

WPA 20327 of 2023

**Sahanaj Begum
Vs.
State of West Bengal & Ors.**

Mr. Prahlad Chandra Ghosh
Mr. Subir Hazra

....for the petitioner

Mr. Samim ul Bari
Ms. Indrani Nandi

.....for the respondent No. 2

Mr. Arjun Ray Mukherjee
Ms. Saheli Mukherjee

.....for the respondent No. 6

Mr. Saibal Acharyya

.....for the school authority

This is the third round of litigation. By filing the present writ petition, the petitioner is seeking a direction from the concerned respondent to approve her engagement as a para-teacher in History at Kapasia A.M. High School (H.S.) (hereinafter referred to as "the school").

In 2010, a selection process was initiated to fill the vacant post. In furtherance of this objective, a notice regarding the work-in-interview was issued on 5th February 2010, inviting applications from prospective candidates. The notice instructed the candidates to bring certain documents, including a Residential Certificate from the Gram Panchayat, his/her Ration Card and EPIC card.

One Srabani Sengupta secured the top position on the panel, while the petitioner ranked second. In the first round of litigation, the petitioner challenged the selection and engagement of Ms. Sengupta on the ground that she failed to produce the EPIC card on the date of the interview. As her challenge was not accepted by the authority, the petitioner filed a writ petition, W.P. 10138(W) of 2010, which was disposed of by a Co-ordinate Bench of this Court

by an order dated 18th October, 2012, directing the concerned respondent to make a decision on the petitioner's application within the specified time frame.

Pursuant thereto, the District Project Officer, after affording an opportunity for a hearing to the petitioner, passed an order on 30th January 2013, refusing to accept the petitioner's challenge to the engagement of Mrs. Sengupta. The order concluded that there was no ambiguity regarding Mrs. Sengupta's residential status, as she was a resident of the village of Kapasia, where the school was located. Challenging the validity of the order dated 30th January 2013, the petitioner filed another writ petition, being WPA 9978 of 2013.

The record reveals that by an order dated 22nd September 2022, a Co-ordinate Bench disposed of the writ petition, WPA 9978 of 2013. During the hearing of this writ petition, it was brought to the Bench's attention that a subsequent fact had emerged that respondent No. 7, Mrs. Sengupta, had left the job.

Taking note of this subsequent development, the Bench disposed of the writ petition, relegating the matter to the school authority with the observation that it would be within the sole discretion of the school authority to decide the issue. The school authority was accordingly directed to make a decision strictly in accordance with the law on the issue raised by the petitioner. However, it was categorically stated in the order that, in any event, the decision would not create any equity in favor of the petitioner.

Pursuant to that order, the school authority exercised its discretion and engaged the present petitioner on 1st November 2022. It is submitted on behalf of the petitioner that she has been rendering services as a para-teacher at the said school to date. However, despite this, no remuneration or honorarium has been paid to her.

Mr. Ghosh, learned advocate for the petitioner, submits that in light of this fact and adopting a sympathetic approach, a direction should be issued to the concerned authority to approve the petitioner's engagement and release her honorarium. To support his submissions, he placed reliance on the decision reported in (2000) 9 SCC 405 (Kishore K. Pati vs. District Inspector of Schools, Midnapore and Ors.), as well as an unreported decision of an Hon'ble Division Bench of this Court in FMA 916 of 2012 (Safiunnessa Begum @ Khatun vs. Farhana Begum & Ors.), and another decision of a Co-ordinate Bench of this Court in WP 16589 of 2014 (Pushpa Roy vs. State of W.B. & Ors.).

Per contra, Mr. Ray Mukherjee, learned advocate representing respondent No. 6, vehemently opposes the contention raised on behalf of the petitioner. He draws my attention to a notification dated 27th March 2010, which specifies that if any para-teacher previously engaged in a school leaves the job, or if her position becomes vacant, such a position shall not be filled by another para-teacher. Instead, the position shall remain vacant *sine die* until it is filled through regular recruitment.

Referring to another notification dated 16th November 2010, Mr. Ray Mukherjee submits that, from that

date onward, only the District Project Officer has the authority to make such engagements, based on the recommendation of the District Level Committee. He further submits that, at the time of disposal of the writ petition, WPA 9978 of 2013, these circulars were not brought to the notice of that Bench. He states that the Bench took note of this fact, and as such, when this writ petition was taken up for hearing at the interim stage, the Bench concluded that the present writ petition should be decided after the exchange of affidavits by the parties.

Mr. Bari, learned advocate representing the State, concurs with the submissions made by Mr. Ray Mukherjee. Additionally, he submits that the selection process was terminated as soon as the first selected candidate was appointed. He asserts that the panel expired immediately upon the acceptance of engagement by the first empaneled candidate. Therefore, according to him, the engagement granted in favor of the petitioner cannot be considered valid, and the seal of approval cannot be placed on it.

Mr. Acharyya, learned advocate representing the school authority, submits that there was no foul play on the part of the school. He further submits that, in compliance with the order passed in WPA 9978 of 2013, the Court exercised its discretion and engaged the petitioner.

Heard learned advocates representing the respective parties. Perused the materials on record.

Admittedly, the petitioner's challenge to the engagement of Mrs. Sengupta was rejected by the concerned District Project Officer through an order dated 30th January

2013. Although this order was challenged in WPA 9978 of 2013, the subsequent resignation of Mrs. Sengupta from the post introduced a new twist to the dispute. The petitioner then abandoned her challenge to the order passed by the District Project Officer and sought to acquire the position that had fallen vacant following the resignation of Mrs. Sengupta.

The Co-ordinate Bench, while disposing of the writ petition WPA 9978 of 2013, proceeded based on the subsequent events, leaving the decision regarding the residential status of Mrs. Sengupta unaddressed. Although, in its order dated 22nd September 2022, the Bench relegated the issue to the school authority with the observation that it would be at the sole discretion of the school authority to decide the matter, in the presence of the State's representative, the same Bench, at the interim stage of hearing this writ petition, reopened the issue and directed it to be decided on affidavit at the time of final hearing.

Therefore, since there has been no determination regarding the legality of Mrs. Sengupta's engagement based on her residential status, at this stage, her engagement cannot be deemed illegal. Thus, unless her engagement is declared illegal, it cannot be asserted that the panel, in which the petitioner was placed in the second position, is still valid. The panel expired immediately upon Mrs. Sengupta's engagement in the post. Consequently, no right can accrue to the petitioner from that panel, which served as the petitioner's main basis for claiming engagement to the post.

Therefore, upon reviewing the notifications referred to in the preceding paragraph, it is clear that the school authority has not been entrusted with the responsibility of making such engagements. Instead, it is the District Project Officer who is authorized to make the engagement to the post, based on the recommendation of the District Level Committee.

s observed earlier, this issue has been reopened, and at this stage, it is not feasible to extend any benefit to the petitioner. The issue regarding the legality of Ms. Sengupta's engagement has attained finality, as the petitioner abandoned her challenge to Mrs. Sengupta's engagement, and the panel expired immediately after Ms. Sengupta's engagement.

Therefore, in light of these circumstances, although this Court is sympathetic to the petitioner, who has been rendering services since 2022 without any remuneration, the fact remains that no enforceable right has accrued to the petitioner that would entitle her to any mandatory direction from this Court to the concerned respondent to approve her engagement.

n the judgment of Kishore K. Pati (*supra*), the decision of the Hon'ble Single Bench was allowed to attain finality. By that decision, the petitioner was granted an appointment, but subsequently, the authority refused to pay the salary. In view of these circumstances, the Court held that since the order of the Hon'ble Single Bench had attained finality, the respondent could not deny the payment of salary.

In the decision rendered in FMA 916 of 2022 (supra), the issue regarding the residential status of the parties was not decided, and both individuals competing for the posts were engaged. Considering this, the Court directed the regularization of both engagements. Therefore, upon close scrutiny of the decisions cited by the petitioner and the propositions laid down therein, it appears that those cases are distinguishable in fact and cannot be applied to the facts and circumstances of the present case.

In view thereof, I am of the considered view that no interference is called for in the present writ petition.

However, it is clarified that this order is not intended to prevent the petitioner from raising any claim for the period during which she has rendered services at the school, if she is entitled to do so in accordance with the law.

Accordingly, the writ petition stands disposed of.

(Partha Sarathi Chatterjee, J)