

WPA 3406 of 2012

13.5.2025

Anisur Rahaman. -vs- The State of West Bengal & Ors.

Ct.25,sl.
369 ,sk

Mr. Susanto Paul
Ms. Sangita Jangro
Ms. Payel Neogi
...for the petitioner.

Mr. Bhaskar Prasad Vaisya,ld. AGP
Mr. Sagnik Chatterjee
...for the State

1. An order of the District Inspector of School (Secondary Education), Murshidabad dated February 12, 2010 is under challenge in this case.
2. The petitioner being a clerk in the School from December 10, 1998 has been rendering voluntary service therein.
3. The vacancy arose as against a permanent sanctioned post of a clerk in the school on March 31, 2008.
4. From the impugned order, it is noticed that the said respondent/District Inspector of Schools (Secondary Education), Murshidabad has not taken into consideration the relevant date when the vacancy arose. Instead he has followed the relevant provision of the West Bengal School Service Commission Act, 1997, to decline the petitioner's prayer, which is, however, not an appropriate legislation to be applied in case of the present petitioner. That is for the reason firstly, that the petitioner belongs to the post of a clerk and the

applicable Rules under the School Service Commission Act, 1997, for the petitioner has come into force with effect from 2009 vide Notification No. 697-ES/S/IS-18/08-09 July 2009. The date of vacancy being prior to coming into force of the said Rules of 2009 for appointment of clerk, the issue or dispute regarding appointment of the present petitioner would not be covered under the said Rules, which does not have retrospective operation.

5. At this juncture, the Court is inclined to look into the order of the Hon'ble Court reported in 2023 SCC Online Cal 2565 (Asit Ranjan Gayen & Ors.vs. State of West Bengal & Ors.), in which the Court has enumerated about the necessity and justifiability of considering for regularization of a temporary appointee, on the basis of his prolonged and continuous service. The ratio thereof squarely applies in case of the present writ petitioner.

6. The Court finds on the discussion as made above, that the impugned order being de hors the law, is liable to be set aside.

7. In such circumstances, the present writ petitioner is disposed of with the following directions:-

- i) The impugned order dated February 12, 2010 passed by the respondent no.3 is set aside;

- ii) Let the respondent decide afresh the petitioner's prayer for regularization in accordance with law and in the light of the decision of this Court as referred to above. He should pass a reasoned order as to the same, if not, the prayer of the petitioner is immediately allow by the said respondent.
- iii) In doing so, the respondent shall afford opportunity of hearing to the petitioner and conclude the entire process within a period of six weeks from the date of communication of copy of this order.

8. With the above observations and directions the writ petition being WPA 3406 of 2012 is disposed of.

9. Since no affidavit is invited, the allegations contained in the petition are deemed to have been denied by the respondents including the private respondents.

10 Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)

