

FMA 1828 of 2013

Smt. Chandana Chakraborty (Sarkar)
Vs.
The State of West Bengal & Ors.

Mr. Lakshmi Kanta Pal
Mr. Bandhu Brata Bhula ...for the appellant

Soumen Sen J. (Oral):

1. In spite of notice the State respondents are not represented. On the earlier occasion the State respondents were not present. For which we requested Mr. Nilotpal Chatterjee learned Junior Government Advocate to represent the State in this appeal. In spite of service of notice of appeal upon Mr. Nilotpal Chatterjee represent the State, there is no representation on behalf of the State.
2. The appellant is a B.A. (Honours in Bengali) from University of Calcutta. She has completed various courses as would appear from the certificates disclosed in this proceeding. The writ petitioner passed diploma in Home Science on 2nd June, 1995. Between 1st March 1996 and 31st March 1997 she was working as Assistant Teacher in Julian Day School, however, it appears that she was appointed as an Assistant Teacher on a temporary basis in Bankim Ghosh Memorial Girls High School (Primary Section) from March 1997 till her service was not renewed by the said School upto 27th December 2012.
3. In view of the fact that her service was not renewed, she filed the writ petition praying *inter alia*, for an approval of

confirmation of the service of the petitioner as an Assistant Teacher w.e.f. 31.01.2011.

4. The learned Single Judge, dismissed the said writ petition on the basis of her certificates disclosed in the writ petition one cannot perform duties in two schools at a time.
5. Learned counsel appearing on behalf of the appellant submits that the date of the letter of the later school, may be incorrect. However, the writ petitioner is entitled to absorption in view of the judgement of the Hon'ble Supreme Court in **(2020) 17 SCC 393 [Pandurang Sitaram Jadhav vs. The State of Maharashtra its Dairy Manager & Anr]**. In view of her continuous uninterrupted long service as an Assistant Teacher and discharging the same function as that of a regular Assistant Teacher, it is further submitted that representation made in this regard was kept pending and the direction ought to have been passed upon the authorities concerned disposed of the writ petition dated 24.01.2013. While it would be doubtful to accept the submission of absorption based on the decision in **Pandurang Sitaram Jadhav (supra)** as the facts appear to be different and the recruitment process are also different. If the writ petitioner was discharged in the same duties as that of a regular teacher undoubtedly she is entitled to the same scale of pay even not other benefits as that of the regular teacher.
6. Moreover, her claim for absorption is required to be considered on the basis of her appointment as an Assistant Teacher and the process of such recruitment shall be made subsequent to the coming into operation of the West Bengal School Service Commission Act, 1997. The ground on which

the writ petition was dismissed also cannot be ignored as she could not have performed her duties in two schools at a time as it appears from the certificates disclosed in the writ petition.

7. However, we direct the respondent no. 2 to decide the representation 24.01.2013 in the event if it is found that she had discharged similar functionary duties as a regular teacher uninterruptedly, she may atleast be entitled to basic scale of pay at least for the period for which she performed subject of course to the approval of D.I. before such appointment was made.
8. We dispose of the appeal by directing the Director of Primary Education Department, Bikash Bhawan, Salt Lake City, Kolkata to dispose of the representation within eight weeks from the date of communication of this order after giving a reasonable opportunity of hearing to all the necessary parties by a reasoned order which shall be communicated to the writ petitioner within two weeks after the final order is passed.
9. The appeal is accordingly disposed of without any order as to costs.
10. In the event it is found that the writ petitioner is entitled to financial benefits the same should be extended to the writ petitioner within four weeks from the date of passing of the final order.
11. We make it clear that the authority shall decide the matter in terms of the applicable rules and regulations and in accordance with law.

12. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Soumen Sen, J.)

(Smita Das De, J)