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02.05.2025
Court No. 25
D.Hira

WPA 7633 of 2018

**Smt. Gouri Santra
Vs.**

The State of West Bengal & Ors.

**Mr. Pradip Kumar Roy, Id. Sr. Counsel,
Ms. Dipanwita Sarkar.
... for the petitioner**

**Mr. Tapan Kumar Mukherjee, Id. A.G.P.,
Mr. Somnath Naskar.
... for the State**

1. This is the third round of the writ petition by the present petitioner, seeking approval of her service in the school with effect from her date of joining therein, that is, November 1, 1979.
2. The first writ petition filed by the petitioner was WPA No. 15498 (W) of 2001, in which the writ petitioner has not been able to obtain an order in her favour.
3. An appeal challenging the said order rejecting the petitioner's prayer for approval by the Hon'ble Single Judge dated September 22, 2011 was filed being FMA No. 1143 of 2012.
4. The said appeal was disposed of by dint of an order dated November 16, 2015. In the same, the Hon'ble Division Bench had formulated four questions and directed as below:-

"In the event the Commissioner of School Education, after taking evidence to be adduced by the writ petitioner, the concerned school and the State, is of the opinion that the balance of probability is in favour of an answer to the aforesaid questions in the

affirmative, he shall in that case approve the appointment of the petitioner post facto solely for the purpose of giving her the retiral benefits who will retire, we are told, on November 30, 2015. The aforesaid exercise must be completed by the Commissioner of School Education on or before December 31, 2015.”

5. After careful perusal of the order of the Hon’ble Division Bench as above, it appears that the Commissioner of School Education was directed to take evidence and come to an opinion that balance of probability as regards the questions formulated by the Hon’ble Division Bench is in affirmative.
6. In that case, the Hon’ble Division Bench has directed the Commissioner of School Education that he shall approve appointment of the petitioner *post facto*, solely for the purpose of giving her the retiral benefits till the last date of her carrier, that is, November 30, 2015.
7. An order has been passed by the Commissioner of School Education dated April 19, 2018, after three years of the order passed by the Hon’ble Division Bench thereby rejecting petitioner’s prayer as above.
8. However, on careful perusal of the order of the Commissioner of School Education dated April 19, 2018 as impugned in the instant writ petition, it appears that the four questions formulated by the Hon’ble Division Bench, have been answered by the said respondent in affirmative.
9. The respondent thereafter, went on to discuss the law applicable and ultimately come to a decision that the

approval of the petitioner would not be in accordance with law.

10. On perusal of the order of the Hon'ble Division Bench as above as well as the order impugned of the Commissioner of School Education as above, the Court finds that the Division Bench by dint of its order dated November 16, 2015 has mandated the said respondent to approve the appointment of the petitioner *post facto* solely for the purpose of giving her retiral benefits, in case the respondent Commissioner is of the opinion as regards the answers of the questions formulated by the Hon'ble Division Bench, to be in affirmative.

11. However, in spite of answering the questions formulated by the Division Bench, further directions of the said Appeal Court, has not been complied with. The Court finds that the respondent Commissioner of School Education shall not have any scope to travel beyond the scope of the order of the Hon'ble Division Bench, excepting formulating an opinion if the answer of the questions formulating by the same has been in affirmative or not.

12. In that case, in accordance with the order of the Hon'ble Division Bench, the Commissioner shall have no other alternative than to comply with the mandate of the Hon'ble Division Bench that approval should be granted to the writ petitioner, *post facto*, for the purpose of giving the petitioner her retiral benefits.

13. In such view of the fact that the Court finds the impugned order of the Commissioner of School

Education, West Bengal dated April 19, 2018 to be *de hors* the purview of the order of the Hon'ble Division Bench as well as in violation thereof, which cannot be allowed to stand.

- 14.** For the reasons as above, the impugned order dated April 19, 2018 passed by the Commissioner of School Education is set aside.
- 15.** The matter is being remanded back to the Commissioner of School Education for deciding upon the issue and passing necessary order strictly in terms of the order of the Hon'ble Division Bench in FMA No. 1143 of 2012 dated November 16, 2015.
- 16.** In doing so, he may grant an opportunity of hearing to the petitioner if he finds so necessary and he should positively dispose of the prayer of the petitioner as above, strictly in terms of the order of the Hon'ble Division Bench in FMA No. 1143 of 2012 dated November 16, 2015 within a period of three weeks from the date of communication of copy of this order.
- 17.** With the above observations and directions, the writ petition being No WPA 7633 of 2018 is disposed of, along with the pending applications, if any.
- 18.** Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)