

01.08.2025.

**01
Ct.No.7.
as**

WPA 7113 of 2024

**Rafiqul Alam Biswas
Vs.
The State of West Bengal & Ors.**

Mr. Prahlad Chandra Ghosh,
Mr. Subir Hazra,
Mr. Sukumar Sarkar.
...for the Petitioner.

Mr. Sirsanya Bandopadhyay,
Ld. Sr. Standing Counsel.,
Mr. Ritesh Kr. Ganguly.
...for the State.

Mr. Arjun Ray Mukherjee,
Ms. Saheli Mukherjee,
Mr. Joyjeev Medhi.
...for the Respondent No.3.

Md. Sarwar Jahan (VC),
Mr. Amanul Islam,
Mr. Sourav Mukherjee.
...for the Respondent No.7.

1. The petitioner and private respondent No. 7 have been embroiled in protracted litigation for more than one and a half decades over the engagement to the post of para teacher at Dhoradaha Union High School, Nadia.

2. The origin of the dispute, which has resulted in prolonged litigation, can be traced back to a selection process initiated in 2004 by the District Project Officer, Sarba Siksha Mission, Nadia. To implement that process, a notification dated 10th June 2004 was issued for the recruitment of 4,000 para teachers in various schools

across the district. The notification specified that 50% of the posts would be reserved for women.

3. There were seven vacant posts of para teachers in Dhoradaha Union High School, Nadia. Of these, four were reserved for women and three for male candidates, in accordance with the 50% reservation policy for women. Upon completion of the selection process, appointments were made against all seven posts. At that stage, neither the petitioner nor private respondent No. 7 submitted their candidature for any of the posts.

4. Subsequently, one of the female para teachers, namely Susmita Mondal, resigned from her post, resulting in a vacancy. The school authorities initiated the necessary steps to fill the post that had fallen vacant due to her resignation. At that time, both the petitioner and private respondent No. 7 submitted their candidature for the said post. The petitioner, Rafiqul Alam Biswas, was engaged in the vacant post of para teacher at Dhoradaha Union High School (hereinafter referred to as 'the school') in 2006.

5. In the meantime, private respondent No. 7 submitted a representation before the competent authority, claiming her entitlement to engagement in the said post. However, despite receiving the representation, the authority failed to take any action. As a result, private respondent No. 7 was compelled to file a writ petition, being W.P. No. 25569 (W) of 2006. The said petition was disposed of by a Coordinate Bench of this Court by an order dated 18th December 2006, directing the competent authority to consider and dispose

of her representation in accordance with law, within the time stipulated therein.

6. Pursuant to the order dated 18th December 2006, the District Project Officer issued an order on 31st January 2011, stating that the prayer for engagement made by private respondent No. 7 could not be considered, as a Government Order dated 27th March 2010, issued by the State Project Officer, had imposed a complete ban on such engagements with effect from that date. However, the order dated 31st January 2011 also recorded that an inquiry would be conducted into the allegation made by private respondent No. 7 regarding the illegality of the petitioner's engagement.

7. Subsequently, the District Project Officer found that the allegation raised by private respondent No. 7 was justified. Accordingly, in 2011, she was engaged in place of the petitioner in the post of para teacher at the school.

8. Aggrieved thereby, the petitioner filed a writ petition, being W.P. No. 11690 (W) of 2011. The said writ petition was disposed of by a Coordinate Bench of this Court by an order dated 4th July 2013. The Bench observed that the District Project Officer had acted erroneously, as no reason was assigned in support of the claim that the post was reserved for a woman. Consequently, the matter was remitted to the District Project Officer for taking a final decision. In the meantime, a direction was issued to allow both the petitioner and private respondent No. 7 to

continue serving as para teachers at the school until a final decision was made.

9. In compliance with the order passed in W.P. No. 11690 (W) of 2011, the District Project Officer issued a reasoned order, recording that the engagement of the petitioner, Rafiqul Alam Biswas, in the post that had fallen vacant following the resignation of Susmita Mondal was erroneous, as the said post was reserved for a woman candidate.

10. The order dated 11th September 2013 was challenged by the petitioner in a writ petition, being W.P.A. No. 4372 (W) of 2014. The records indicate that, by an order dated 20th January 2023, the matter was referred to the Secretary, School Education Department, with a direction to resolve the issue by passing a reasoned order. The reasoned order passed by the Secretary in compliance with the said order dated 20th January 2023, in W.P.A. No. 4372 (W) of 2014, is the subject matter of challenge in the present writ petition.

11. Mr. Ghosh, learned Advocate appearing for the petitioner, draws attention to the notice dated 10th June 2004 and submits that the 50% reservation policy was to be applied on a district-wise basis, not school-wise. Referring to the engagement letter dated 28th December 2006, issued by the District Project Officer in favour of the petitioner, he contends that this letter reflects that the competent authority had duly maintained the policy of 50% reservation for women at the time of engagement.

12. Inviting my attention to the application submitted by the private respondent for the post, Mr. Ghosh contends that the private respondent applied for the position of para teacher at Bairadaha Union High School. He further submits that a Coordinate Bench, in its order dated 4th July 2013, specifically observed that the District Project Officer erred in concluding that the post was reserved for women. Mr. Ghosh argued that, contrary to this finding, the reasoned order under challenge in the present writ petition maintains that the post was reserved for women. He submits that such a conclusion cannot be permitted to stand.

13. He further submits that although the State had categorically decided not to engage any para teachers after 2010, in the present case, the private respondent was nonetheless engaged in the post in 2011. For this reason, he contends that the order under challenge in this writ petition is legally unsustainable. He also submits that the petitioner was lawfully appointed to the post in 2006 and rendered unblemished service to the school until his forcible removal in 2011. According to him, such a person cannot be deprived of his position on the ground that the authority had allegedly committed a gross error at the time of filling the post. He prays for a direction to the concerned respondents to permit both the petitioner and the private respondent to continue to serve the school as para teachers.

14. In rebuttal, Mr. Roy Mukherjee, learned Advocate appearing for respondent No. 3, submits that the petitioner

has deliberately sought to create confusion regarding the name of the school. Inviting my attention to a portion of the reasoned order dated 6th April 2023, he submits that the order specifically clarified that there is no school, namely, Bairadaha Union High School within the same demographic area of Nadia district. He further submits that the order stated that, in that demographic area, there is only one school, namely Dhoradaha Union High School.

15. Referring to the relevant portion of the order, he submits that the District Project Officer, Sarba Siksha Mission, in its meeting dated 18th October 2004, decided that the 50% reservation for women would be applied on a school-wise basis. Relying on the guidelines for the engagement of additional para teachers annexed to the affidavit-in-opposition filed on behalf of respondent No. 3, he submits that these guidelines categorically state that at least 50% of the teachers engaged in each school must be women teachers. Therefore, according to Mr. Mukherjee, there can be no doubt that the 50% reservation for women was intended to be applied school-wise.

16. He submits that the post that had fallen vacant following the resignation of a female para teacher at the school should have been reserved exclusively for a female candidate and, accordingly, filled only by a female candidate. However, he contends that the then competent authority committed an error by appointing a male candidate, namely the petitioner, to the post.

17. Mr. Bandopadhyay, learned Advocate appearing for the State, defended the order under challenge in the writ petition, contending that the petitioner contested the said order and the engagement of the private respondent on two grounds. He submits that, according to the petitioner, the 50% reservation for women was to be maintained on a district-wise basis. Further, the petitioner contended that the private respondent should not have been engaged in the post in 2011, as the State had decided not to appoint any additional para teachers in any school after 2010.

18. Referring to certain paragraphs of the reasoned order challenged in this writ petition, he submits that the District Project Officer, Sarba Siksha Mission, resolved in its meeting that the reservation would be applied on a school-wise basis. He further submits that it is an admitted fact that the post, which fell vacant following the resignation of a female candidate, was therefore reserved for a female candidate. Consequently, there was an administrative mistake in filling the post with a male candidate, namely the petitioner. He contends that since this mistake occurred, the State has acknowledged and rectified it.

19. He submits that although the private respondent was engaged in 2011, her engagement, following the principle of the doctrine of restitution, relates back to the date of the petitioner's engagement in 2006. He relies on the decisions reported in AIR 1961 Cal 70 (*Mahadeo Prosad Shaw vs. Calcutta Dyeing & Cleaning Co.*), AIR 1966 SC 948 (*Binmayak Swain vs. Ramesh Chandra Panigrahi & Anr.*),

and 2024 SCC OnLine SC 163 (Manoj Kumar vs. Union of India & Ors.) for the proposition that a person who has suffered due to an erroneous order or mistake should be entitled to the benefit of restitution to remedy such wrongful action.

20. Mr. Jahan, learned Advocate representing the respondent No.7 adopted the submissions advanced on behalf of the State.

21. Heard the learned Advocates appearing for the respective parties and perused the materials on record.

22. Before delving into the contours of the controversy involved in the present writ petition, it would be appropriate to summarise the admitted facts. The post in question fell vacant due to the resignation tendered by a female para teacher, namely Susmita Mondal. Pursuant to the selection process initiated in 2004, seven para teacher posts were filled up at the school. In accordance with the 50% reservation policy for women, four of these posts were reserved for female candidates and were accordingly filled by four women. The remaining three posts were reserved for male candidates and were filled by three male candidates. Susmita Mondal had been engaged in one of the posts reserved for female candidates.

23. As noted earlier, in 2006, Susmita Mondal tendered her resignation, prompting the school authorities to initiate a fresh selection process to fill the vacancy created by her departure. Both the petitioner and private respondent No. 7 submitted their candidature for the said post. Upon

completion of the selection process, the petitioner was selected for the post, and a letter of engagement was accordingly issued in his favour.

24. Thereafter, as noted in the preceding paragraphs, the private respondent also asserted her claim to the said post. The competing claims of the petitioner and the private respondent gave rise to a series of litigations before this Court, necessitating judicial intervention through multiple writ petitions filed by both parties. Ultimately, the matter was referred to the Principal Secretary, School Education Department, for its effective resolution.

25. The Principal Secretary, School Education Department, passed a reasoned order, which is under challenge in the present writ petition. In the said order, the Principal Secretary specifically recorded that the District Project Officer, Sarba Siksha Mission, in its meeting dated 18th October 2004, had resolved that the 50% reservation for women was to be maintained on a school-wise basis. Accordingly, out of the seven sanctioned posts, four were reserved for female candidates and were filled by four women, including Susmita Mondal.

26. Thus, there can be no doubt in concluding that the post in which the petitioner was engaged in 2006 was reserved for a female candidate. Consequently, the appointment of a male candidate to a post reserved for a woman cannot be regarded as valid. Therefore, the reasoned order rightly recorded that the petitioner's engagement was void ab initio. I do not find any infirmity in such a decision.

27. However, with respect to the other part of the reasoned order, namely, the engagement of the private respondent, the Principal Secretary, School Education Department, relied upon the notifications dated 27th March 2010 and 9th June 2010, and expressed doubt as to whether, in view of those circulars, the engagement of the private respondent could be considered valid. Nevertheless, it stands established that the post in question was reserved for a female candidate. Accordingly, the private respondent ought to have been engaged in the post in 2006. However, due to prolonged litigation, judicial intervention by this Court, and an administrative error, the said engagement could not be made at the appropriate time and was ultimately given in 2011.

28. There exists a general presumption that statutes, notifications, or administrative orders operate prospectively. Courts are ordinarily reluctant to give retrospective effect to a new law or amendment unless the language of the legislation clearly mandates such application. It is a well-settled principle that delegated legislation or executive orders affecting existing rights are not to be applied retrospectively, unless there is an explicit provision or a clear intention to that effect.

29. A recruitment or selection process, once initiated by the issuance of an advertisement, is deemed to have commenced and concludes upon the appointment and joining of the selected candidate, unless it is lawfully deferred or cancelled midway. As with other pending

actions or proceedings, the general principle against retrospective application applies equally to ongoing selection processes.

30. In statutory interpretation, when the legislature provides that no suit shall be 'instituted' or 'entertained' on a particular subject, such language typically does not impact suits already filed. However, if the statute states that, after its commencement, 'no decree shall be passed' or 'no court shall exercise jurisdiction', it would affect ongoing proceedings. Similarly, if the legislature uses expressions such as 'no decree shall be passed in a suit filed or pending', it may expressly include pending suits or appeals within its ambit. Applying this principle, the circulars referred to in the preceding paragraph cannot be construed to affect a selection process that had already been initiated prior to their issuance.

31. Therefore, I concur with the contention advanced by Mr. Bandopadhyay that the circulars in question would not have any bearing on the selection process initiated by the concerned authorities in 2006. While the private respondent is not entitled to claim any notional or actual benefits arising from the period commencing in 2006, her engagement shall nonetheless relate back to the date on which the petitioner was appointed to the post.

32. Thus, I do not find any infirmity in the reasoned order that would warrant interference by this Court.

33. As for the petitioner's claim seeking a direction to allow him to continue serving as a para teacher in the school

along with the private respondent, I am of the considered view that such a direction would be inappropriate. Permitting both the petitioner and the private respondent to be engaged simultaneously would result in an unwarranted financial burden on the State.

34. Accordingly, the writ petition is dismissed, however, without any order as to costs.

(Partha Sarathi Chatterjee, J.)