
(2011) 09 CAL CK 0098
In the Calcutta High Court
Case No : Writ Petition No. 5612 (W) of 2011

Md. Safirul Seikh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 5 CHN 469

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Zamiul Alam, for the Appellant; Subrata Das Gupta for the State, for the Respondent

Final Decision : Dismissed

Judgement

Biswanath Somadder, J.—A naive officer who has scant understanding of the judicial process of a Constitutional Court exercising its high prerogative jurisdiction under Article 226 of the Constitution of India, is now personally present before this Court in terms of the earlier order dated 15th September, 2011. On his behalf, learned advocate for the State, however, tenders unqualified apology for his client's lack of understanding regarding the importance of a prompt response to a writ petition. Such apology is accepted. Detailed reasons as to why he is personally present before this Court today shall, however, be manifest from the earlier orders passed by this Court, time to time from 17th August, 2011, and there is no necessity for prolixity by repeating the same. The fact remains that while there is a huge pendency of cases in the High Court, most of such cases cannot be disposed of- one way or the other solely due to lack of understanding of the judicial process which this Court is supposed to follow while entertaining applications under Article 226 of the Constitution of India, by some of the State authorities.

2. Under the writ Rules framed by our High Court - for the purpose of regulating proceedings under the Article 226 of the Constitution of India the State or an

authority of the State is supposed to be given only forty eight hours notice in order to respond to a writ petition. In the order dated 8th September, 2011, it is clearly recorded that a copy of the writ petition had been duly served upon the District Project Officer, Sarva Shiksha Mission, Murshidabad, being the respondent No. 2, which he received on 23rd August, 2011. Yet, this officer never approached this Court nor even sought for any assistance from the office of the learned Government Pleader and/or the Legal Remembrancer immediately upon receipt of notice; other than a mere correspondence which, appears to be signed by him on 7th September, 2011 (i.e., sixteen days after receipt of notice of a writ petition having been filed before this Court), addressed to the learned Government Pleader. It was the bounden duty - nay an absolute obligation in law on the part of the District Project Officer, Sarva Shiksha Mission, Murshidabad, - who is very much a State authority - to have responded to the allegations made in the writ petition within 48 hours from date of receipt of a copy of the writ petition; which he, in fact, had received on 23rd August, 2011. This is one classic example of how an authority of this State apathetically and weakly responds to a writ petition, which more often than not leads to a situation where the Court is invariably left with no choice but to pass an ad-interim order in the matter, solely due to lack of prompt and effective response of the State in respect of the contentions raised in a writ petition which remain undisputed and/or uncontroverted and/or untraversed. Bringing this kind of situation unto itself leaves the State vulnerable before the Writ Court - it is as if the State and/or its authorities are in cahoots with the writ petitioner. On the other hand, if the State or an authority of the State responds promptly and effectively to a writ petition, such a situation will seldom arise and the writ Court will have the benefit of taking into consideration the State's effective response and instead of keeping a matter pending for a long time, have it disposed of expeditiously, thereby rendering efficacious justice and also reducing pendency significantly.

3. Be that as it may, coming to the merits of the instant matter, it appears from the submissions made by the learned advocate for the State that the writ petitioner's prayer for being considered for appointment to the post of additional para teacher in Bahadurpur Primary School situated in the district of Murshidabad, as the second empanelled candidate, cannot be granted in the facts of the instant case. The post of additional para teacher of the concerned school was duly approved by the District Project Officer, Sarva Shiksha Mission, Murshidabad, vide memo dated 3rd January, 2007. The validity of the panel was for a period of twelve months from the date of such approval. Although, the first empanelled candidate was appointed as an additional para teacher on 25th January, 2007, his appointment was on contractual basis for a period of one year, subject to renewal of his service by the concerned authorities, upon his rendering satisfactory service. The service of the first empanelled candidate was renewed from time to time, last of which took place on 24th January, 2009. The resignation of the first empanelled candidate on 10th February, 2010, which prompted the writ petitioner to seek engagement as the additional para teacher

of the concerned school by virtue of his being the second empanelled candidate, cannot be considered by the authorities since the original validity period of the panel-in-question had already expired by then, i.e., on 2nd January, 2008, merely because the first empanelled candidate's engagement as additional para teacher was renewed from time to time, the same could not have ipso facto caused extension of the validity of the panel that was approved on 3rd January, 2007, since its validity remained for a period of one year only from that date.

4. In such circumstances, there is no merit in the matter and the writ petition is liable to be dismissed.

5. However, before dismissing the instant writ petition, this Court directs the Registrar General to forward a copy of this order forthwith to the Legal Remembrancer, Government of West Bengal, who shall, upon receipt of such communication, circulate a part of this order - as contained in the first three paragraphs - to all heads of State departments, District Magistrates, District Superintendents of Police, Sub-Divisional Officers, Block-Development Officers and all other authorities under the direct control of State administration so that corrective measures are immediately adopted by all concerned in order to ensure absolute elimination of the malady that plagues the system, as observed in the first three paragraphs of this order, which compromises with the fabric of the Constitutional scheme to render efficacious justice by a Court exercising its high prerogative jurisdiction under Article 226 of the Constitution of India.

6. The writ petition is thus dismissed, subject to the above direction. Urgent Photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.