

ML-58
22.04.2026
Ct. No. 11
KCP

MAT 734 of 2025
with
IA No. CAN 1 of 2025

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

Mr. Prosenjit Mukherjee

Sk. Sahjahan Ali

Ms. Babita Pramanik

.... For the appellant

Mr. Pinaki Dhole

Ms. Tapati Samanta

..... For the State respondents

Mr. Arjun Ray Mukherjee

Mr. S. Mukherjee

..... For the respondent no. 4

The present appeal has been preferred challenging an order dated 7th March, 2025 passed by the learned single Judge dismissing the writ petition being WPA 23202 of 2018. The said writ petition was preferred primarily challenging an order dated 6th September, 2018 passed by the Secretary, School Education Department, Government of West Bengal (in short, the Secretary) observing *inter alia* that the writ petitioner/appellant will not come under the purview of the Government Order (in short, GO) dated 5th February, 2014 and that the GO dated 6th April, 2018 has no retrospective effect for the panchayat election 2013 and that as such the appellant cannot be reinstated in the post of para teacher.

The facts of the case have been detailed in paragraph 3 of the order impugned. The learned single Judge dismissed the writ petition upon arriving at findings that the appellant completely flouted the order as has been circulated *vide* memo dated 24th May, 2013 by not

submitting his undertaking as required prior to submission of nomination for panchayat election and the leave as enjoyed by the appellant was not authorized. It was also observed that the GO dated 05th February, 2014 would not apply to para teachers who participated in the 2013 panchayat election and that the appellant cannot claim negative equality.

Mr. Prosenjit Mukherjee, learned advocate appearing for the appellant strenuously argues that the appellant was initially given contractual appointment as a para teacher way back in the year 2004. Subsequent thereto, a new policy decision was adopted by the State in the year 2010 extending the tenure of appointment of a para teacher from one year till the attainment of the age of 60 years and accordingly by the GO dated 05th February, 2014, the contractual para teachers who participated in the panchayat election in course of such contractual engagement were extended the benefit of re-engagement but surprisingly a different yardstick was applied in the case of the appellant. Such argument, as urged, was glossed over by the learned single Judge and no finding was returned on the same.

He further argues that by the GO dated 6th April, 2018 as the whole time functionaries of Gram Panchayat, Panchayat Samity and Zilla Parishad were declared to be eligible for leave of absence during the period they render service as a functionary in terms of the provisions of the West Bengal Panchayat Act, 1973, the Department of

School Education also decided to extend the benefits of leave of absence to the para teachers. The appellant, accordingly, was entitled to the benefits conferred by the GO dated 6th April, 2018.

According to Mr. Mukherjee, the issue as regards re-engagement of the appellant was earlier relegated for consideration to the Secretary by an order dated 16th March, 2017 passed by the Court in the earlier writ petition being WP 1863 (W) of 2016. A perusal of the said order would reveal that the learned Court arrived at a finding that the GO dated 5th February, 2014 is applicable so far as the appellant is concerned. Such finding was not assailed by the respondents and accordingly, the Secretary could not have refused to apply the provisions of the GO dated 5th February, 2014 and 6th April, 2018 while considering the appellant's claim.

Mr. Arjun Ray Mukherjee, learned advocate appearing for the respondent no.4 denies and disputes the contention of Mr. Prosenjit Mukherjee and submits that a perusal of the GO dated 5th February, 2014 would reveal that the same was applicable to the group of contractual para teachers, who were participants in the panchayat election of 2008. Prior to such participation they did not get the benefit of the policy decision towards extension of engagement as para teacher till 60 years of age and as such the GO dated 5th February, 2014 was issued only for such category of para teachers and participants of panchayat election of 2008. The appellant, who had

already obtained the benefit of extension of service as a para teacher prior to participation in the panchayat election of 2013, does not come under the purview of the said GO dated 5th February, 2014.

As regards the GO dated 6th April, 2018, Mr. Mukherjee argues that the same has not been given any retrospective effect and accordingly has no manner of application pertaining to the appellant's claim who admittedly was a participant in the panchayat election of 2013. Thus, no legal right of the appellant has been infringed warranting interference.

Mr. Dhole, learned advocate appearing for the State respondents adopts the submission of Mr. Mukherjee and submits that there is no infirmity in the order impugned and the issue urged that as in some cases the para teachers have reaped the benefit of re-engagement, the appellant cannot be denied similar benefits, has rightly not been accepted by the Court since no negative equality can be claimed.

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

An appellate power interferes not when the order appealed is not right but only when it is clearly wrong and the appellate Court in exercise of judicial review cannot lightly interfere with a reasoned order passed.

Indisputably, the appellant though initially engaged as a para teacher on contractual basis got the benefits of

extension of service till the attainment of age of 60 years, as would be explicit from the memo dated 16th August, 2012. The GO dated 5th February, 2014 was applicable to those para teachers who did not get the benefit of the policy decision towards extension of service till the attainment of age of 60 years adopted subsequent to their participation in the panchayat election of 2008. In view thereof, the learned single Judge rightly discounted the argument of the appellant as regards application of the GO dated 5th February, 2014 since he contested the panchayat election of 2013 after availing the benefit of extension of service till the attainment of age of 60 years. A composite perusal of the GO dated 6th April, 2018 would reveal that the same has not been given any retrospective effect and as such the same cannot have any application upon a participant of the panchayat election of 2013.

The argument of Mr. Mukherjee that the writ court in the earlier round of litigation arrived at a categorical finding that the GO dated 5th February, 2014 is applicable in respect of the appellant's claim, is also not acceptable inasmuch as a perusal of the order dated 16th March, 2017 would reveal that the Court only expressed an opinion that the GO dated 5th February, 2014 '*is not altogether irrelevant*' and remanded back the matter for fresh consideration in the light of all relevant GOs and circulars including the GO dated 5th February, 2014.

The learned single Judge upon dealing with all the factual issues arrived at specific findings and we do not find any patent error of law in the same.

In view thereof no interference is called for in the present appeal.

The appeal and the connected application are, accordingly, dismissed.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Rai Chattopadhyay, J.)

(Tapabrata Chakraborty, J.)