
(2020) 01 CAL CK 0105

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 20546 (W) Of 2019

Balaram Ghosh

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 03-01-2020

Acts Referred:

Citation : (2020) 01 CAL CK 0105

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Shamim ul Bari, Molly Saha, T.M. Siddiqui,, Ranjan Saha, Arindam Chattopadhyay

Final Decision : Disposed Of

Judgement

Tapabrata Chakraborty, J

The present writ petition has been preferred challenging inter alia an order dated 26th September, 2018 passed by the Secretary, Government of West Bengal, School Education Department (in short, the Secretary).

Mr. Bari, learned advocate appearing for the petitioner submits that challenging the inaction on the part of respondents to grant appointment to the post of an Assistant Teacher in a primary school, the petitioner preferred a writ petition which was disposed of by an order dated 13th March, 1991 directing the respondents to grant appointment. The said order was challenged by the State authorities in an appeal but the same was dismissed on 16th June, 1999. Ultimately, by a memo dated 28th June, 1999 issued by the respondent no.6, the petitioner was given appointment and he retired on 31st May, 2007. Prior thereto, on 25th May, 2007 he was issued a pension payment order indicating that he is not entitled to pension having rendered only 7 years, 10 months and 30 days service. The petitioner thereafter submitted a representation stating that for the delay on the part of the respondents to grant appointment, he cannot be denied pension. The same was, however, not considered. Aggrieved thereby, the

petitioner and other similarly situated incumbents preferred a writ petition claiming notional benefits on and from the year 1991. The said writ petition being W.P. 12309 (W) of 2011 was, however, dismissed. Aggrieved thereby, the petitioner along with others preferred a mandamus appeal. The same was allowed by a judgment dated 11th May, 2015.

The operative part of the said judgment runs as follows :

"Under the circumstances, we are of the view that at least from 1997, i.e. the date of dismissal of the Appeal on 16.6.1997 to the date of their appointment, the Appellants are entitled to notional benefits except salary benefit (following the principle of no work no pay) and from 1999 onwards, they are entitled to full regular service benefits".

Mr. Bari submits that the Special Leave Petition preferred by the State respondents challenging the judgment dated 11th May, 2015 was dismissed on 21st April, 2017 and thereafter a memo dated 4th August, 2017 was issued directing inter alia that "the date of issue of the said appointment letter be read as 16.06.1997 instead of 28.06.1999. It is further mentioned here that he is entitled to notional benefit except salary benefits for the above period and from 1999 onwards, he is entitled to full regular service benefits". The petitioner's appointment was thus approved with effect from 16th June, 1997 and he retired on 31st May, 2007. The deficiency in qualifying service was thus of only 16 days. The petitioner thereafter approached the competent authority for condonation of such deficiency in qualifying service and to grant pension but in vain. As such, the petitioner preferred a writ petition being W.P. 8438 (W) of 2018 and by an order dated 27th June, 2018 the same was disposed of with a direction upon the Secretary to take a decision in the light of the observations made in the said order. Thereafter, the Secretary passed the impugned order on 26th September, 2018.

Mr. Bari submits that due to pendency of litigation the approval of appointment was withheld for about eight years for which the petitioner cannot be made to suffer and in exercise of the authority as conferred under the pension scheme, the Secretary ought to have condoned the delay of 16 days.

Drawing the attention of this Court to the documents annexed at pages 47 to 51 of the writ petition, Mr. Bari submits that in similar facts and circumstances, the competent authority had condoned deficiency in qualifying service and granted pension and as such no different yardstick can be applied in the case of the petitioner.

Mr. Siddiqui, learned advocate appearing for the State respondents submits that it needs to be ascertained as to whether similarly situated persons have been granted the benefit, as prayed for and the issue needs to be relegated to the competent authority for consideration.

A perusal of the impugned order dated 26th September, 2018 reveals that the

Secretary has proceeded on the basis that the date of appointment of the petitioner was 16th June, 1997 and the deficiency in qualifying service was of 45 days. Such observation and computation is ex facie erroneous. The deficiency in qualifying service of the petitioner is of only 16 days, as would be explicit from the contents of the memo dated 4th August, 2017. The Secretary has also not taken into consideration the observations made by the Court in the order dated 27th June, 2018 passed in W.P. 8438 (W) of 2018.

The pension scheme is a beneficial scheme and the benefits are extended as a social security measure and in the backdrop of such object and taking into consideration the facts involved, I am of the opinion that the respondents cannot refuse to condone the deficiency of 16 days in minimum qualifying service of the petitioner.

Accordingly, the impugned order dated 26th September, 2018 passed by the Secretary, is set aside.

It appears that one Katchet Ali Mondal, who preferred a writ petition being W.P. 12309 (W) of 2011 along with the petitioner from which the appeal being FMA 1450 of 2011 arose, approached this Court for condonation of deficiency of about three months in qualifying service. His writ petition being W.P. 6822 (W) of 2012 was disposed of by an order dated 24th June, 2012 condoning the shortfall of three months and the said order has also been complied with.

In the said conspectus, no different yardstick can be applied in the case of the petitioner and the respondents are directed to condone the deficiency of 16 days in qualifying service of the petitioner and to grant usual pensionary benefits within a period of six weeks from the date of communication of this order along with a copy of the writ petition.

If for any other pressing reason, the deficiency in qualifying service of the petitioner cannot be condoned, the Secretary shall communicate the reasons to the petitioner within the aforesaid period.

With the above directions and observations the writ petition is disposed of.

There shall however be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.