
(2012) 10 CAL CK 0022
In the Calcutta High Court
Case No : Writ Petition No. 5519 (W) of 2008

Debashis Biswas

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 1 CALLT 25 : (2013) 1 WBLR 530

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Kashi Kanta Moitra, Mr. Mrinmay Kumar Sahoo and Mr. Rasomay Mondal, for the Appellant; Champak Ghosh and Ms. Mitusree Boral for the Respondent No. 3, Mr. Manoj Kumar Roy for the Respondent No. 7 and Mr. Sadhan Kumar Halder for the State, for the Respondent

Final Decision : Dismissed

Judgement

Biswanath Somadder, J.—Let the affidavit in opposition filed on behalf of the respondent No. 7 be taken on record. The writ petitioner applied on 24th July, 2004, for the post of Samprasarak in agurkhali Madhyamik Siksha Kendra, situated within the jurisdiction of Beraberi Gram Panchayat in the district of North 24 Parganas, based on an advertisement issued on 17th July, 2004, by the Secretary. Managing Committee of the concerned Siksha Kendra, being the respondent No. 8. Consequently, he was appointed to the post-in-question on 1st September, 2004, based on an agreement entered into by and between the writ petitioner and 2 the Secretary of the concerned school on 16th August, 2004, which was to be valid for a period between 1st September, 2004 and 30th April, 2005. Subsequently, by another agreement dated 2nd May, 2005, the writ petitioner was reappointed as Samprasarak for the period between May 2005 and 30th April, 2006. His honorarium was, however, stopped from 1st April, 2005 and he was ultimately removed from service with effect from 26th September, 2006.

2. Thereafter, the writ petitioner approached this Court on at least two earlier

occasions. Initially, he filed a writ petition, being W.P. No. 23906 (W) of 2006. which was disposed of on 11th October, 2007, by the Court, which directed the concerned respondent authority to consider the writ petitioner's representation within a certain time frame, after giving an opportunity of hearing to the petitioner and the added respondent, Smt. Dipa Ghosh and communicate his decision to the writ petitioner as well as Smt. Dipa Ghosh, after passing a speaking order. Based on such directions given by the Court, the entire matter was taken up for consideration by the concerned Block Development Officer, who rendered his decision on 17th December, 2007, which became a subject-matter of challenge in another writ proceeding initiated by the writ petitioner, being W.P. 441 (W) of 2008. This latter writ petition was disposed of on 17th January, 2008, with a similar direction. i.e. by directing the concerned respondent authority to consider the writ petitioner's representation filed on 3rd January, 2008, within a certain time frame, after giving a reasonable opportunity of hearing to petitioner and by recording a reasoned order. Consequent thereto, an order was passed on 14th March, 2008, by the Mission Director, Paschim Banga Rajya Shishu Shiksha Mission, which has now been challenged by the writ petitioner in the third round of litigation.

3. The impugned order dated 14th March, 2008, in its entirety, is reproduced hereinbelow:-

In compliance with the order of Hon'ble Justice Sri Alok Kumar Bosu on the above noted writ application Sri Debasish Biswas, petitioner," was asked to appear for hearing vide Memo No: 342 dated 4.3.2008 and Sri Biswas appeared today. He produced a copy of his representation dated January 3, 2008 and submitted that he has not been informed of the result of the interview which he had participated in.

The main grievance of the present writ petitioner as recorded in his representation dated 3rd January, 2008 addressed to the Mission Director, Paschim Banga Rajya Shishu Shiksha Mission is that the interview which was held by the Managing Committee is not legal.

It appears from the submission of Sri Biswas that in response to the advertisement inviting applications from prospective candidates for the post of a Samprasarak (Bengali) for the Magurkhali Madhyamik Siksha Kendra within Habra - II Block of North 24 Parganas district he also submitted an application in support of his candidature and participated in the interview taken by the Selection Committee. The very fact that he took part in the interview in response to the advertisement shows that disputing the interview on the question of legality was of little concern for Sri Biswas.

It would not be fair to cancel the interview taken by the Managing Committee at this stage particularly the writ petitioner himself having participated in such interview in the hope of being selected for the post which was advertised. There is reason to believe that had the writ petitioner been selected or informed of his

being selected through such interview he would not question the legality of the interview.

The unpaid honorarium which is alleged to have been withheld by the Managing Committee must be released immediately as ordered by the Block Development Officer, Habra - II Development Block dated 17.12.2007, North 24 Parganas.

Copy of this order be handed over to Sri Biswas immediately. Another copy may be served to the Secretary, Managing Committee of Magurkhali Madhyamik Siksha Kendra for strict compliance of this order.

4. It is clearly evident from the pleadings that the writ petitioner was appointed in a purely time-bound contractual post of a Samprasarak by the Secretary of the concerned school, without even adhering to the relevant guidelines governing such appointment. It was under such circumstances that the writ petitioner's honorarium was stopped and he was not allowed to continue to render his service as a Samprasarak in the concerned school.

5. It appears that the impugned order dated 14th March, 2008, has been passed by the Mission Director, Paschimbanga Rajya Shishu Shiksha Mission, in absolute conformity with the Court's order dated 17th January, 2008. passed in W.P. 441 (W) of 2008 and is supported with cogent reasons.

6. The writ Court ought not to transpose itself as an appellate authority over a particular authority which has performed its obligation to abide by the specific directions given by a Court and rendered a decision in the matter supported with cogent reasons. The discretionary jurisdiction of this Court under Article 226 of the Constitution of India ought not to be invoked in such a case, unless of course, the decision so rendered by the concerned authority was palpably wrong or arbitrary or perverse or smacked of mala fide motive or had been rendered without adhering to the specific directions given by the Court. In this context, one may take notice of the judgment rendered by this Court in the case of Amarendranath Mandal Vs. State of West Bengal and Others, .

7. None of the exceptions elucidated in the judgment referred above - which would allow interference by the writ Court - are present in the facts of the instant case. As observed hereinbefore, the impugned order dated 14th March, 2008, passed by the Mission Director, Paschimbanga Rajya Shishu Shiksha Mission, is supported with cogent reasons and has been rendered in terms of the specific directions given by this Court in the order dated 17th January, 2008, passed in the earlier writ petition, being W.P. 441 (W) of 2008.

8. That apart, the records of the case demonstrate that the writ petitioner has developed a habit of filing successive writ petitions, each one of them centering around the same issue, i.e., with regard to his discontinuance and further non-selection as a Samprasarak, It is as if the writ petitioner has decided to keep on moving this Court, by filing successive writ petitions, till such time an order is passed by this Court which enures to his benefit (emphasis supplied) This sort of

an attitude of a litigant is precisely what has been frowned upon by the Supreme Court of India in several of its judgments. In Dr. Buddhi Kota Subbarao Vs. K.Parasaran and others, , it was observed that no litigant has a right to unlimited drought on the courts time and public money in order to get his affairs settled in the manner as he wishes. His easy access to justice should not be misused as a licence to file misconceived or frivolous petitions. This observation has also been reflected in a recent judgment of the Supreme Court in Sunil Kumar Vs. State of Haryana, , while it was considering as to whether there should be any restraint on a writ petitioner in such a fact situation or whether he should be permitted to abuse the judicial process as he likes.

(Emphasis in original).

For reasons stated above, this Court is unhesitatingly of the view that the instant writ petition is thoroughly misconceived and is liable to be dismissed and is accordingly dismissed.

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