
(2013) 06 CAL CK 0021
In the Calcutta High Court
Case No : Writ Petition No. 14390 (W) 2013

Bodhisatta Ghosh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Citation : (2013) 3 WBLR 789

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Saptangsu Basu and Anjan Bhattacharya, for the Appellant; Ekramul Bari and Sambhunath De, for the Respondent

Judgement

Biswanath Somadder, J.—In terms of the order dated 4th June, 2013, the District Primary School Council, North 24-Parganas, has prepared a report in the form of an affidavit, which may be taken on record. Having heard the learned advocates for the parties and upon perusing the instant application as well as the report in the form of an affidavit filed on behalf of the District Primary School Council, North 24-Parganas, it appears that the subject matter of challenge in the instant writ proceeding is in respect of a teacher who has resumed his duties in a primary school under the District Primary School Council, North 24-Parganas, but has not paid his usual entitlements.

2. According to the petitioner, the Chairman, District Primary School Council, North 24-Parganas, by his memo dated 6th November, 2012, addressed to the Sub-Inspector of Schools, Basirhat New Circle, North 24-Parganas, permitted the writ petitioner to join Mukunda Kati Free Primary School immediately, with his existing subsistence allowance. It is the specific case of the petitioner that having once been allowed to resume his duties, all entitlements ought to have been released in favour of the petitioner. However, the concerned authority has chosen to pay the petitioner only the subsistence allowance, which is impermissible in law.

3. From the report in the form of an affidavit, it however appears that the petitioner had made a representation before the Chairman, District Primary School Council, North 24-Parganas, on 28th September, 2012, which he has not disclosed in the instant writ petition. It appears from the said representation that the petitioner was essentially seeking re-engagement, in spite of being under deemed suspension. It has been further stated by the Chairman of the District Primary School Council, North 24-Parganas, in her report that after receiving a copy of the instant writ petition she came to know from her learned counsel about the order/direction of this Court in an earlier writ petition which had been moved by the petitioner. Since she had no personal knowledge of the earlier order/direction of this Court, she had allowed the writ petitioner to join his duty, with his existing subsistence allowance on 6th November, 2012, on the basis of his representation. The Chairperson, having no alternative, has prayed leave before this Court to allow withdrawal of her order dated 6th November, 2012, which the petitioner seeks to rely on in the present writ proceeding.

4. The learned advocate for the petitioner prays for leave to file an affidavit-in-reply in order to take exception to the report in the form of an affidavit.

5. There is no manner of doubt whatsoever that not only the petitioner has not disclosed his representation dated 28th September, 2012, in the present writ petition-which he otherwise ought to have disclosed before this Court, while invoking this Court's extraordinary discretionary jurisdiction under Article 226 of the Constitution of India-he has also not even brought to the notice of this Court the material fact of moving an earlier writ petition, being W.P. 8832 (W) of 2010, which culminated in an order dated 14th February, 2011, which reads as follows:

The writ petitioner is under deemed suspension ever since he was in custody for more than forty eight hours in connection with Police Station Case No. 144 dated 11th March, 2008, under Basirhat Police Station, District North 24 Parganas under Sections 498A/302/201/34 of the Indian Penal Code. He has now approached this Court praying, inter alia, for release of subsistence allowance according to the new scale of pay from the date of his detention. He has also prayed for an order allowing him to join his duty as a teacher in the primary school, where he was earlier teaching, upon revocation of the order of suspension, which this Court rejects outright, in view of the gravity of charges levelled against him. The issue as to whether the writ petitioner is entitled to revision of his suspension allowance based on ROPA 2009, is also answered in the negative in view of what has been specifically stated in Rule 7 of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001, which is quoted hereinbelow:--

Suspension.--(1) A Primary School Council may place a teacher under suspension-

(a) where an inquiry under sub-rule (1) of rule 9 of these rules against him is contemplated by the Primary School Council or such an inquiry is pending: or

(b) where a case of any criminal offence involving moral turpitude against the teacher is under investigation.

(2) Where a teacher is detained in custody for a period of exceeding 48 hours on a criminal charge or otherwise, he shall be deemed to have been suspended by an order of the appointing authority with effect from the date of his detention and shall remain under suspension until further orders. A teacher who is undergoing a sentence of imprisonment shall also be dealt with in the same manner, pending a decision as to the disciplinary action to be taken against the teacher.

(3) Every order of suspension under sub-rule(1) shall be communicated to the Director of School Education, Government of Bengal, and the Board.

(4) A teacher under suspension or deemed to have been suspended shall be entitled to following payments:--

(a) During the first three months of suspension, a monthly subsistence allowance equal to the amount of pay which he would have been drawn if he had been on half-pay leave.

Provided that where the period of suspension exceeds three months, the appointing authority shall be competent increase the amount of subsistence allowance for the remaining period of suspension by such amount, not exceeding fifty percent of the subsistence allowance admissible during the first three months of suspension, if in the opinion of the appointing authority, the period of suspension has been prolonged for reasons to be recorded in writing.

(b) Dearness, medical and other allowances, admissible from time to time on the basis of the subsistence allowance fixed by the competent authority.

(5) No payment under sub-rule (4) shall be made unless the teacher furnishes a certificate to the effect that he is not engaged in any other employment, business, profession or vocation.

It is the admitted position that ROPA 2009 came into effect on 27th February, 2009, whereas the writ petitioner is under deemed suspension since 2008.

Rule 7(4)(a), as quoted above, makes it clear that a teacher under suspension or deemed to have been suspended shall be entitled to a monthly subsistence allowance equal to the amount of pay which he would have drawn if he had been on half-pay leave during the first three months of suspension. In the instant case, the writ petitioner would, therefore, be entitled to a monthly subsistence allowance computed on the basis of the salary structure prevailing during the first three months of his being placed under suspension. It is, therefore, clear that the writ petitioner cannot get any benefit out of the revision of pay as per ROPA 2009.

However, the proviso contained under Rule 7(4)(a) allows certain amount of discretion upon the appointing authority to increase the amount of subsistence

allowance for the remaining period of suspension by such amount not exceeding fifty percent of the subsistence allowance admissible during the first three months of suspension if in the opinion of the said appointing authority, the period of suspension has been prolonged for reasons to be recording in writing.

In such circumstances, this Court is of the view that the writ petitioner may be granted liberty to approach the Chairman, District Primary School Council, North 24 Parganas, who shall consider the case of the writ petitioner for enhancement of his monthly subsistence allowance based on the discretion conferred under the proviso to Rule 7(4)(a), as referred above.

The writ petition stands disposed of accordingly.

6. The discretionary jurisdiction of the writ Court cannot be taken for granted by a litigant who seeks to steal a march over the Court by conveniently disclosing only those material facts and documents which are in his/her favour and not disclosing such material facts or documents which do not enure to his/her benefit.

7. The prayer of the learned advocate for the petitioner for leave to file an affidavit-in-reply in order to take exception to the report in the form of an affidavit filed by the Chairman, District Primary School Council, North 24-Parganas, is not allowed because this Court, sitting in its high prerogative writ Jurisdiction, inter alia, exercises certiorari jurisdiction, which is based on records and whatever has been disclosed in the report in the form of an affidavit are merely matters of record. To allow records to be controverted, is to introduce disputed questions of fact which, ordinarily, would bring the instant matter within the adjudicatory realms of an ordinary civil Court.

8. The ploy of the petitioner is obviously to delay the inevitable.

9. This is one example of a case where a litigant has approached the writ Court seeking certain discretionary orders, without even disclosing and/or annexing relevant documents, which have a crucial effect and/or bearing in the facts of the instant case. Not only there has been a gross suppression of material facts-the petitioner has demonstrated palpable impropriety by filing the instant writ petition seeking such discretionary reliefs, which cannot be granted in the facts of the instant case, as observed earlier. For reasons stated above, this writ petition is liable to be dismissed and is accordingly dismissed.