

S/L 18
09.02.2026
Court No.18
SD

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

WPA 19572 of 2023

Manoj Kumar Kundu

Vs.

The State of West Bengal & Ors.

Mr. Saibal Acharyya

Mr. Dwarika Nath Mukherjee

Mr. Pradip Kumar Ghosh

...for the Petitioner.

Mr. Arindam Chattopadhyay

Ms. Lipika Chatterjee

...for the State.

1. Report filed by the Commissioner of School Education signed on May 16, 2024 in Court today be retained with the records.

2. The petitioner's prayer for pay protection stood rejected by the Commissioner with the observation that the petitioner made submission before the Court as recorded in the order dated September 13, 2019 in WPCRC 207 (W) of 2017 that the petitioner would not seek continuity of service. The order dated September 13, 2019 is annexed to the writ petition and to the report filed by the Commissioner.

3. It appears that the issue of continuity of service was not a matter to be adjudicated by the Court in the contempt proceeding. The Court in the order dated September 13, 2019 clearly recorded that any difference in scale of pay drawn by subsequently applying and being recommended for fresh appointment on scale of pay would be a substantial

cause that cannot be decided in the contempt proceeding. The petitioner was granted leave to obtain further relief on the said substantial cause, if so advised.

4. The petitioner, accordingly, filed fresh writ petition seeking pay protection. The Hon'ble Court vide order dated December 14, 2022 in WPA 4057 of 2022 passed an order directing the Commissioner to take a decision on the entitlement of the petitioner to get the benefit of pay protection relying on the Circular being No. 914-SE/S/5P-03/19 dated August 1, 2019.

5. The Commissioner in compliance of the aforesaid order passed the impugned order on June 7, 2023 by holding that without continuity of past service, no protection of pay can be granted. The Commissioner held that the prayer of the petitioner is barred by principle of estoppel as the petitioner himself relinquished his claim of continuity of service.

6. On hearing the submission made on behalf of both the parties and on perusal of the documents annexed to the writ petition and the report filed by the Commissioner, it appears that the Commissioner misread the order passed by the Court and misdirected himself in passing the impugned order.

7. It does not appear that the petitioner ever relinquished his right for continuity of service. In fact, it appears that the service of the petitioner from one

school to the other was continuous without even a day's break.

8. The order of the Principal Secretary, School Education Department dated August 1, 2019 clearly permits pay protection to such in-service Assistant Teachers appointed on fresh recommendation of the West Bengal Central School Service Commission. There is no reason as to why the benefit of the order dated August 1, 2019 according pay protection will not be made applicable in favour of the petitioner.

9. In fact, the Court vide order dated 14th December, 2022 granted liberty to the petitioner to rely upon the Circular dated 1st August, 2019 in support of his prayer for pay protection. The aforesaid liberty granted by the Court was simply overlooked by the Commissioner while passing the impugned order.

10. In view of the above, the instant writ petition stands disposed of by setting aside the impugned Office Memorandum dated June 7, 2023 and by remanding the matter back to the Commissioner for a fresh decision upon applying the order of the Principal Secretary, School Education Department dated August 1, 2019.

11. If required, an opportunity of hearing shall be provided to the petitioner once again for placing documents in support of his claim.

12. A decision shall be taken at the earliest but positively within eight weeks from the date of communication of this order.

13. If the prayer of the petitioner is allowed, then necessary consequential steps shall be taken without any further delay.

14. Parties to act on the basis of the server copy of this order duly downloaded from the official *website* of this Court.

(Amrita Sinha, J.)