

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Aniruddha Roy

W.P.A. 31492 of 2017

Smt. Nayan Biswas

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Prahlad Chandra Ghosh
Mr. Subir Hazra.

For the State : Mr. Sadhan Kr. Haldar

Heard on : April 15, 2024

Judgment on : April 15, 2024

Aniruddha Roy, J. :

1. Affidavit-of-service, filed in Court today, is taken on record.

Facts:

2. The writ petitioner claims to have worked as a **Group - D** staff at one **Tungi S. S. High School, District – Murshidabad** for about **21 years**.

She claimed approval of her appointment. She submitted a representation dated **September 28, 2016, Annexure-P5 at page 29** to the writ petition.

3. In the first round of writ litigation, **W.P. No.24992 (W) of 2016**, a coordinate Bench by its order dated **October 28, 2016, Annexure-P7 at page 35** to the writ petition directed the respondent no.3 to consider the said representation of the petitioner in the light of the direction of the Hon'ble

Supreme Court ***In the matter of : Piyu Datta –vs.- State of West Bengal & Ors.***, reported at **(2012) 3 WBLR (SC) 715**.

4. Pursuant to and in terms of the said direction of the coordinate Bench the respondent no.3 decided the representation of the petitioner after affording an opportunity of hearing to both the petitioner and the relevant school authority and passed its reasoned order dated **May 16, 2017, Annexure-P8 at page 37** to the writ petition rejecting the claim. The relevant observations of the respondent no.3 are quoted below :

“ Accordingly, a hearing has been taken on 16.01.2017 with prior intimation to all respondent authorities. On the date of hearing petitioner along with Secretary & Teacher-in-Charge of the school were remain present.

Petitioner stated that she has been working as Gr. ‘D’ staff since 2003. She has been paid of Rs.3000/- per month by the school authority, she added. Now, she is claiming her service approval.

Teacher-in-Charge stated that he joined as A.T. in the year 1997. Subsequently, he became Teacher-in-Charge on 01.01.2016. He also stated that Mahamaya Mandal (Metron) was a permanent staff of the school. She died in the year 2000 while in service. School authority took a resolution on 16.08.2003 to the effect that appointment may be given to the petitioner on condition that she would be terminated after joining a sponsored candidate in place of Mahamaya Mandal. Later on, Babulal Sardar has been recommended by the School Service Commission (NR) to join as Gr. ‘D’ staff in place of Mahamaya Mandal (died). But unfortunately school authority did not terminate the petitioner, Teacher-in-Charge added. However, Teacher-in-Charge is of the opinion that prayer of the petitioner should be considered on humanitarian ground.

Secretary of the school stated that he took charges on 20.09.2011. He also stated that there is one Gr. ‘D’ post lying vacant which has already been reported to School Service Commission (NR) and very

soon the post shall be filled up by sponsored candidate from School Service Commission (NR).

Heard the matter at length and I am of the opinion that school authority has no locus standi (sic) to appoint any candidate ignoring the office of the School Service Commission (NR) and District Inspector of Schools (SE), Murshidabad. This type of appointment should be considered as void appointment. Moreover, as per order of Apex Court of India, in the matter of Manidra Nath Sinha and Others –Vs.- State of West Bengal and Others, Civil appeal No.7897 of 2010, no organizing staff of the school could be regularised.

On the above observations, the prayer of the petitioner is rejected.

Thus the matter is disposed of.”

5. Assailing the said impugned reasoned order dated **May 16, 2017** the petitioner filed the instant writ petition.

Submissions:

6. Mr. Prahlad Chandra Ghosh, learned counsel for the petitioner referring to the said impugned order submits that, the judgment of the Hon'ble Supreme Court ***In the matter of : Piyu Datta (Supra), Annexure-P6 at page 31*** to the writ petition was not considered by the respondent no.3 while passing the said impugned reasoned order rejecting the claim of the petitioner. He submits that, the law laid down by the Hon'ble Supreme Court ***In the matter of : Piyu Datta (supra)*** has created a right in favour of the petitioner, since in view of the direction of the Hon'ble Supreme Court, the case of Piyu Datta was considered and she received an approval. In this regard, Mr. Ghosh has referred to a judgment of the Hon'ble Division Bench passed in a contempt proceeding dated **February 28, 2014** rendered in

CPAN 1490 of 2013 at page 44 to the writ petition. Learned counsel for the petitioner also relied upon another judgment of a Hon'ble Division Bench of this Court, ***In the matter of : Md. Bani Israil -vs.- The State of West Bengal & Ors., rendered in FMA 238 of 2009, Annexure-P9 at page 38*** to the writ petition. On the selfsame proposition he also relied upon an order of the Hon'ble Division Bench dated ***March 10, 2014 In the matter of : Samaresh Kumar Mondal -vs.- State of West Bengal & Ors.,*** passed in ***MAT 1250 of 2012.***

7. Learned counsel for the petitioner then submits that, the appointment of the petitioner was a regular appointment and there was no illegality whatsoever and the petitioner has been working for more than twenty-one years and is eligible to receive approval of her service, moreover, the law is well settled in favour of the petitioner, as referred to above. Mr. Ghosh, learned counsel for the petitioner also submits that, the case of the petitioner can be sent for reconsideration once again. He refers to an order of this Court dated ***December 14, 2023*** rendered in ***WPA 3149 of 2017 In the matter of : Santosh Kumar Seth -vs.- The State of West Bengal & Ors.*** and submits that, the petitioner is identically placed and similarly situated as that of that petitioner. Accordingly, the petitioner's case should have been considered for approval.

8. *Per contra*, Mr. Sadhan Kumar Haldar, learned State counsel appearing for the respondent nos. 1 to 3 submits that, upon careful consideration and upon due application of mind on the materials available before it, the

respondent no.3 has passed the reasoned order dated **May 16, 2017** in this writ petition. The petitioner was heard and the relevant school authority was also heard.

9. Relying upon the said impugned order, learned State counsel submits that, the appointment of the petitioner was thoroughly illegal and without the due process of law and the appointment was a backdoor appointment. There was no prior permission obtained from the respondent no.3 while appointing the petitioner for the post. There was no sanction or approval or appointment caused by the West Bengal School Service Commission which is a mandatory provision in law.

10. Learned State counsel further submits that, the observation of the Hon'ble Supreme Court ***In the matter of : Piyu Datta (supra)*** was made considering the peculiar facts and circumstance of the case in exercise of its power under **Article 142** of the Constitution of India. When a direction is made in exercise of its power under **Article 142** of the Constitution of India, it cannot be considered to have a binding legal force or proposition of law on the field.

11. Learned State counsel then submits that, the impugned reasoned order dated **May 16, 2017** is otherwise well-versed and well-reasoned. In the event, any direction is made for approval of the petitioner in the given fact situation then, an illegal appointment and a backdoor entry will receive the seal of the Court for approving her service, the same is not permissible in

law. Accordingly, learned State counsel submits that, the writ petition is not only devoid of any merit but also an abuse of the process of law.

Decision :

12. After considering the rival contentions of the parties and upon perusal of the materials on record, it appears from the observations made by the respondent no.3 in its impugned order dated **May 16, 2017** while rejecting the claim of the petitioner that, the respondent no.3 had proceeded after granting due opportunity of hearing to the petitioner and the school authority and also upon considering the relevant materials placed before it.

13. On a careful scrutiny of the said impugned order and upon reading the statements made in the writ petition and also upon perusing the materials disclosed through this writ petition, this Court is also of the firm view that, the petitioner has not made out any case or has not disclosed any materials on the face whereof the observation of the respondent no.3 made in the impugned order can be demolished unimpeachably.

14. The law is now well settled in the service jurisprudence that, unequals cannot be treated equals. ***In the matter of : State of Karnataka and Ors. -vs.- Uma Devi & Ors., reported at (2006)4 SCC 1***, the Hon'ble Supreme Court had laid down the law and observed that, when the appointment is totally illegal and the entries are through the backdoor of the employment, there shall be no question of regularisation and/or approval of such employment. In the facts of this case, the petitioner also does not come within the scope and purview of the exception curbed out ***In the matter of :***

Uma Devi (supra) as the appointment of the petitioner was not in terms of any prior permission obtained from the respondent no.3 nor the appointment was made and approved by the West Bengal School Service Commission. The respondent no.3 while rejecting the claim of the petitioner has discussed all the relevant materials available before it wherefrom this Court is also convinced that, the appointment of the petitioner was not following the due process of law and was a backdoor entry within the meaning of the ratio decided and the observation made by the Hon'ble Supreme Court ***In the matter of : Uma Devi (supra)***.

15. From a reading of the direction made by the Hon'ble Supreme Court ***In the matter of : Piyu Datta (supra)*** the authority was directed to consider the case of the petitioner therein in the peculiar facts and circumstance involved therein and the authority was never directed to approve the service of the petitioner or give appointment to the petitioner. Following the said direction of the Hon'ble Supreme Court the authority might have given appointment or approval of service to that petitioner but it cannot be construed that, a right had accrued in favour of the petitioner in the fact situation of this case. Following the said direction ***In the matter of Piyu Datta (supra)*** the other Hon'ble Division Benches had directed the authority to consider the case of those respective petitioners and even if such petitioners had received the appointment or approval, this would not create any right to receive an appointment or approval of service in favour of an

alleged employee, as the petitioner in the instant case, whose appointment is otherwise illegal and a backdoor entry in the employment.

16. In the matter of : Santosh Kumar Seth (supra) the post concerned was a sanctioned post and was lying vacant. There was no allegation of illegal appointment or backdoor entry. Thus, the ratio decided **In the matter of : Santosh Kumar Seth (supra)** has no application in the facts and circumstances of this case.

17. The impugned order dated **May 16, 2017, Annexure-P8 at page 37** to the writ petition does not suffer from any infirmity or perversity and the same stands **affirmed**.

18. The writ petition is totally devoid of any merit and is **dismissed** without any order as to costs.

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

(Aniruddha Roy, J.)