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WP 24356 of 2019

Binapani Kanrar-vs-State of West Bengal & Ors.`

Mr. Amiya Kr. Gayen
Ms. A.A.Gayen.

...for the petitioner.

Mr. Subir Sanyal
Mr. Ratul Biswas

...for the Council.

Mr. Ranjan Saha

...for the State.

The petitioner is a retired Assistant Teacher.

She is equipped with an order of this court dated 7.9.2018 passed in Writ Petition No. 5900(W) of 2013 by dint of which she has been granted post-facto approval of her appointment and also the Notional Benefit, from the date of appointment of the other candidates, who were initially empanelled along with her.

The writ petitioner is aggrieved in particular with the order dated 10.12.2018 of the Chairman, District Primary School Council, Howrah which says as follows:

“In compliance with Her Lordship’s Order dated 07.09.2018 as passed by the Hon’ble Justice Amrita Sinha, Hon’ble High Court, Calcutta in W.P.No. 5900(W) of 2013 Smt. Binapani Kanrar-vs-The State of West Bengal & Ors, order is hereby issued to the effect that the appointment of the petitioner is hereby approved w.e.f. 10.04.2003 on post-facto basis with Notional Benefit in favour of Smt. Binapani Kanrar, A.T. of Dakshin Chandchak Pry. School, U.N.Pur. South Circle, Howrah on and from the date on which appointments were given to the other empanelled candidates in terms of the Order dated 21.08.2002 passed by the Hon’ble Division Bench, High Court, Calcutta and financial Benefit will be given from the date of order i.e. 07.09.2018 as passed by the Hon’ble High Court as mentioned above”.

Mr. Gayen is appearing on behalf of the writ petitioner. He has argued that in spite of direction of the court for grant of approval and Notional Benefit to his client from the date 10.04.2003, the respondent authority has failed to comply with such direction of the court, as a whole, in as much as though his client has been granted approval from that date, but rejected grant of any Notional Benefit.

According to Mr. Gayen, the Notional Benefit would include emoluments, excepting the Basic Pay comprising with Pay Band and the Grade Pay.

He says that in spite of the fact, that in part compliance of order of the court, the respondent authority has allowed pay fixation of the writ petitioner by taking into consideration her basic pay as above but the other Notional Benefit components were not ever extended to the writ petitioner. He has sought for an order of the court directing the concerned respondent to duly quantify and grant the entire due benefit in terms of Court's order, in favour of the writ petitioner.

Mr. Sanyal is representing the respondent/council. He has, however, put up serious objections as to the contentions and prayers of the writ petitioner, as above.

According to him and what he submits is that on the basis of the records annexed with the affidavit-in-opposition filed by the State respondent, the writ petitioner has been granted entire benefits including arrear amount, after calculation of her Notional Benefit as per law. He says that there cannot be any further grievance of the present writ petitioner, as claimed in this case regarding due compliance of Court's order. He has insisted that the writ petition be dismissed.

The question is as to whether in terms of this Court's order dated 7.9.2018 in WP No. 5900(W) of 2013, Notional Benefit has

been extended to the writ petitioner, with effect from 10.4.2003, or not.

What the writ petitioner is claiming in this case is the actual cash benefit, had she been employed in the said post with effect from 10.4.2003. The documents and record would reveal that pay fixation and arrears have already been granted to the writ petitioner. The said fact is admitted in this case. Pay fixation is the benefit, which could be granted to the writ petitioner to allow her the Notional Benefit. The submission in this regard, made on behalf of the writ petitioner, is misconceived and does not inspire confidence thereupon.

The law is now very well settled that the writ petitioner cannot claim the benefit for the period when she was not employed. This Court finds that the writ petitioner shall not be entitled to any further grant, pursuant to the order of grant of Notional Benefit, in her favour. The order of this Court, dated 10.12.2018, has been duly complied with.

Under such circumstances, in my considered opinion, the writ petitioner would not be entitled to any relief whatsoever in this case.

The writ petition No. WPA 24356 of 2019 is dismissed.

(Rai Chattopadhyay, J.)