikat Banerjee
Mr. Uttam Kumar Ray
Mr. Kalyan Kumar Panda
...for the petitioners in WPA 25282 of 2022

Mr. Bhaskar Prasad Vaisya
Mr. Mrinal Kanti Ghosh
...for the State in WPA 2280 of 2023

Mr. Swapan Kr. Datta
Mr. Dipankar Das Gupta
...for the State in WPA 25282 of 2022

Mr. Lalit Mohan Mahata
Mr. Amit Bikram Mahata
Mr. Aditya Bikram Mahata
...for the respondent nos. 4 to 6 and 3 to 5

As the applications are related to each other and
involve the same issue, the same are taken up for
hearing together.

Reply filed on behalf of the respondent no. 2 in
WPA No. 25282 of 2022 is taken on record.

Learned counsel appearing on behalf of the petitioner in WPA 2280 of 2023 submits as follows. On 30.11.2010 the Principal of Bikiramjit Goswami Memorial College published an advertisement inviting candidates to fill up seven non-teaching posts. The petitioner applied for the post of Cashier and upon due process of selection, he was appointed to the said post with proper approval from the competent authority. In 2014 a writ petition being WPA 30376 (w) of 2014 was filed by the unsuccessful candidates who had applied for the post of typist and clerk. On 30.08.2018 this Court disposed of the writ petition by quashing the appointments of all seven posts being the private respondents therein including the present petitioner. After that, the College authorities debarred all them from joining. An appeal was filed challenging the order. The Division Bench set aside the order on 12.12.2019 and remanded back the matter for fresh consideration by directing that the status quo was to be maintained. On 11.08.2022 a Co-ordinate Bench of this Court was pleased to allow the writ petition filed by quashing appointments of the respondent nos. 11 and 12 only the other five posts were left untouched. In spite of this judgment, the College authorities did not allow the petitioner to join. In the meantime, the petitioner in WPA 2280 of 2023 prayed for expunging of

his name from the list of petitioners in the earlier writ petition as he had filed a separate writ petition. The same was allowed. Standing on similar footing, one Sankar Karmakar moved WPA 25441 of 2022 praying for reinstatement as he was among the five candidates whose candidature/appointment was not touched. By an order dated 19.01.2023, this Court directed the respondent college authority to rectify the service record of the petitioner and to send the same with all necessary documents and papers before the Director of Public Instructions who was to, in turn, approve the service record of the petitioner in the manner as stated. The entire employment tenure of the petitioner was to be considered as continuous service tenure since his joining without termination or breakage in any manner. The petitioner is also entitled to the same benefit. Pursuant to such order, the said Sankar Karmakar has already joined the service.

Learned counsel for the petitioners in WPA 25282 of 2022 adopts the submissions of the learned counsel for the petitioners and further submits as follows. The petitioner no. 1 was selected as accountant in Bikramjit Goswami Memorial College, Purulia, the petitioner no. 2 as a peon and the petitioner no. 3 as a guard. All of them are on the same footing as the said Sankar Karmakar who has already been granted benefit of

reinstatement without breaking service from the date of joining.

Learned counsel appearing on behalf of the College authorities denies the allegations and submits as follows. In the event a direction is passed for reinstatement of the petitioners, the same can same can at best have a notional outcome for the back period. Aterall, the petitioners have not worked for that period. Learned counsel further submits that time would be required to take necessary steps for convening a general body meeting.

Learned counsels appearing on behalf of the State submit that the DPI has not received any proposal. Unless the same is received, necessary action cannot be taken.

A Co-ordinate Bench of this Court had, by an order dated 11.08.2022 in WPA 30376 of 2014, made it abundantly clear that as the Court had only accepted the challenge in relation to the post as stated therein, the points raised regarding appointments of the respondent nos. 14 to 15 therein as being independent and without any connection to the members of the governing body was not being gone into.

It also appears that the order passed by the Co-ordinate Bench of this Court in WPA 25441 of 2022 has reached its finality the respondent authorities have not

challenged the same. The petitioners are clearly similarly circumstanced as the petitioner in WPA 25441 of 2022.

In view of the above, the college authorities are directed to rectify the service record of the petitioners and send the same with all necessary documents and papers to the DPI positively within four weeks from the date of communication of this order. The DPI, in turn, shall approve the service record of the petitioners in the manner as stated above in accordance with law and inform the petitioner and the governing body positively within a further period of four weeks after receiving the intimation from the governing body. It is further made clear that the entire employment tenure of the petitioners should be considered and construed as continuous service since joining without any termination or break in any manner.

With these observations, the writ petitions are thus disposed of.

Parties shall act on a server copy downloaded from the official website of this Court.

(Jay Sengupta, J.)