
(2002) 08 CAL CK 0033
In the Calcutta High Court
Case No : Writ Petition No. 2725 of 1998

Aparna Ghosh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Citation : (2002) 2 ILR (Cal) 552

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Arup Kumar Lahiri, for the Appellant; Manideepa Mukherjee and Mrinmoy Bagchi, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—In this writ application the Petitioner has prayed for the following relief?s:

(a) A writ of or in the nature of Mandamus commanding the Respondents to forthwith revoke, cancel, rescind and/or withdraw the Memo No. 827-S.E.(S) . dated September 19, 1997 issued by the School Education Department, Secondary Branch, Government of West Bengal and to act in accordance with law;

(b) A writ of or in the nature of Mandamus commanding the Respondents to count the service rendered by the Petitioner in Adra South Eastern Railway Girls". Higher Secondary School, P.O. Adra, District Purulia and in Kharagpur South Eastern Railway Girls" High School, P.O. Kharagpur, District Midnapore towards pension of the Petitioner and to allow to the Petitioner all consequential benefits;

(c) A writ of or in the nature of Mandamus commanding the Respondents to allow to the Petitioner all the benefits including continuity of service, protection of pay on account of her service in Adra South Eastern Railway Girls" Higher Secondary School, Adra, District Purulia and in Kharagpur South Eastern Railway Girls" High School, P.O. Kharagpur, District Midnapore.

(d) A writ of or in the nature of Certiorari directing the Respondents to send up to this Hon"ble Court all records of the case including the Memo No. 827-S.E.

(e) dated September 19, 1997 issued by the School Education Department, Secondary Branch, Government of West Bengal, so that conscionable justice may be done by quashing the same.

2. The fact leading to the writ application is very short. The Petitioner served Adra South Eastern Railway Girls" Higher. Secondary School, Post Office-Adra; District "Purulia and Kharagpur South Eastern Railway Girls" High School; Post Office - Kharagpur, District: Midnapore as Assistant teacher for the periods from October 14, 1977 to August 2,. 1985 in respect of the periods in respective schools as detailed in the Service Book issued for Class III and Class IV staff of the South Eastern Railway. The Petitioner joined on August 3, 1985 in the present school wherein the Petitioner is still working. The Petitioner applied for counting the past service as rendered in the aforesaid two schools of Adra and Kharagpur for all purposes including the post retirement benefits. Such prayer was refused by Memo No. 827-S.E. (S) dated September 19, 1997 by O.3.D. and ex-officio Deputy Secretary, School Education Department, Government of West Bengal only on the ground that under para. 7 annex. I of the West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-Retirement Benefits) Scheme of 1981, the past service in the Railways could not be counted towards the pension of teacher of aided schools.

3. The Petitioner has placed reliance to the aforesaid Scheme of 1981 to submit that the impugned decision was ex facie illegal and contrary to the Scheme. It is submitted by the Petitioner that under Clause (7) even the service as rendered by the employee under Government when is counted towards pension, there was no justification to refuse the service of the Petitioner as rendered in the aforesaid two schools under South Eastern Railways as counted service for pensionary benefits. It is submitted by the Petitioner that the Petitioner was a Government Employee being the employee of the Railways who are Government Employees. Besides, the Petitioner further assailed he order contending that when benefits having been given under Clause (7) in respect counting of past service, if any, rendered by any employee in Bangladesh that is erstwhile Pakistan, the service as rendered by the Petitioner in. the Railway School in India cannot be refused as a counting service.

4. This writ application has been opposed by the State Government orally without filing any affidavit. Having regard to the contentions as made, the answer of the dispute could be solved by considering the aforesaid Death-cum-Retirement Benefits Scheme of 1981. Under chp. II Clause (5) the word "affiliated/approved", approved teacher and non-teaching employees and the educational institutions have been defined. The said provisions read thus:

5.(a)(i). "Affiliated/Approved" means recognized by the West Bengal Board of Secondary Education/West Bengal Madrasa Education Board/Dist. School

Boards/West Bengal Council of Higher Secondary Education/District Inspector of Schools/Director of Public Instruction/Director of School Education/ Director of Technical Education/Director of Library Services as the case may be-(ji) "Approved teacher and non-teaching employees" means "employees of recognized educational institutions whose services have been approved by the authorities referred to in sub-para. 5(a)(i) above by any officer/officer authorized by them.

(b) "Educational Institution" means Institutions approved affiliated by the West Bengal Board of Secondary Education/West Bengal Council for Higher Secondary Education/Director of Technical Education, West Bengal/Director of Library Services, West Bengal/ West Bengal Madrasa Education Board/District School Board/Director of Public Institution/Director of School Education and whose pay and allowances are borne by the State Government.

5. Under ch. III Clause (7) of the said Scheme the qualifying service for pension has been defined wherein it is mentioned that continuous service of a whole-time approved employee in any educational institution would be counted as qualifying service as well as service rendered by an employee under Government would be counted towards pension. Such provision reads thus:

7. Service qualifying for pension-(a) Except for compensation gratuity, the service rendered by an employee before the completion of the age of 18 years shall not qualify for pension, (b) continuous service of a whole time approved employee in any educational institution, shall count as qualifying service, (c) war service rendered between September 3, 1939 and April 1, 1946 by an employee shall count as qualifying for pension under this scheme provided the employee concerned was absorbed as an employee on or before January 1, 1948 and the service would have otherwise qualified for pension, (d) service rendered before partition, i.e. during the period up to August 14, 1947, by an employee in any affiliated institutions in areas included in East Pakistan (now Bangladesh) shall qualify for pension and the period of break from the date of leaving the institutions in East Pakistan (now Bangladesh) and the date of appointment in any institution in West Bengal is to be treated as automatically condoned.

Affiliation of a school will be verified on the basis of documentary evidence. In the absence of documentary evidence, contemporary evidence duly signed by Director or any officer authorized by him, will be accepted.

Service rendered by an employee under Government if any will count towards pension. The service in an institution before its recognition will not count.

6. From the document as annexed in the writ application at page 28 it appears that the Secretary, West Bengal Board of Secondary Education by his letter No. S/593 dated December 17, 1992 recognized Adra S.E. Railway Girls" H.S. School and Kharagpur S.E. Railway Girls" High School with effect from April 25, 1959 and January 1, 1956 respectively. Hence under Clause (5)(b) of the aforesaid Scheme of 1981 the Educational Institutions Adra and Kharagpur are the

institutions approved and affiliated by the West Bengal Board of Secondary Education. Once the schools have been affiliated and recognized, there is no justification*, to deny the counting of such service as rendered by the Petitioner in those schools. Furthermore, under Clause (7) the service rendered under any Government also is counted for pensionary benefits.

7. The Employees of the Railways are Central Government employee and there is no doubt in it. The Petitioner being an employee under South Eastern Railway was granted a Service Book as annexed in the writ application. In the Service Book there are different columns, which speaks that the Petitioner was a Government servant. Under Clause (7) the word "government" has been mentioned but it was not defined. Since there was no definition in the said Scheme of-1981, the meaning of the word "Government" to be considered from General Clauses Act. It is a settled law that when in any Statute and/or any order and/or any notification any word is not defined, the meaning of the said word to be considered in terms of the General Clauses Act. Under General Clauses Act, 1987 the word "Government" has been defined under Clause 3(23) of the said Act, which includes both the Central Government and any State Government. Such definition of General Clauses Act, 1897 has been adopted and incorporated under Clause 5(a) of Bengal General Clauses Act. Hence in the Death-cum-Retirement Benefits Scheme, 1981 under Clause (7) the word "Government" as appearing would mean both Central Government as well as State Government.

8. As already discussed that the Petitioner rendered her service as Assistant teacher in the schools under South Eastern Railways and accordingly the Petitioner was a Central Government employee. Hence, once it is proved from the service record that the Petitioner was an employee of the Central Government, the service as rendered by the Petitioner in the aforesaid two schools namely, Adra and Kharagpur also would be counted towards pension in terms of Clause (7) of Death-cum-Retirement Benefits Scheme, 1981. Having regard to such position of law, the impugned decision accordingly is not legally sustainable. Hence it is set aside and quashed. The writ application is allowed in terms of prayers (a), (b), (c) and (d).

9. There will be no order as to costs.

10. Authorities are directed to take steps accordingly.

11. Let urgent Xerox certified copy of this order, if applied for, be given to the learned Advocates appearing for the parties expeditiously.