

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

MAT 2215 of 2017

With

IA No. CAN 3 of 2022

Asish Kumar Pal & Ors.

-vs

The State of West Bengal & Ors.

For the Appellant No.1 : Mr. Arunava Ghosh

Mr. Anindya Lahiri

Ms. Pranati Das

For the Appellant No. 2 to 11 : Mr. Prosenjit Mukherjee

Mr. Jahangir Parvez

For the State : Mr. Kishore Dutta

Mr. Pinaki Dhole

Mr. Avishek Prasad

Heard On : 16.01.2023

Judgement Delivered On : 30.06.2023

TO COURT :- This instant appeal has been preferred against the Judgment and Order passed by the Hon'ble Single Bench on the 6th day of November, 2017 in writ petition being W.P. 1465 (W) of 2017.

Through the impugned Judgment and Order the Hon'ble Single Bench has been pleased to disallow the prayers made by the petitioners in the writ petition praying for extending the benefits of service including the pay fixation, G.P.F., C.A.S. benefits, pension and all other benefits.

The fact of the present case is that the petitioners were/are rendering their services as Upper Division Assistant, Supervisor, Cashier-cum-Lower Division Assistant, Statistical Assistant, Typist cum Storekeeper, Group-D peon and Driver respectively in the different centers under the Nalhati-I ICDS project run by Non Government Organization (NGO). In respect of these petitioners the revision of their pay scale has taken place from time to time in terms of record of processing activities (in short ROPA) Rules and during their service the West Bengal Service Rules have also been applied. The petitioners are working at par with the employees working in the ICDS projects being run and managed by the Government of West Bengal directly, the nature of duty, function, responsibility and even service conditions of the employees under the ICDS project run by the NGOs and ICDS projects run by the Government are similar. In spite of working at par with the employees of the ICDS projects being run by the Government directly it has been alleged that the petitioners

are denied of equal treatment in respect of the service conditions and benefits. As such, the petitioners have sought for relief.

The appellant/writ petitioner No.1 namely, Asish Kumar Pal has approached this Hon'ble Court praying for disbursement of his pensionary dues in accordance with the pension payment order along with penal interest payable till the date of actual payment of the same and gratuity amounting Rs. 6,51,115/- along with penal interest payable till the date of actual payment of the same.

The Learned Counsel appearing on behalf of the appellant No. 1 has submitted that the appellant had participated in the process of recruitment and had qualified for the said post after passing a written examination. He has further submitted that the panel of candidates who were proposed to be employed and appointed in the ICDS project were forwarded to the office of the Directorate of Social Welfare and after proper screening candidates were shortlisted and a final list of candidates was prepared and approved by the Principal Secretary of the Government of West Bengal. It has further been submitted that subsequent to the appointment of the petitioner a revised guideline for functioning of the ICDS projects run by the NGOs was introduced. The administrative control over the functioning of the NGO was being supervised by the Social Welfare Department and the disciplinary control of the officers and staff was being exercised by the Government which reserves the right of approval of any punishment which may be inflicted upon the

employees. He has further submitted that from time to time several orders have been issued in between the years 1999 and 2020 by which the scale of pay has been granted to the employees of the Government who are discharging their duties in the ICDS which have been extended to the appellant. He has further submitted that the appellant has discharged his duties as polling officer during several elections held for constituting the West Bengal Legislative Assembly. It has further been submitted that the applicant is disqualified for contesting the elections for being elected as member of any tier of the Panchayati Raj system. It has further been submitted that pension payment order was processed and issued from the office of the Principal Accountant General (A&E) and committed pension to the tune of Rs. 10, 58, 900/- has been calculated. Learned Counsel has also submitted that subsequent to the issuance to the pension payment order the applicant has received a communication through which it has been stated by the CDPO that the entire exercise and preparation of the PPO is to be withheld in view of the pendency of the instant appeal. The Learned Counsel has further submitted that the service of the appellants is governed by the West Bengal Service Rules and WBCCA Rules like the State Government employees. It has further been submitted that the respondent authorities cannot take any contradictory stand. On the one hand the appellants while being treated as an employee of the State Government in respect of the West Bengal Panchayat Elections Act, 2003 and West Bengal Panchayat Act, 1973 cannot be denied in respect of their retiral benefits. In this context the Learned Counsel has cited a Judgement reported in (2009) 3

SCC 68. He has further cited a Judgement published in (1978) 4 SCC 257 wherein it has been laid down that the Court is to look into the proper aspect to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearance. He has further cited a Judgement reported in (2013) 15 SCC 85 wherein it has been laid down as follows :

“14. It is well settled that the court can lift the veil, look to the conspectus of factors governing employment, discern the naked truth though concealed intelligently. The court has to be astute in piercing the veil to avoid the mischief and achieve the purpose of law. It cannot be swayed by legal appearance. The court's duty is to find out whether the contract between the principal employer and the contractor is a sham, nominal or merely a camouflage to deny employment benefits to the workmen.”

The Learned Counsel appearing on behalf of the appellants Nos. 2 to 12 firstly has adopted the submissions of the Learned Counsel appearing on behalf of the appellant No.1. Thereafter he has submitted that except the appellant No.8 all the appellants are rendering their services as Upper Division Assistants, Supervisors, Lower Division Assistant and Storekeeper. He has further submitted that the appellants pray for treating them at par with the Government employees as much as they are governed by the service rules meant for the Government employees and banking upon the same prayer the appellants have claimed certain service benefits which have not been extended to them like GPF, Career Advancement Scheme, West Bengal Health Scheme, promotion and pension which are available to the State Government employees. He has further submitted that in terms of the letter dated 17th June

2009 the OSD and EO Joint Secretary had issued an order stating that the Governor has been pleased to allow the officers and staff as well as the appellants herein to draw their payment in the revised pay structure with effect from 1st January 2006 as per West Bengal Service (Revision of Pay and Allowance) Rules, 2009 and in terms of the Clause ii of the said order the arrear of the pay and allowance arising out of such revision of pay shall be guided under the relevant provision of the West Bengal Services (ROPA) Rules 2009.

The Learned Counsel appearing on behalf of the State/respondent has submitted that the appellants/writ petitioners are all employees of a non-Governmental organization run ICDS project. These persons are claiming all the benefits which are being given to the employees of the Government run ICDS projects. He has further submitted that an Integrated Child Development Scheme (for short ICDS) is a Government of India project which is being implemented by the State Government. He has further submitted that the State Government being the implementing agency implement the scheme through their own ICDS project which is termed as Government run ICDS project. He has further submitted that the State Government also nominate some non-Government Organization for implementation of the projects which is termed as NGO run ICDS project. The Learned Counsel has further submitted that the salary and other expenditures of the staff of both Government and NGO run ICDS projects are borne by the Government of India. He has further submitted that the appellants/writ petitioners are the employees of a NGO

namely Elmhirst Institute of Community Study (in short EICS) having its office within the jurisdiction of the Post Office Shantiniketan District Birbhum. He has further submitted that the appellants have filed the writ petition claiming their service benefits but they have not made their employer a party in the said proceeding. He has further submitted that the entire expenses for the scheme is borne by the Central Government except some expenses that is food and nutrients which are borne by the State Government. He has further submitted that the Central Government who is the funding authority has not been made a party. It has also been submitted that the presence of both the appointing authority and the Government of India is very much necessary for proper adjudication in the matter in dispute, as such the proceedings suffer from the defect of non-joinder of necessary parties. The Learned Counsel has further submitted that the ICDS projects are being run by both the Centre and the State in the ratio of 60:40. The Learned Counsel has further submitted that the appointment letters of the appellants reflect that the appellants have been appointed by the honorary Secretary of the EICS, as such these appellants are at a different footing from the Government employees. The Learned Counsel has further submitted that the appellant no. 1 namely Asish Kumar Pal who was about to retire from service in spite of the knowledge that he is not entitled to any pensionary benefit prepared his own service book and pension papers and submitted the same through the Child Development Project Officer (for short CDPO) before the office of the Principal Accountant General (A&E) West Bengal by suppressing all the relevant facts. He has further submitted that the

office of the Principal Accountant General (A&E) West Bengal processed the said pension paper and issued a PPO in favour of the appellant No.1 sanctioning pension and other benefits to which the said appellant is not legally entitled. He has further submitted that the CDPO at the last stage on understanding the gravity of the offence intimated the SDPO Sadar Birbhum about the illegal sanction of pension and other benefits including the issuance of the pension payment order in favour of the appellant No.1 he has further submitted that on receipt of the said letter the payment was stopped. The Larned Counsel has further submitted that the appellant No.1 has filed an application in the pending appeal being CAN NO. 3 of 2022 praying for implementation of the pension payment order issued by the office of the Principal Accountant General (A&E) West Bengal dated 27-09-2021 and has prayed for release of the pension and other benefits. The Learned Counsel has further submitted that the application of the West Bengal Service Rules Part I and II in case of the employees of the NGO run ICDS projects are not mandatory as it has been stated. He has further submitted that the West Bengal service Rules may be adopted in case of these employees. The Learned Counsel has further submitted that neither the pension nor any other benefits which are available to the Government run ICDS projects can be extended to the NGO run ICDS projects as there is no scheme for extending such benefits to the employees of the NGO run ICDS projects.

From the facts of this case it is apparent that the appellants are the employees of the NGO run ICDS project.

The ICDS is a Government of India project which is implemented by the State Government. The State Government being the implementing agency implement the scheme through their own ICDS project which is termed as Government run ICDS project. On the contrary some NGOs are also nominated for the said projects which are termed as NGO run ICDS project. The ICDS projects run on the contribution of Centre and the State at the ratio of 60 : 40.

The appellants herein are employees of Elmhirst Institute of Community study (in short EICS) but the said EICS has not been impleaded as a party in the lis. The Central Government though being the funding authority has not been made a party. Thus, both the Central Government and the aforementioned NGO though being necessary party have not been incorporated as a party.

From the appointment letters it reveals that the appellants were appointed by the Honorary Secretary of the EICS on 16.3.1998. Thus being appointed by a non Governmental organization does not bring them within the ambit of Government employees.

This Court refers to the Order passed by Hon'ble Single Bench of this Court in the case between *Sunita Ghosh and ors. Vs the State of West Bengal and ors.* praying for the benefits which have been paid in this lis along with other benefits. Through the said Judgement and order the Hon'ble Single Bench has been pleased to refuse to issue a writ in the nature of mandamus as prayed for by the petitioners.

This Court feels it relevant to mention that the appellants in the instant lis stand on a different footing from those who had preferred the **Special Leave Petition (Civil) No. 16547 of 2007**. The appointment of the appellants herein have been given by an NGO.

As such the benefits which can be granted to the persons being appointed by the State cannot be granted in this instant case.

Thus, this Court finds no reason to interfere with the impugned Judgement and order of the Hon'ble Single Bench.

MAT 2215 of 2017 with IA No. CAN 3 of 2022 stands accordingly **dismissed**.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)