

Item No. - 17
25.02.2025
Rohan
Court No. 8

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**FMA 1235 OF 2024
with
I.A. No.: CAN 1 of 2024**

**Padmavathi Sakkinala
Versus
The State of West Bengal & Ors.**

**Mr. Ujjal Ray,
Mr. Arpa Chakraborty**
... for the appellant

**Mr. Nilotpal Chatterjee,
Mr. Arindam Ghosh**
... for the State

**Ms. Koyeli Bhattacharyya,
Mr. Bibek Dutta,
Ms. Keya Panja**
... for the W.B.B.S.E.

Mr. Kanak Kiran Bandyopadhyay
... for the WBCSSC

1. The appellant is subject to several rounds of litigations before this Court raising the grievances relating to keeping her out from the panel of the successful candidates in 12th Regional Level Selection Test for filling up the post of Assistant Teacher in various Government sponsored schools within the State.
2. The genesis of the first litigation could be traced when the appellant flagged an issue on the correctness of the answers to some of the questions which were initially unattended to, but on the basis of an order passed by this Court in the writ petition filed by the appellant, the authorities activated the process and ultimately

found that the answers to such specific questions as disclosed in the answer keys were incorrect.

3. Undeniably, the appellant was awarded marks and included in the panel of the successful candidates. There has been a gap of nearly a decade in achieving such desired result and ultimately, appointment was made to the post of Assistant Teacher in the year, 2020. The litigation did not receive quietus as the appellant claims the monetary benefits as well as the other financial benefits from a retrospective date, i.e., the date on which the last candidate in the said 12th RLST was appointed. The writ petition which was filed for such relief came to be disposed granting liberty to the appellant to make a representation flagging such grievance. The authorities did not accede to the prayers of the appellant and proceeded to reject the same which was further challenged by the appellant before this Court. The Court set aside the said order and directed the Principle Secretary, Department of Education to consider the representation which ended into with such findings:

“... Thus, the matter is disposed of. All concerned are being informed accordingly.

However, in respect of the prayer of the grant of monetary benefit, the petitioner in her written representation dated 28-04-2022 relies upon the Judgment of the Hon’ble Supreme Court in the matter of Ramesh Kumar VS Union of India & Ors reported in (2015)14 Supreme Court cases 335, paragraph 9-12,15 and 16 wherein Hon’ble Supreme Court was of the opinion that the Principle of “No work no pay” could not be attracted where the respondents were in fault.

Hence, the prayer of the petitioner for grant of monetary benefit with effect from Nov, 2013, to her date of joining i.e. 07.11.2020, the case with all relevant papers including the copy of the Judgment of the Hon’ble Supreme Court in the matter of Ramesh Kumar VS Union of India & Ors is being forwarded to

the Finance Department, Government of West Bengal for their consideration.

*Sd/-
Principal Secretary
School Education Department
Date: 23.06.2022*

4. Since the ball was again rolled in the Finance Department, the prayer was rejected on 19th June, 2024 with the following observation:

“Pay and allowances become admissible only when a person being duly employed discharges duties. At this stage we don’t find any reason to allow the consequential benefits i.e. actual pay and allowances w.e.f November, 2013, till joining the school as Assistant Teacher on 07/11/2020 on ground that she hadn’t rendered any service during entire period.”

5. The petitioner challenged the said order by filing a fresh writ petition reiterating and/or reinstating the facts and the prayer which is disposed of by the Single Bench on 25th July, 2024 in the following:

“Such stand taken by the concerned District Inspector of Schools has been endorsed by the Finance Department, Government of West Bengal, as it has been communicated by the Assistant Secretary, School Education Department vide memo dated 19th June, 2024. The Finance Department observed on 19th June, 2024 that pay and allowances become admissible only when a person is duly employed and discharges duties. The Finance Department has taken a specific stand that pecuniary benefits are not payable to petitioner since petitioner did not discharge duty from November, 2013.

This Court in appreciation of the facts as narrated on behalf of the parties does not find flaw in the decision taken by the Finance Department being observed on 19th June, 2024 and the steps taken by the concerned District Inspector of Schools vide memo dated 14th July, 2022 thereby notionally fixing pay of the petitioner appears to be in sync with the decision of the Finance Department, needs no interdiction. It is trite that without formally being appointed in the post

of Assistant Teacher the petitioner cannot claim actual arrear benefits.”

6. Challenging the said order, the instant mandamus appeal is filed by the appellant.
7. The counsel for the appellant submits that neither the Finance Department nor the Single Bench took note of the judgment of the Hon'ble Supreme Court rendered in ***Ramesh Kumar vs. Union of India and Others*** reported in ***(2015) 14 SCC 335***, wherein it is held that the principle of no work no pay has no manner of applicability in a situation where the authorities were at fault in not appointing the persons to the post.
8. The reliance is further placed upon the three Judge Bench decision of the Hon'ble Apex Court rendered in ***Union of India and Others vs. K.V. Jankiraman and Others*** reported in ***(1991) 4 SCC 109*** for the same proposition meaning thereby that the principle of no work no pay cannot be applied when the authorities are found to have committed a fault which deprives the person to be appointed to the said post.
9. On the other hand, the counsel for the State submits that there are other judgments which runs counter to those proposition for the simple reason that the person who had not worked nor discharged the duties attached to the post is not entitled to receive any amount either on account of salary or otherwise.
10. On the conspectus of the aforesaid stand taken before us, it is manifest from the impugned judgment as well as the decision of the Finance Department that the judgments rendered by the Hon'ble Apex Court in ***Ramesh Kumar (supra)*** and ***K.V. Jankiraman and Others (supra)*** were not considered. The Principal Secretary of the School Education Department in his

decision dated 26th March, 2022 forwarded the entire papers to the Finance Department to take an independent decision in this regard highlighting the proposition of law laid down by the Hon'ble Apex Court in ***Ramesh Kumar (supra)***. The moment the authority noticed the judgment of the Hon'ble Apex Court declaring the law, it is the ardent duty of the authority, more particularly, the Finance Department to take into consideration and return his finding whether the proposition of law laid down therein has any manner of applicability in the special facts of the case. The Finance Department cannot overlook nor can avoid a decision to be taken on the basis of law applicable in a fact situation nor can proceed to reject the claim without recording the reasons therefor. The moment the Principal Secretary, School Education Department forwarded the entire papers to the Finance Department to take an independent decision in the light of the judgment rendered in ***Ramesh Kumar (supra)***, it is obligatory on the part of the Finance Department to take into consideration the ratio of the said judgment before it surreptitiously jumped to the conclusion that the appellant is not entitled to any monetary relief.

11. The order of the Single Bench is, thus, set aside.
12. Consequently, the order of the Finance Department communicated through the letter dated 19th June, 2024 is hereby set aside.
13. The Finance Department is directed to reconsider the representation/application of the petitioner strictly in terms of the observations made by the Principal Secretary, School Education Department taken on 23rd June, 2022.

14. It goes without saying that the Finance Secretary of the Finance Department is directed to afford an opportunity of hearing to the respective parties and shall return its finding both on facts as well as law within six weeks from the date of communication of this order.
15. The appeal being **FMA 1235 of 2024** along with connected application, if any, are disposed of.
16. No order as to costs.
17. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(HARISH TANDON, J)

(PRASENJIT BISWAS, J)