

S/L 17
30.07.2024
Court. No. 551
Suvayan

WPA 23193 of 2010

Sri Ashutosh Jana
Vs.
State of West Bengal & Ors.

Mr. Mukteswar Maity
Ms. Nupur Chaudhuri

...for the petitioner.

Mrs. Jyotsna Roy Mukherjee
Ms. Srijani Mukherjee

...for the respondent Nos. 1, 2 and 4.

1. The receipted copy of letter dated July 29, 2024 addressed to Mr. Gourav Das, learned Advocate for the D.P.S.C., South 24 Parganas as written by Mr. Mukteswar Maity, learned Advocate for the writ petitioner is taken on record.

2. Ms. Jyotsna Roy Mukherjee along with Ms. Srinaji Mukherjee, learned Advocates for the respondent Nos. 1, 2 and 4 is present and in course of hearing Ms. Mukherjee has handed over an instruction dated 06.06.2024 as received by her from the Superintendent, MR Bangur Hospital, Tollygunge, Kolkata – 700033. The written instruction as filed today is also taken on record.

3. By filing the instant writ petition the writ petitioner has prayed for issuance of writ of mandamus directing the respondents to release the salary of the petitioner for rendering his services as an assistant teacher of Paschim Hesnabad, F.P. School with effect from 26.02.2010.

4. In course of hearing Mr. Maity, learned Advocate for the writ petitioner at the very outset draws attention

of this Court to the order dated May 18, 2012 as passed by a co-ordinate Bench, the relevant portion of which is as under:

“By way of an interim measure, this Court directs the Sub Inspector of Schools to provincially release salary to the petitioner within one week from the date of communication of this order. Such payment, however, would be subject to the final decision of the writ petition.”

5. Mr. Maity submits before this Court that subsequently by an order dated June 12, 2013 the instant writ petition was dismissed for default on account of the none appearance of the writ petitioner. However, by an order dated March 23, 2017 the instant writ petition being WPA 23193 of 2010 is restored to its original file by setting aside the order of dismissal dated June 12, 2013.

6. It is submitted by Mr. Maity, learned Advocate for the writ petitioner that after restoration of the instant writ petition being WPA 23193 of 2010 the salary of the writ petitioner was not released even thereafter provisionally.

7. In course of her submission, Ms. Mukherjee, learned Advocate for the respondent Nos. 1, 2 and 4 draws attention of this Court to the order dated April 26, 2024 as passed by another co-ordinate Bench. It is submitted that from the instruction dated June 6, 2024 as received from the Superintendent, MR Bangur Hospital, it would reveal that there is no such provision for issuance of duplicate certificate as per present norms and since the

writ petitioner has claimed that his original disability certificate has been lost, he has to follow the guideline as mentioned in the said instruction.

8. In open Court, Ms. Mukherjee, learned Advocate for the respondent Nos. 1, 2 and 4 supplies a copy of written instruction of Superintendent, MR Bangur Hospital to Mr. Maity, learned Advocate for the writ petitioner. Such being the position liberty is given to the petitioner to apply for fresh disability cum UDID certificate in the appropriate portal as mentioned in the said instruction and further liberty is given to the writ petitioner to appear before the Superintendent/MSVP of Kakdwip Super Speciality Hospital under Kakdwip Sub-division, District – South 24 Parganas after compliance of all the formalities of making application for issuance of fresh disability certificate in the appropriate portal as mentioned in the said written instruction.

9. As discussed supra, it is reported on behalf the petitioner that even after restoration of the instant writ petition the writ petitioner is not getting his salary even provisionally as directed by a co-ordinate Bench of this Court on 18.05.2012. It is thus submitted that during the pendency of the writ petition the said Sub-Inspector of School may be directed to release the salary of the writ petitioner at least provisionally till disposal of the instant writ petition.

10. Per contra, Ms. Mukherjee, learned Advocate for the respondent Nos. 1, 2 and 4 draws attention of this Court to the supplementary affidavit-in-opposition as

affirmed on December 21, 2023. Attention of this Court is drawn to the averments of the S.I. of School (Primary Education, South 24 Parganas) at page No. 2 and at page No. 4 of such supplementary affidavit-in-opposition. It is submitted by Ms. Mukherjee that in the said supplementary affidavit-in-opposition it has been specifically averred that at the time of verification of original testimonials (as laid down in the appointment letter of the petitioner) the writ petitioner, Ashutosh Jana failed to produce the original physically handicapped certificate to the then S.I. of School. So his joining report was not accepted by the then S.I. of School, Kakdwip Sub-Division.

11. It is further submitted by Ms. Mukherjee that in page No. 4 of the said supplementary affidavit-in-opposition it has also been averred by the said S.I. of School that the then Chairman of the District Primary Council, South 24 Parganas requested the Superintendent, MR Bangur Hospital, South 24 Parganas to verify the physically handicapped certificate of the writ petitioner.

12. Considering the entire factual aspects as involved in the instant writ petition and on perusal of the entire materials as placed before this Court, this Court finds that the instant writ petition can be disposed of by granting liberty to the writ petitioner to apply afresh for obtaining fresh certificate of his disablement in the appropriate portal as mentioned in the instruction of the Superintendent, MR Bangur Hospital dated 06.06.2024

and in the event such an application is made by following the procedures as mentioned in the said portal, further liberty is given to the writ petitioner to appear before the Superintendent/MSVP of Kakdwip Super Speciality Hospital under Kakdwip Sub-division, District – South 24 Parganas.

13. On such appearance by the writ petitioner before the Superintendent/MSVP of Kakdwip Super Speciality Hospital under Kakdwip Sub-division, District – South 24 Parganas, the said Superintendent/MSVP shall form an appropriate medical Board and such medical Board shall thereafter examine the writ petitioner and in the event it is found that the writ petitioner is disabled, such medical Board shall issue appropriate disability certificate in the name of the writ petitioner.

14. The entire process that is the process of making application by the writ petitioner in the appropriate portal as mentioned supra after observing all formalities, the appearance before the Superintendent/MSVP of Kakdwip Super Speciality Hospital, the formation of the medical Board, the physical and clinical examination of the writ petitioner and conclusion of the finding of the Board are to be completed within six months from today or from the date of communication of this order whichever is earlier.

15. In the event the writ petitioner is provided with a disability certificate the same shall have to be submitted before the respondent No. 3, Director of School Education (P.E.), Bikas Bhaban, Salt Lake, Kolkata – 700091 and the respondent No. 4, Sub-Inspector of School in Kakdwip

Circle, P.O. and P.S. Kakdwip, District – South 24 Parganas who on receipt of the same shall take appropriate decision in accordance with law within a month from the submission of the said disability certificate.

16. It is needless to mention that while examination of the claimed disability of the writ petitioner the medical Board shall follow the prevailing rules and guideline in this regard.

17. All the parties to the instant writ petition are directed to act on the server copy of this order duly downloaded from the official website of this Court.

18. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)