

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Jay Sengupta

WPA 16422 of 2024

Sudeb Das

Vs.

State of West Bengal & Ors.

For the petitioner : Mr. Partha Sarathi Deb Barman
Mr. Animesh Mukherjee
Mr. Saptarshi Chakraborty

.....Advocates

For the State : Mr. Swapan Kr. Datta, Sr. Adv & AGP
Mr. Rajat Dutta

.....Advocates

For the respondent nos. 3&4 : Mr. Bitasok Banerjee
Mr. A. K. Dutta

.....Advocates

For Union of India : Mr. P. K. Drolia

.....Advocate

Heard lastly on : 30.01.2025

Judgment on : 06.05.2025

Jay Sengupta, J:

1. This is an application, inter alia, praying for direction upon the respondents, particularly the respondent nos. 3 and 4 to rescind, recall and cancel the impugned decision taken by the Principal of Rampurhat College vide reference No. 11/NT./2024 dated 16.04.2024 and for directing respondents nos. 3 and 4 to immediately disburse the arrear salary/payment of the additional 1/5th of the basic pay as per revised scale from January, 2018 to the present dated in terms of the approval of the petitioner's appointment issued by the Governing Body resolution dated 07.03.2008.

2. Learned counsel appearing on behalf of petitioner submitted as follows. The petitioner was compelled to do the job of Group-C post, in addition to his duty under the provisions of clause 9(7) of the Statutes relating to the appointment and terms and conditions of service of non-teaching staff duty – under statutes and the petitioner was entitled to get the 1/5th salary for his extra job. But, such extra remuneration to the respondents was not paid. For the reason that since after 2018, even assuming though not conceding, that such extra work was stopped, as claimed by the respondents, but even after such claimed stoppage of work, the writ petitioner was forced to work as earlier, but without paying any remuneration for such extra work. The extra work/duty performed by the petitioner and such denial to pay remuneration was wholly illegal. In respect of the letter dated 05.07.2023 written by the petitioner on the basis of asking option from the petitioner as to whether he would perform extra duty in excess of his usual duty and as such the petitioner accepted such offer of the respondents. The respondents had been

trying to defeat the legitimate claim of the petitioner by misrepresenting the said letter dated 05.07.2023. By a resolution adopted by the governing body of the respondent college the petitioner was asked to perform the office work and paid the amount equivalent to 1/5th of the minimum basic pay of the Group-C post, in addition to his salary and as such, he performed his additional duty, but no remuneration had been paid from 2018 till date to the petitioner. But, there was an instance that for such extra work rendered by another employee, in addition to her usual duty, she was paid extra remuneration. Though the respondent college claimed that a resolution was adopted, yet no copy of such resolution had ever been disclosed nor ever supplied to the petitioner. But, even then as a loyal employee the petitioner acted, as directed by senior and superior authority to work as such. While it was the allegation of the respondents that the petitioner did not perform his duty as Group-D staff, which was wholly untrue – the respondent authorities could very well have taken disciplinary action or show cause against the petitioner, but without doing so the respondent's such allegation could not be said to be true, valid and lawful. He was doing the job till date and in his previous affidavit-in-reply he annexed two documents regarding this and in this application he wanted to annex those two documents. The resolution adopted by the governing body of the respondent college was absolutely illegal and they had violated their rule. They had taken the resolution for appointment of the candidates at the time of X-Mas holiday. There was clause in their Statute where the Holiday had been explained and on a Holiday the governing body could not take any decision regarding the

appointment. So they had taken decision with a malafide intention, which was illegal and liable to be set aside.

3. Learned counsel for the respondents 3 and 4 submitted as follows. In 1989, the petitioner was appointed to a Group-D post on compassionate ground. On the basis of a resolution adopted by the Governing Body of the respondent College in 2008, the petitioner who was on a substantive post already, had been asked to perform additional work and paid in addition to his salary amount equivalent to 1/5th of the minimum basic pay in a Group C Post. That the petitioner was fully aware about the consequences of such officiating arrangements and there was no promise under any circumstances made to the petitioner that such officiating arrangement would continue forever. The respondent authorities after initiation of a selection process, duly filled up vacancies in the concerned College in the year 2015 and 2016 as indicated in the memo dated 16.04.2024 After filling up the vacancy of Group C, the Governing Body of the College duly adopted a Resolution on 29.12.2017 that payment of 1/5th of the basic pay to other 2018 teaching staffs should be stopped with effect from January, 2018. Here, it was pertinent to mention that according to the Burdwan University Academic Calendar of the year 2017-2018, 29.12.2017 (Friday) was a working day and on the that day the above resolution was adopted. Photocopy of the Academic Calendar of the year 2017 -2018 of Burdwan University was relied upon. By the resolution dated 29.12.2017 the additional pay of 1/5th of the basic salary was stopped not only for the petitioner, but also four other Group D Staffs of the Respondent College namely, Madhabi Banerjee, Naba Kumar

Mondal, Brindaban Chandra Das and Safin e Alam. Here it was pertinent to mention that there was no complaint from these staffs in this respect. In the year 2023, after 5 years of the resolution dated 29.12.2017 and stoppage of payment of addition 1/5th of the basic pay, the petitioner made a representation before the College authority on 05.07.2023, asking to do job under Group C category. As the representation dated 05.07.2023 of the petitioner was allegedly not considered, the petitioner preferred a writ petition being WPA 28007 of 2023 and on 28.02.2024 this Court disposed the same. It was needless to mention that it was the discretion of the Respondent College Authority to assign any job to any of its employee, but for that no employee had any vested right to a particular duty and assigning duty was the prerogative of the employer.

4. The State was represented and was heard.

5. I heard the learned counsels for the parties, perused the writ petition and the affidavits as well as the written notes of submissions.

6. It appears that on the basis of the resolution adopted by the Governing Body of the respondent College, the petitioner who was already in a substantive post was asked to perform additional work and was to be paid in addition to his salary an amount equivalent to 1/5th of the minimum basic pay in the Group-C Post. The respondent authorities after initiation of a selection process duly filled up the vacancies in the concerned College in the years 2015-16. After this filling up of vacancies of Group-C, the Governing Body of the College duly adopted a resolution on 29.12.2017 that payment

of 1/5th of the basic pay to other staffs would be stopped with effect from January, 2018. While the other four Group-D staffs of the respondent College agreed to the same, it was the petitioner who supposedly refused to agree. As explained by the respondents 3 and 4, the date of adopting the resolution was a working day.

7. It appears from the document by which the petitioner and some others were asked to do the additional work upon an arrangement that they ought to have been fully aware of the consequences and there was no promise made that the arrangement would continue forever. The petitioner cannot now retract from such agreed arrangement and take advantage of the work against the additional pay on a temporary basis and try to give it a permanent status.

8. It is the discretion of the respondent College authority to assign any of its jobs to any of its employee and it is for the employee to accept the same or not. But, the acceptance of such arrangement by an employee knowing fully well about the temporary and limited nature of such assignment confers no vested right to such particular duty or job.

9. By offering such temporary arrangement, the College authorities had neither assured any permanence to the same nor had waived their right to fill up the real vacancy in the Group-C in accordance with law. Thus, I do not find any patent illegality in the stand taken by the College authorities or in the passing of the impugned reasoned order.

10. In fact, the order dated 16.04.2024 was well reasoned and clearly set out the justification behind the steps taken.

11. In view of the above discussions, I do not find any merit in this application.

12. Accordingly, the writ petition is dismissed.

13. However, there shall be no order as to costs.

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

(Jay Sengupta, J.)