

01.04.2026
Item No.18
Court No.11
Avijit Mitra

**FMA 638 of 2022
with
IA No. CAN 1 of 2022**

**Sushanta Kumar Panda
- Versus -
Moushumi Mondal & ors.**

Mr. Saikat Banerjee, Sr. Adv.,
Mr. Kamal Mishra
.... for the appellant
Mr. Gausul Alam,
Mr. Sajal Pandit
....for the State
Mr. Sandip Kr. De,
Mr. Abhik Chitta Kundu
....for the respondent no.6

1. The present appeal has been preferred challenging an order dated 15th March, 2022 passed by the learned single Judge in the writ petition being WPA 3633 of 2022 which was preferred by the petitioner/respondent no.1 herein, namely, Moushumi Mondal (in short, Moushumi) primarily praying for issuance of necessary direction upon the respondents to disburse her arrear salary for the period from 19th August, 2017 to 31st October, 2021 along with interest at the rate of 12 % from the date of entitlement of payment of arrear salary till the actual payment. In the said writ petition, the appellant herein was impleaded as the respondent no.3 and the same was disposed of by the order

impugned directing the respondents to take necessary steps for payment of the arrear salary upon allocation of funds with interest at the rate of 12 % per annum on and from the due date till the date of actual payment. It was further directed that the amount of interest that would be paid *'shall be recovered from the salary of the concerned District Inspector of Schools (Primary Education), Kolkata for whose illegal/arbitrary action there has been delay in according approval of appointment of the petitioner, resulting in non-disbursal of salary for a considerable period'*.

2. Mr. Saikat Banerjee learned advocate appearing for the appellant submits that the appellant as a State functionary was working as the Additional District Inspector of Schools (SE) Ranaghat at the time of disposal of the writ petition. The learned advocate representing the State functionaries only made a submission that the arrear salary amount has already been sanctioned and was awaiting allotment. In view of such admission, the writ petition was disposed of in the motion stage directing disbursement of the admitted arrear salary along with interest with a further direction that the interest amount shall be recovered from the salary of the concerned District Inspector of Schools (PE), Kolkata. The appellant, who was impleaded by

name, did not get any opportunity to furnish his explanation as regards the delay towards disbursement as alleged. Before fixing responsibility and on the basis of a surmise that *'had the District Inspector of Schools acted in strict compliance of the Rules, then the petitioner would have been saved from the trouble of approaching the Court for relief'*, the learned Judge directed payment of interest.

3. Drawing our attention to the order dated 30th July, 2021 passed by the Principal Secretary, School Education Department (hereinafter referred to as the Principal Secretary) he submits that noting the delay in disbursement of the arrear claim, the Principal Secretary directed the Commissioner of School Education, West Bengal to show cause the concerned District Inspector to explain his action and to take appropriate action thereafter. Pursuant to such direction the respondent no.3 issued a show cause to the appellant on 22nd September, 2021 to which the appellant duly replied but no steps were taken thereafter till his retirement on 30th November, 2024.

4. Mr. Banerjee contends that a perusal of the order dated 30th July, 2021 would reveal that the dispute as regards approval of appointment of the teachers originated in the year 2016 and was settled upon disbursement of the arrear claim with interest

on 15th March, 2022 during the said period four incumbents including the appellant held the post of District Inspector of Schools (PE) Kolkata. Thus, the delay cannot solely be attributed to the appellant. Furthermore, the appellant cannot be penalized for having called for necessary documents from the school authorities in terms of the government notification dated 3rd March, 2016 before arriving at a final decision moreso when the time taken for disbursement stood intervened by a period lost due to the pandemic.

5. Mr. De, learned advocate appearing for the school authorities vehemently opposes the appellant's claim and submits that all relevant documents relating to approval of the teachers were submitted way back on 9th September, 2017 and even after relentless persuasion, the appellant took no steps and as such school was constrained to prefer the writ petition in the year 2021. A perusal of the order of the Principal Secretary dated 30th July, 2021 would clearly reveal that responsibility was fixed upon the appellant and that as such the learned single Judge rightly directed recovery of the interest amount paid by the State from the appellant.

6. Mr. Alam, learned advocate appearing for the State could not disclose any reason as to why the

respondent no.3 did not take necessary follow up steps till the date of the appellant's retirement on 30th November, 2024 even after receipt of the reply to the show cause notice from the appellant on 22nd September, 2021.

7. We have heard the learned advocates appearing for the respective parties and considered the materials on record.

8. One Smt. Veronica Bharati Bar, Smt. Moushumi Mallick (Mondal) and Smt. Sagorika Mondal were selected for appointment to the post of teachers in the said school and the respective panels were forwarded to the office of the District Inspector of Schools (PE) Kolkata for issuance of letter of appointment in the month of October, 2017. In a letter dated 24th April, 2018 the Secretary of the school stated *inter alia* that '*on scrutiny of the papers of the panel in respect of the 3 (three) appointment it is found that some mistakes done by ourselves in connection with the submitting the papers. This may kindly be condoned*'. Having received the said letter of appointment, the appellant wrote a letter on 3rd July, 2018 seeking attested photocopy of mark sheets and other relevant documents of rest 12 empaneled candidates. As the sanctioned vacant posts in which the teachers were appointed was not disclosed, the appellant issued a further letter dated

18th January, 2019 seeking the particulars of the sanctioned vacant posts in which the teachers' seeking approval were selected. The said letters were placed in the Managing Committee meeting of the school and a resolution was adopted on 31st January, 2019 identifying the posts and communicated to the appellant on 1st February, 2019. Considering all the documents, the appellant issued a letter to the respondent no.3 on 5th June, 2024 detailing the reasons as to why he was unable to approve the appointment of the three teachers as required under the procedure prescribed *vide* memo dated 3rd March, 2016 but unfortunately, the respondent no. 3 did not respond to the same and in the midst thereof, the school preferred the writ petition being WPA 3633 of 2022. In the said conspectus, the allegations of the school authorities that the concerned District Inspector of Schools (PE) Kolkata was insisting for extraneous consideration or he was shrewd and cunning do not stand established. There is also no material on record to establish that the appellant has acted negligently with an intent to earn or to confer undue benefit.

9. It further appears the Principal Secretary in the order dated 30th July, 2021 arrived at a finding that the three teachers were appointed in sanctioned posts upon retirement of the previous incumbents

and the appellants were directed to consider the said posts as vacant sanctioned posts as per paragraph 3 of the notification dated 3rd March, 2016. Pursuant to such direction the concerned teachers were approved with effect from the date of issuance of the order of the Principal Secretary. However, subsequently the Joint Secretary *vide* memo dated 19th September, 2021 clarified and directed the appellant to rectify the approval letters by mentioning the dates of approval with effect from the date of joining of the teachers. Such directions were immediately complied with by the appellant *vide* memo dated 10th September, 2021.

10. We find substance in the argument of Mr. Banerjee that the issue as regards approval of appointment of the teachers originated in the year 2016 and was settled upon disbursement of the arrear claim with interest on 15th March, 2022; during the said period four incumbents including the appellant held the post of District Inspector of Schools (PE) Kolkata and that as such the delay cannot solely be attributed to the appellant. In the order dated 30th July, 2021 the Principal Secretary did not pass any direction for recovery of the interest amount from the appellant but directed the respondent no.3 to take appropriate steps upon issuing a show cause. Admittedly even after

submissions of a reply to the show cause on 22nd September, 2021 the respondent no.3 did not take any follow up steps and in the midst thereof the appellant retired on 30th November, 2024. Such action on the part of State authorities speaks of their reluctance to recover an interest amount of about Rs 5 lakhs from the appellant.

11. Indisputably, a period was lost due to pandemic on and from the month of March 2020. The appellant had already retired on 30th November, 2024 and pension is now the sole source of his livelihood and recovery of the interest amount at this stage may be harsh and inappropriate and interference with the order impugned may not be an instance of misplaced sympathy moreso when it is not a case of any negligent and reckless exercise of quasi-judicial powers in violation of the statutory provisions and guidelines and that the procedural lapses, if any, are not smeared with any intent to avail undue benefit or to heckle and harass the teachers. There is also no material on record to establish any misrepresentation or fraud.

12. In the above facts and circumstances, the direction towards recovery of interest from the salary of the concerned District Inspector of Schools (Primary Education), Kolkata is set aside.

13. With the above observations and directions, the appeal and the connected application are, accordingly, disposed of.

14. There shall, however, be no order as to costs.

15. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)