
(2012) 06 CAL CK 0069
In the Calcutta High Court
Case No : Writ Petition No. 7567 (W) of 2011

Jai Shankar Singh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 28-06-2012

Acts Referred:

Citation : (2013) 1 CHN 225

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Santi Das, for the Appellant; Sadananda Ganguli and T.K. Chatterjee for State-Respondent Nos. 1 to 5, for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—The petitioner was initially appointed as an Assistant Teacher in Gyan Bharati Vidyapith which is a D.A. getting school, on 1st April, 1972. He rendered his service in the said school till 13th February, 2006. Subsequently he joined his service in Arya Bikash Vidyalaya as Headmaster on 14th February, 2006 and ultimately retired from service on superannuation with effect from 30th January, 2011. Arya Bikash Vidyalaya is admittedly a recognised non-Government aided institution. After his retirement, the petitioner claimed pensionary benefit. His claim for pensionary benefit was rejected by the concerned District Inspector of Schools, Secondary Education, Kolkata as he did not complete qualifying period of service in any aided institution. By referring to the Government Order No. 131 SE(B) dated 19th April, 2006 and Government Order No. 14 SE(B) dated 8th January, 2007, it was held by the concerned District Inspector of Schools that the service which the petitioner rendered in Gyan Bharati Vidyapith, the D.A. getting school for the period from 1st April, 1972 to 13th February, 2006 cannot be counted as reckonable service towards pension. As such, the prayer of the petitioner for grant of pension was rejected by the concerned District Inspector of Schools.

2. The said order of the concerned District Inspector of Schools dated 8th April, 2011 contained in annexure "P-4" to this writ petition at page 30 is under

challenge in this writ petition at the instance of the said retired Headmaster.

3. Let me now consider as to how far the concerned District Inspector of Schools was justified in rejecting the petitioner's claim for pension in the facts of the instant case.

4. Mrs. Das, learned advocate appearing for the petitioner at the very outset submits before this Court that as per the Scheme of 1981, the petitioner is not entitled to claim pensionary benefit, as the length of his service in the Government aided institution is short of the requisite length of service necessary for availing of the pensionary benefit as per the said Scheme.

5. Mrs. Das submits that the petitioner's right to get the pensionary benefit emanates from the subsequent Government Order issued under Memo No. 180 Edn.(B)/IM-33/88 dated 20th May, 1988 which provides that the service rendered by a teaching or non-teaching employee in unaided institution or institutions shall be counted towards pensionable service provided at the time of retirement/death/superannuation of the employee concerned the institution or institutions in which the incumbent served received aid from the Government or any other body authorised by the Government for the purpose.

6. Mrs. Das, thus, submits that since her client ultimately retired from the aided institution in 2011, his service in the previous D.A. getting school should also be counted as reckonable service towards pension.

7. Mr. Ganguli, learned advocate appearing for the State-respondents submits that since the earlier Government Order of 1985 was not superseded by the subsequent Government Order dated 20th May, 1988, the petitioner cannot be granted pensionary benefit by virtue of the subsequent Government Order dated 20th May, 1988.

8. This Court does not find any substance in such contention of Mr. Ganguli as grant of pensionary relief to the retired person was introduced by the Government as a social beneficial scheme. The subsequent Government Order dated 20th May, 1988 was issued by the Secretary under the order of the Governor to extend the benefit of pension by a social security measure to the retired teaching and non-teaching staff of the aided institution and as such it should be presumed that by virtue of the subsequent Government Order dated 20th May, 1988 an extension of such benefit was given to a particular class of employees who were not covered under the original Scheme of 1981.

9. As such, this Court holds that even though the petitioner was not entitled to get pension under the original Scheme of 1981, but by virtue of extension of such benefit to a class of teachers to which the petitioner belongs, by a subsequent Government Order dated 20th May, 1988, the petitioner is entitled to get the benefit of pension as his period of service in the D.A. getting school for the period from 1st April, 1972 to 13th February, 2006 is to be counted as reckonable service towards pension in terms of the Government Order dated

20th May, 1988. Fact remains that even after 1988 another Government Order was issued by the Government on 19th April, 2006 which also recognises the petitioner's right to get pension.

10. Let me now consider Mr. Ganguli's contention to ascertain as to how far the said Government Order dated 19th April, 2006 affects the petitioner's right to get pension in the facts of the instant case.

11. If the subsequent Government Order dated 19th April, 2006 is considered minutely, then it appears that the said Government Order was issued to exclude those teachers who initially served in an aided institution and thereafter in a D.A. getting institution and thereafter again in an aided institution wherefrom they retired from enjoying the pensionary benefits.

12. The said Government Order clearly mentions that when there is no continuity of service in more than one aided institutions and when service in more than one aided institutions is intervened by service in any D.A. getting school, then the initial service which such a teacher rendered in the first aided institution or institutions cannot be counted as reckonable service towards pension of the said teacher, even though he ultimately retired from an aided institution. It is nobody's case here that the petitioner initially served in an aided institution and thereafter in a D.A. getting institution and thereafter again in an aided institution wherefrom he ultimately retired.

13. As such, the Government Order dated 19th April, 2006 in my considered view has no application in the facts of the instant case as admittedly the petitioner initially served in a D.A. getting school and thereafter in an aided institution wherefrom he retired. As such, the petitioner's right to get pensionary benefit which emanates from the Government Order dated 20th May, 1988, cannot be denied by the State-respondents.

14. This Court holds that the concerned District Inspector of Schools misinterpreted the provisions contained in the Government Order dated 19th April, 2006 and the Government Order dated 8th January, 2007 respectively. The impugned order is absolutely illegal and as such the same cannot be retained on record. The impugned order thus stands quashed.

15. The concerned authority is, thus, directed to count both the period of service of the petitioner in the D.A. getting school as well as in the aided school wherefrom the petitioner retired, as reckonable service towards pension in terms of the Government Order dated 20th May, 1988 and the pensionary benefits including all arrear pension shall be granted to the petitioner positively within a period of twelve weeks from the date of communication of this order. In default, the concerned authority will be required to pay interest @8% per annum on such unpaid dues of the petitioner from the date of his retirement up to the date of actual payment thereof.

16. The writ petition is, thus, disposed of. Let the writ file being W.P. No.

20990(W) of 1998 which was requisitioned in connection with this matter, be sent down to the concerned department.

Urgent photostat certified copy of this order, if applied for, be furnished to the applicant as early as possible.