

S/L 1
07.03.2025
Court. No. 551
Suwayan

WPA 23202 of 2018

**Sri Ganesh Mahakur
Vs.
The State of West Bengal & Ors.**

*Mr. Srijan Nayak
Mr. Sk. Sahjahan Ali*

...for the petitioner.

*Mr. Pinaki Dhole
Mrs. Tapati Samanta
Mr. Arindam Ghosh*

...for the State.

*Mr. Arjun Roy Mukherjee
Ms. Saheli Mukherjee*

...for the respondent no. 4.

1. In this writ petition the writ petitioner has prayed for issuance of appropriate writ or writs against the respondent authorities for cancellation and/or setting aside the Memo No. 920-SE(Law)/SL/5S-52/16 dated September 6, 2018 whereby and whereunder the writ petitioner's prayer for reinstatement in the post of Para Teacher was not considered favourably.
2. This Court has heard learned Advocate for the writ petitioner and learned Advocate for the respondent authorities at length.
3. For effective adjudication of the instant *lis* the facts leading to filing of the instant writ petition are required to be dealt with in a nutshell and those are discussed hereinbelow in seriatim:

(i) The writ petitioner was engaged as a Para Teacher on and from 29.11.2004 at

Chandanpur Birendra Siksha Sadan and he discharged his duty till 16.08.2013.

(ii) On 04.06.2013 the writ petitioner filed his nomination for contesting Panchayat General Election, 2013.

(iii) On 29.07.2013 the writ petitioner was elected as a winning candidate in the said Panchayat election.

(iv) On 17.08.2013 the writ petitioner took oath as Pradhan of Badalpur Gram Panchayat.

(v) After his election as a Pradhan the writ petitioner did not tender his resignation. Subsequently, the writ petitioner made a representation with the respondent authorities for allowing him to join in the said post, however, the same was not considered favourably and to that effect the Additional District Magistrate (Dev.), Purba Medinipur passed an order on 03.12.2015 which was communicated to the writ petitioner.

(vi) In an earlier round of litigation the writ petitioner by filing WP 1863(W) of 2016 had impugned the said order dated 03.12.2015.

(vii) On 16.03.2017 a co-ordinate Bench while disposing WP 1863(W) of 2016 set aside

the order dated 03.12.2015 as passed by the Additional District Magistrate (Dev.), Purba Medinipur and directed the respondent authorities to pass a reasoned order after giving opportunity of hearing to the petitioner and/or his representatives.

(viii) Pursuant to the said order dated 16.03.2017 the Secretary, School Education Department, Law Branch, Government of West Bengal passed a reasoned order dated 06.09.2018 after giving an opportunity of hearing to the writ petitioner. The said Secretary found no merit in the representation of the writ petitioner and thus no relief was granted to the writ petitioner. Hence the writ petition.

4. On careful consideration of the entire materials as placed before this Court it reveals from page no. 28 of the affidavit-in-opposition of the respondent no. 4 that the State Project Director , PBSSM under cover of his memo dated 24.05.2013 directed the following:

“Now, taking into consideration the above factors, I am directed to inform that any personnel serving under Sarva Siksha Abhiyan will not be allowed to contest Panchayat General Election or any other election to an elected body unless she/he submits an undertaking at the time of filing nomination to

the effect that she/he will tender resignation from the post, if, elected.

All concerned are to be informed accordingly.”

5. At the time of hearing Mr. Nayak, learned Advocate for the writ petitioner fails to show that the writ petitioner at the time of filing nomination had given any such undertaking. Materials have been placed before this Court on behalf of the respondents to substantiate that in respect of Para Teachers leave rules are applicable particulars of which have been furnished from page nos. 17 to 22 of the affidavit-in-opposition. It reveals therefrom that a Para Teacher is entitled to maternity leave, causal leave and medical leave. Admittedly, the writ petitioner's prayer for leave after his election as Panchayat Pradhan was granted by the Head Master of the said school.
6. Sufficient materials have been placed before this Court on behalf of the respondent no. 4 that the leave as sanctioned by the Head Master of the school where the writ petitioner working as a Para Teacher was contrary to the Leave Rules vide memo dated 26.02.2009.
7. It is equally pertinent to mention herein that the Managing Committee of the school while granting special leave to the writ petitioner clearly indicated

that such grant of leave was subject to the approval of the higher authority.

8. This Court thus has got no hesitation to hold that the leave as enjoyed by the writ petitioner was not authorized. However, the same is not the subject matter of the instant writ petition.
9. Admittedly, the writ petitioner has completely flouted the order as has been circulated vide memo dated 24.05.2013 and he had not submitted his undertaking as required prior to submitting nomination for Panchayat Election.
10. At this juncture if I look to the description of duties of Para Teachers as circulated through memo dated 26.02.2009 it reveals that the said circular clearly indicates that a Para Teachers shall have to perform three major duties, viz.; remedial teaching, child tracking and Teaching Learning Material preparation for activity based learning in school. It further reveals from the said memo dated 26.02.2009 that a Para Teacher is supposed remain in school for four days in a week and for the remaining two working days he has to monitor the dropout students and to ensure community support for enrolment of children in schools. If contents of the memo dated 26.02.2009 and memo dated 24.05.2013 are read conjointly, it appears to this Court that keeping in mind the duties and responsibilities of the Para Teacher in a school as

well as in the society the State Project Director, PBSSM passed an administrative order as circulated through memo dated 24.05.2013 that in the event a Para Teacher serving under Sarva Siksha Abhiyan intends to contest Panchayat General Election or any other election he has to submit an undertaking at the time of filing nomination to the effect that he or she will tender resignation from the said post of Para Teacher if he or she is elected.

11. This Court thus considers that the administrative order as has been communicated through memo dated 24.05.2013 is in accordance with the true spirit of the earlier administrative order dated 26.02.2009 which deals with the duties of the Para Teacher.
12. In course of his argument Mr. Nayak further contended that the action of the respondent authorities is contrary to the memo dated 05.02.2014 wherefrom it would reveal that the Para Teachers who participated in the Panchayat Election, 2008 and who were elected, they were subsequently reinstated in their service. Mr. Nayak further contended that from page no. 53 of the instant writ petition it would reveal from the reply given by District Project Officer, SSM, Murshidabad that some similarly circumstanced persons' employment was not terminated though the said persons were elected in Panchayat Election of 2013. It is thus submitted that the order under

challenge dated 06.09.2018 is violative under Article 14 of the Constitution of India.

13. This Court has meticulously gone through the administrative order as circulated through memo dated 05.02.2014 regarding re-engagement of erstwhile Para Teacher after being relieved from the fulltime post in Panchayat bodies.
14. It appears to this Court that the said administrative order was issued for giving benefit to some Para Teachers who participated in Panchayat Election, 2008 keeping in mind that in the meantime the terms and conditions of the service of the Para Teachers have been improved since their service tenure was extended to the age of 60 years instead of year to year basis subject to satisfactory performance. It thus appears to this Court by no stretch of imagination it can be said that the administrative order as has been communicated vide memo dated 05.02.2014 will apply *mutatis mutandis* in case of the Para Teachers who participated in 2013 Panchayat Election.
15. This Court further considers that the respondent authorities in discharge of their administrative action are at liberty to take any administrative decision and this writ court is not expected to interfere in the domain of the administration unless it is shown that an administrative order suffers from perversity and/or violative of the constitutional provisions. This

Court thus finds no illegality and/or irregularity in the order dated 06.09.2018 which has been challenged by filing the instant writ petition.

16. Admittedly from the replies dated 19.09.2018 and 25.09.2018 as given by the District Project Officer, SSM, Murshidabad and Uttar Dinajpur respectively in response of the RTI applications it reveals that the employments of some Para Teachers who have participated in 2013 Panchayat Election were not terminated but from such reply it cannot be ascertained under what condition the said persons are performing their duties. For the sake of argument, event if it is accepted that those persons are illegally continuing their service, this Court by applying the principle of Article 14 of the Constitution of India cannot permit the writ petitioner to continue his service as Para Teacher since the present writ petitioner has violated the order of the State Project Officer dated 24.05.2013 by not tendering his resignation after the election.

17. It is pertinent to mention herein that Article 14 of the Constitution of India carries a positive concept. Only because some illegalities have been committed by the respondents/authorities in respect some Para Teachers, the same may not by itself be a ground for perpetuating the illegality. The said view was taken by the Hon'ble Supreme Court in the case of ***National Council for Teacher Education vs.***

Committee of Management reported in **(2006)**
4 SCC 65.

18. It is pertinent to mention herein that from page nos. 30 and 31 of the affidavit-in-opposition of the respondent no. 4 it reveals that that the respondent authorities have already taken appropriate action against those Para Teachers who have participated in the 2013 Panchayat Election.
19. In view of the discussion made hereinabove this Court thus finds no merit in the instant writ petition.
20. Accordingly, the instant writ petition being WPA 23202 of 2018 is dismissed.
21. There shall be, however, no order as to costs.
22. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)