

(2010) 11 CAL CK 0046
In the Calcutta High Court
Case No : Writ Petition No. 15746 (W) of 2009

Girija Prasad Pandey

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Citation : (2011) 2 CHN 223

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Pradip Sen, for the Appellant;Tulsidas Maity for the Council, Jiban Hari Mallick for the State, for the Respondent

Judgement

1. The writ Petitioner is a retired primary school teacher who retired with effect from 31st January, 2009, after rendering twenty-three years of service. He has filed the instant writ petition being primarily aggrieved by the inaction on the part of the Respondent authorities to pay his retiral dues. Direction for filing of affidavits were given earlier and the writ petition is now being finally heard and disposed of upon exchange of affidavits.

2. In the writ petition it has been specifically stated, inter alia, that the writ Petitioner joined service on 1st January, 1980, as an Assistant Primary School Teacher under "B" category. Subsequently, the writ Petitioner obtained a B. Ed. Degree in the year 1986 from Jadavpur University (Evening Section). Prior to enrolling himself for the said B. Ed. Course, the Petitioner made a prayer, by a letter dated 9th July, 1984, to the concerned District Inspector of Schools (P.E.), Kolkata, seeking permission to appear in the said course. Such permission was granted and was endorsed in the said letter itself by the concerned District Inspector of Schools (P.E.).

3. Consequent upon the Petitioner successfully passing the B. Ed. Examination, the District Inspector of Schools (P.E.), Kolkata, vide Memo, dated 5th March, 1987, sanctioned "A" category scale of pay with effect from 7th October, 1986, in

favour of the writ Petitioner. In the affidavit-in-opposition affirmed on 16th December, 2009, by the District Inspector of Schools (P.E.), Kolkata, for the first time after more than twenty-two years, a stand has been taken to the effect that the permission given to the writ Petitioner, in the year 1984, to appear in the B. Ed. Course by the then District Inspector of Schools (P.E.), was possibly given inadvertently. According to the deponent, as per G.O.1192-Edn. (P) dated 20th July, 1973, part-time evening B. Ed. Course was available only to the untrained approved teachers of recognized secondary schools and, therefore, the writ Petitioner was not eligible to undergo the B. Ed. Evening course.

4. In the opinion of this Court, such a stand, as indicated hereinabove, taken by the District Inspector of Schools (P.E.), Kolkata, for the first time in December, 2009, and never earlier, and that too only in an affidavit filed before this Court, is nothing but an afterthought. The deponent has never stated in her affidavit as to the basis on which the Memo, dated 5th March, 1987, was issued by the then District Inspector of Schools (P.E.), Kolkata sanctioning "A" category scale of pay in favour of the writ Petitioner with effect from 7th October, 1986. It has also not been stated in the affidavit as to the why the District Inspector of Schools (P.E.), Kolkata, chose to remain silent and allowed the writ Petitioner to enjoy "A" category scale of pay, with effect from 7th October, 1986 till the date of his superannuation, i.e. 31st January, 2009. The reference to the Government Order dated 20th July, 1973, by the deponent has, therefore, no manner of application at all in the facts and circumstances of the instant case. The writ Petitioner having been granted "A" category scale of pay with effect from 7th October, 1986, till he attained superannuation, cannot be deprived of his legitimate retiral dues, based on the scale of pay that he enjoyed for over twenty-two years. More importantly, the deponent has never alleged that the writ Petitioner, at any stage, misrepresented or practised fraud in Order to get the necessary sanction for obtaining the benefit of "A" category scale of pay.

5. In such circumstances, the writ Petitioner is entitled to get relief from this Court.

6. The writ petition is, therefore, disposed of with a direction upon the District Inspector of Schools (P.E.), Kolkata to process the pension papers of the writ Petitioner in the light of the observations made here in above and forward the same to the Director of Pension, Provident Fund and Group Insurance, Finance Department, Government of West Bengal, as expeditiously as possible, preferably within a period of six weeks, but not later than eight weeks from the date of communication of a photostat certified copy of this Order.

Urgent photostat certified copy of this Order, if applied for, be given to the learned Advocate for the parties.