

09.01.2024
Item No.6
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IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

WPA/2659/2023

KALLAL CHAKRABORTY
VS
THE STATE OF WEST BENGAL & ORS.

Mr. Arnab Saha,
...for the Petitioner.

Mr. Hirak Barman,
Ms. Bedashruti Bose,
...for the State

Learned counsel for the petitioner has filed this present writ petition challenging the order of suspension dated 2.5.2022 with retrospective effect from 15.8.2020 issued by the President, Ad hoc Committee, West Bengal Board of Secondary Education under the prayer (a) which is as follows:

“(a) issue a writ in the nature of mandamus directing the Respondent concerned to declare the impugned Order of suspension dated 02.05.2022 with retrospective effect from 15.08.2020 issued by the President, Ad hoc Committee, West Bengal Board of Secondary Education and consequent impugned order vide Memo No. 217/1(3)/G/APD(SE) dated 12.05.2022 issued by the District Inspector of Schools (Secondary Education), Alipurduar are non est, illegal, devoid of any legal effect;”

After hearing the learned counsel for the petitioner this Court has issued notice on December 1, 2023 to the respondent. While pendency of the writ petition on 7.12.2023, the petitioner has received a communication permitting him to join in the service as Assistant Teacher. Accordingly, the petitioner also joined on 20th December, 2023 and the petitioner is in service.

Learned counsel for the petitioner represented that petitioner has filed the present writ petition for the following prayers :

“(a) issue a writ in the nature of mandamus directing the Respondent concerned to declare the impugned Order of suspension dated 02.05.2022 with retrospective effect from 15.08.2020 issued by the President, Ad hoc Committee, West Bengal Board of Secondary Education and consequent impugned order vide Memo No. 217/1(3)/G/APD(SE) dated 12.05.2022 issued by the District Inspector of Schools (Secondary Education), Alipurduar are non est, illegal, devoid of any legal effect;

(b) issue a writ in the nature of mandamus directing the Respondent concerned to revoke, cancel, rescind, recall the impugned Order of suspension dated 02.05.2022 with retrospective effect from 15.08.2020 issued by the President, Ad hoc Committee, West Bengal Board of Secondary Education and consequent impugned order vide Memo No. 217/1(3)/G/APD(SE) dated 12.05.2022 issued by the District Inspector of Schools (Secondary Education), Alipurduar forthwith;

(c) issue a writ in the nature of mandamus directing the Respondent concerned to allow the Petitioner to resume his duty in the service at the post of 'Assistant Teacher' at the Rabindra Junior High School, Hamiltanganj, Alipurduar forthwith and also allow to continue with said service without any excuse and consequently thereupon direct the Respondent concerned to regularize the period of service illegally suspended by the impugned order in the relevant service book of the Petitioner upon treating the service of the Petitioner so rendered at the said post at the said school from the period of 24.03.2021 to 12.05.2022 as regular service of the Petitioner forthwith."

As per prayers (a) and (b) there is no grievance at all whereas in prayer (c) the petitioner has sought for regularize the period of suspension which was passed on 02.05.2022 with retrospective effect from the 15.08.2020.

Therefore learned counsel for the petitioner represented that prayer (c) may be considered and the suitable direction may be issued to the respondent.

Learned counsel for the State has represented that the petitioner has challenged the suspension order. Later, on 07.12.2023 the petitioner was permitted to join in the service. Hence, the writ petition is not maintainable and the prayer made before this Court has become infructuous. Admittedly, the petitioner was suspended on

02.05.2022 with retrospective effect from 15.08.2020. Therefore, learned counsel for the petitioner represented that a direction may be issued to the respondent to consider the prayer no. (c) by regularizing the petitioner's service from 15.8.2020 to 2.5.2022.

Learned counsel for the State has represented that since the petitioner has received salary there is no question of regularizing from 15.8.2020 to 02.05.2022. Since the petitioner was suspended on 02.05.2022 in the impugned order it is mentioned that the suspension order will take retrospective effect from 15.08.2020, it is up to the State to consider the petitioner's service of regularization from 15.08.2020 till 02.05.2022. Therefore, the petitioner is given liberty to approach the respondent by way of making representation seeking the prayer (c) for regularization of his service from 15.08.2020 to 02.05.2022. Learned counsel for the State has also agreed for the same. Therefore, I am inclined to pass following order :

- a) This writ petition is disposed of.
- b) The petitioner is given liberty to make a representation to the respondent within two weeks from the date of receipt of the order seeking regulation of the services from 15.8.2020 to 02.0

- c) 5.2022 pursuant to communication of the order dated 07.12.2023.
- d) On receipt of the said representation within the time stipulated by this Court, the respondent is directed to consider the same and pass appropriate order within a period of twelve weeks thereafter.

With these observations, this writ petition stands disposed of.

(M. V. MURALIDARAN, J.)