

OD 18

WPO/293/2020
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

RINA DATTA
VS
STATE OF WEST BENGAL AND ORS.

BEFORE:
The Hon'ble JUSTICE RAI CHATTOPADHYAY
Date: 13th February, 2024.

Appearance:
Mr. Sakti Pada Jana, Adv.
...for the petitioner

The Court: The writ petitioner who is a teacher of a D.A. getting school, namely, "Gyan Bharati Prathamik Vidyalaya", has sought for an order of this Court, modifying the impugned order dated 13.07.2017, to the effect that the date of approval of the writ petitioner as mentioned therein is erroneous and should be modified.

The brief fact of the case, necessary for disposal of the writ petition, is that the writ petitioner is an Assistant Teacher of the said school, appointed on 13.06.2011. Thereafter, her service was confirmed and recommendation of herself along with five other Assistant Teachers of the said school, was forwarded to the concerned respondent, that is, District Inspector of Schools (Primary Education), Kolkata, vide letter dated 17.01.2017, for approval of their services.

All the Assistant Teachers recommended by the school for approval, by dint of the said letter, could not see a ray of hope due to inaction of the concerned

respondent to act pursuant to the recommendation of the School Managing Committee to approve their service. All of them had moved this Court and obtained order that the concerned respondent would take decision with regard to the recommendation of approval of all the teachers including the present writ petitioner. Pursuant to the same, the concerned respondent had ultimately acted and passed the order dated 13.07.2017. Let the same be quoted as hereinbelow:

“In compliance with the solemn order of the Hon’ble High Court of Calcutta on 22.02.2017, passed by the Hon’ble Justice Mr. Arijit Banerjee, in the matter mentioned above, the appointment of Smt. Rina Datta, the petitioner, in the post of Assistant Teacher of Gyan Bharati Prathamik Vidyalay, 64-A, Nimtala Ghat Street, Kolkata – 700006, under Circle – XIX, is here by approved w.e.f. 22.02.2017”.

The writ petitioner is aggrieved that her date of approval has been mentioned by the concerned respondent in the said letter as 22.02.2017, that is the date on which this Court disposed of the writ petition being No.WP 4583(W) of 2017, directing the respondent to consider the petitioner’s prayer for appointment and that her service has not been approved, from the date of her confirmation.

Mr. Jana, learned advocate appearing for the writ petitioner says that the date of order of the Court cannot be the effective date from which the approval can be granted to the writ petitioner. He has pointed out to the various orders of this Court granted in favour of similarly circumstanced Assistant Teachers, that by dint of Court’s order, approval was given effect to, from the date of their confirmation with the school. Similar effect and appropriate modification to the

order dated 13.07.2017 has been sought for by Mr. Jana on behalf of the writ petitioner.

The respondent / State have not been represented in this case. Under such circumstances, the affidavit-in-opposition submitted on behalf of the said respondent is taken up for consideration, as the matter is being disposed of today, in absence of any representation on behalf of the respondents.

It is seen that the defence of the concerned respondent, as envisaged in the affidavit-in-opposition is that the writ petitioner did not possess the requisite training qualification on the date of her appointment or confirmation. As such, the respondent says that, her service cannot be approved on and from the date of her confirmation in service.

The writ petitioner was appointed in the said school as an untrained candidate. This was pursuant to the relaxation granted for appointment of an untrained candidate, in the post of an Assistant Teacher, as envisaged by the Central Government. It is a fact that on the date of appointment or on the date of her confirmation, the writ petitioner was not qualified with the training component. However, it is found that the training qualification would not be mandatory for approval of a teacher in a school, who is enjoying 'B' category scale of pay, until and unless 'A' category scale of pay is prayed for, by her. Admittedly, the writ petitioner is granted 'B' category scale of pay. An Assistant Teacher, who is granted 'B' category scale of pay, would not necessarily be required to be qualified with the Primary Teachers' Training, at the time of her induction, and would be allowed to take benefit of the exemption, to be appointed as an untrained candidate. This, however, would not operate as a resistance or

bar, for a teacher so appointed, to be approved in due course of time, as per existing rules and upon compliance of all the formalities relating thereto. This applies in case of the present writ petitioner too.

All the other similarly circumstanced teachers have been granted approval with effect from the date of their confirmation respectively as seen from the copies of the various previous orders of this Court. The writ petitioner cannot be subjected to a differential treatment being similarly situated.

Under such circumstances, this Court finds it is proper to allow the writ petition.

The date of approval of the writ petitioner as mentioned in letter dated 13.07.2017 is set aside.

The concerned respondent, that is, District Inspector of Schools (Primary Education), Kolkata, is directed to issue a fresh approval letter, acknowledging the date of appointment of the writ petitioner with effect from the date of her confirmation of service in the said school. The exercise as above, shall be done by the concerned respondent, that is, District Inspector of Schools (Primary Education), Kolkata, within a period of four weeks from the date of service of copy of this order.

The writ petition is, accordingly, disposed of.

(RAI CHATTOPADHYAY, J.)