

WPA 30326 OF 2016

Kanchan Chaubey

Vs.

The State of West Bengal & Ors.

Mr. Vipul Kundalia
Mr. Soumya Majumdar
Mr. Arun Upadhyay
Mr. Chandan Mishra.

....For the Petitioner

Mr. Supriyo Chattopadhyay
Mr. Sabyasachi Mondal.

....For the Respondent
Nos. 1 to 3/State

Mr. Saktipada Jana
Mr. Shubhajyoti Das.

....For the Respondent Nos.
4 and 5/School

Authority

This is a hearing matter upon direction for filing affidavits. The registry notes dated **March 7, 2017** and **June 6, 2017** show that, despite there being a direction on **April 21, 2017** no affidavit-in-opposition has been filed.

Considering the issue involved in this writ petition and considering its long pendency, this Court proceeds for its final disposal on the basis of the existing records.

This is the second round of writ litigation.

The petitioner claims to be a teacher for the subject **Hindi** in a Higher Secondary School at **Gyan Bharati**

Vidyapith, Kolkata (for short the school). Claiming approval and Dearness Allowance (D.A.) the petitioner submitted a representation dated **November 9, 2015, Annexure-P4 at page 36** to the writ petition, before the State authority. The petitioner claims that, she had joined the school under a Joining Letter dated **July 6, 2011, Annexure-P2 at page 22** to the writ petition. Since the representation was not considered, the petitioner filed the first writ petition, **WPA 1137 (W) of 2016**. The first writ petition was disposed of by a coordinate Bench by its order dated **July 4, 2016, Annexure-P5 at page 37** to the writ petition. The coordinate Bench directed the respondent no.3 therein to consider the representation in the manner and mode stated therein.

Pursuant to the said direction of the coordinate Bench the respondent no.3 decided the issue by passing its reasoned order dated **October 19, 2016, Annexure-P8 at page 46** to the writ petition. The petitioner has assailed the said impugned order through this writ petition.

Drawing attention to the said impugned order Mr. Soumya Majumdar, learned counsel led by Mr. Vipul Kundalia, learned counsel appearing for the petitioner submits that, insofar as the petitioner is concerned, her claim was rejected on the ground that, the petitioner was over aged at the time of appointment, hence no approval

could be accorded. He further submits that, with regard to the issue of approval of other teachers up to Classes IX-X, the approval was rejected on the plea of staff pattern but such was not the plea for rejection insofar as the petitioner is concerned.

Referring to the decision of the coordinate Bench of this Court at **pages 52 to 55** of the writ petition Mr. Majumdar, learned counsel for the petitioner submits that, it was the consistent view taken by the Court to condone the age bar where the age bar was marginally crossed and approval was granted.

In the light of the above, Mr. Majumdar submits that, the service of the petitioner should be approved and the Dearness Allowanced (DA) shall be paid to the petitioner to which she is eligible in law.

Mr. Saktipada Jana, learned counsel appearing for the respondent nos. 4 and 5 submits that, in the instant case also even if the age bar is attracted, it is attracted marginally, which may be considered by the State authority while granting approval of service to the petitioner.

Mr. Supriyo Chattopadhyay, learned Additional Government Pleader appearing for the respondent nos. 1 to 3 submits that, it is not only the age bar but also the staff pattern which are required to be considered, in view of the State policy, before approval of service of a teacher. The impugned order shows that, the appointment of the

petitioner was beyond the sanctioned teachers' strength. Therefore, the appointment was illegal. He further submits that, necessary permissions were also not obtained to appoint the petitioner beyond the sanctioned strength of teachers.

After considering the rival contentions of the parties and upon perusal of the materials on record, on a close scrutiny of the said impugned order dated **October 19, 2016** it appears to this Court that, the petitioner is a teacher of the higher secondary section, her case was considered on the basis of the age bar only and not on the basis of the staff pattern. It also appears to this Court that, even if the age bar is attracted, the same is attracted marginally. The **Government Memo bearing no. 1267/1(21) G.A.** dated **November 26, 1998, Annexure-P1 at page 21** to the writ petition, shows that, the age bar applicable in the instant case for the petitioner was **37 years** as on the date of application received by the school authority from the petitioner. It appears that as on the date of joining, i.e. **July 6, 2011** the petitioner **was 37 years 5 days** only. So even if the age bar is attracted, it is attracted marginally.

The right of employment is a constitutional right. The petitioner in the instant case has been working as a teacher for more than **14 years** as on date. The petitioner has been working with an unblemished career record.

In view of the foregoing discussions and reasons the impugned decision of the respondent no.3 dated **October 19, 2016, Annexure-P8 at page 46** to the writ petition stands ***set aside*** and ***quashed in respect of the petitioner only.***

To subserve justice, a higher authority, the respondent no.2 shall revisit the issue upon issuing a prior hearing notice of at least seven days to the petitioner, the respondent nos. 3, 4 and 5 and after affording an opportunity of hearing shall pass a reasoned order in accordance with law.

It is made clear that, while deciding the issue, the respondent nos. 4 and 5 shall produce all the relevant records before the respondent no.2. ***The reckoning date shall be taken as the date of receiving the application submitted by the petitioner for her appointment as a teacher in the school.***

It is made clear that, this Court has not gone into the merits of the submissions and rival submissions made by the parties. The parties who shall participate in the hearing shall be free to urge whatever points they wish to urge by relying upon whatever records, documents, papers and judgments before the respondent no.2.

It is needless to mention that, the law and rules prevailing as on the date of receiving application by the

school submitted by the petitioner for her appointment in the school shall be the guiding factor.

The entire exercise, as directed above, shall be carried out and completed by the respondent no.2 positively within a period of **ten weeks** from the date of communication of this order.

The reasoned order shall be communicated by the respondent no.2 to the petitioner, the school authority and all other relevant parties positively within a further period of **two weeks** from the date of the reasoned order to be passed.

In the event the reasoned order goes in favour of the petitioner, all consequential and necessary steps shall be taken by the respondent no.3 and/or any other State authorities to give effect thereto positively within a period of **four weeks** from the date of communication of the reasoned order to be passed.

It is needless to mention that, if the petitioner is found to be eligible to receive the Dearness Allowance (DA) then, the Dearness Allowance shall be paid to the petitioner on and from and with effect from the date of her appointment against the sanctioned strength.

With the above observations and directions this writ petition, **WPA 30326 of 2016** stands **allowed**, without any order as to costs.

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

(Aniruddha Roy, J.)