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07.08.2025
Ct. No. 11
rrc

MAT 379 of 2025
with
IA No. CAN 1 of 2025
and
IA No. CAN 2 of 2025
and
IA No. CAN 3 of 2025

(The Mission Director, Paschim Banga Rajya Sishu
Siksha Mission Vs. Fatema Khatun & Ors.)

Mr. Sarwar Jahan
Ms. Mousumi Mitra
Mr. Kaustav Roy

..... For the appellant

Mr. Sunit Kr. Roy
Ms. Susmita Mandal

**..... For the respondent/writ
petitioner no. 1**

The present appeal has been preferred by the Mission Director, Paschim Banga Rajya Sishu Siksha Mission (hereinafter referred to as the said Mission) challenging a judgment dated 13th January, 2025 passed by the learned Judge in the writ petition being WPA 24621 of 2024 which was preferred by the writ petitioner/respondent no. 1, namely, Fatema Khatun (in short, Fatema), primarily praying for the following relief:-

‘Writ in the nature of Mandamus commanding the respondents, their men, agents and servants herein to pay regular as well as arrear honorarium view of engagement of the petitioner being Sahayika of Jiyagachi Sishu Siksha Kendra,

*Jiyagachi, Dhangra, Chanchal II, District – Malda
w.e.f. 26.6.2010, forthwith.'*

In connection with the appeal, an application for condonation of delay being IA No. CAN 3 of 2025 has been filed. Upon perusal of the records, we are satisfied with the explanation given towards the delay in preferring the appeal and accordingly, such delay is condoned. The application being IA No. CAN 3 of 2025 is disposed of.

Mr. Roy, learned advocate appearing for Fatema submits that in connection with the appeal, Fatema has preferred an application being IA No. CAN 1 of 2025 primarily seeking expeditious disposal of the appeal. The said application is disposed of and the appeal is taken up for final hearing.

Drawing our attention to a memo dated 23rd April, 2010 issued by the Joint Secretary to the Government of West Bengal, Department of Panchayats and Rural Development and particularly, clause 5 of the said memo, Mr. Jahan, learned advocate appearing for the appellant submits that alleged engagement of Fatema was not prior to issuance of the said memo.

He argues that the concerned Sthayee Samity approved the earlier selection process by a resolution dated 4th May, 2010, i.e., subsequent to the issuance of the said memo dated 23rd April, 2010. The purported engagement of Fatema pertaining to an earlier selection process was thus, void *ab initio* and Fatema did not

acquire any right to the post. Such argument, as urged, was glossed over by the learned Judge and no finding was returned on the same. Such infirmity warrants interference of the Court.

Mr. Jahan further submits that by the memo dated 23rd April, 2010, the selection committee was reconstituted and as such, the decision of the earlier selection committee could not have been approved subsequent to the change of policy as reflected in the memo dated 23rd April, 2010.

Mr. Roy denies and disputes the contention of Mr. Jahan and submits that Fatema applied for appointment as the 3rd Sahayika at Jiyagachi Sishu Siksha Kendra (hereinafter referred to as the said SSK) responding to an advertisement published by the competent authority. She emerged to be successful in the selection process and her engagement was also approved by the Sthayee Samity on 4th May, 2010.

Drawing our attention to a memo dated 12th April, 2010 issued by the respondent no. 6 herein Mr. Roy submits that at the very inception, the competent authority being the respondent no. 6, granted permission to the said SSK to take necessary steps for engagement of the 3rd and the 4th Sahayika Sahayika on the basis of the government circulars dated 8th November, 2004 and 27th October, 2006.

He argues that after conclusion of the selection process and approval by the competent authority, the rules could not have been changed subsequently through the issuance of the memo dated 23rd April, 2010.

He further submits that, in fact, after such approval by the Sthayee Samity, the said SSK entered into an agreement with Fatema and she started discharging her services on the basis of the said agreement. Such engagement of Fatema was, however, challenged by the earlier 3rd Sahayika but such writ petition was dismissed by the order dated 30th August, 2022 observing, *inter alia*, that Fatema was appointed in the post of Sahayika after 30th April, 2009 *'following the recruitment procedure prevalent at the material point of time'*. The appeal preferred against the said order was also dismissed but the authorities still illegally withheld Fatema's honorarium.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

A perusal on the memo dated 23rd April, 2010 reveals that the same was issued in cancellation of notifications dated 20th April, 2010 and 21st January, 2018. The government orders referred to in the memo of the respondent no. 6 dated 12th April, 2010 granting permission to the said SSK to conduct the selection process had not been referred to in the memo dated 23rd

April, 2010. From clause 6 of the said memo it appears that the same would also be applicable to the existing engaged Sahayika. There is no clause in the said to the memo to the effect that the same would be given any retrospective effect.

Indisputably, the selection process was initiated on the basis of the prior permission issued by the respondent no. 6 *vide* memo dated 12th April, 2010. The panel prepared was approved by the said Managing Committee of the said SSK and then forwarded for approval to the competent authority being the Sthayee Samity which, in turn, approved the said panel on 4th May, 2010. Even after issuance of the said memo dated 23rd April, 2010, the learned Court in an earlier round of litigation passed an order on 30th August, 2022 observing, *inter alia*, that Fatema's engagement was made '*following the recruitment procedure prevalent at the material point of time*'. The said order was not interfered with by the Hon'ble Appeal Court. The State respondents have also not preferred any appeal against the judgment dated 13th January, 2024.

The learned Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the judgment impugned, warranting interference of this Court.

Accordingly, the appeal and the connected application for stay being IA No. CAN 2 of 2025 are dismissed.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)