
(2014) 02 CAL CK 0071

In the Calcutta High Court

Case No : Writ Petition No. 7574 (W) of 2006

Kartick Chandra Das

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Citation : (2014) 4 WBLR 273

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Usha Maity, Advocate for the Appellant; Mujibar Rahaman, Advocate for the Respondent

Judgement

Tapabrata Chakraborty, J.—Affidavit of service filed today in Court be kept with the record. This writ application had been preferred stating, inter alia, that the petitioner was initially appointed as an organizing Assistant Teacher of Ramchak Rameswari Vidyamandir Junior High School (hereinafter referred to as the said School) in the year 1971 and subsequent thereto repeated prayers were made by the said school authorities for recognition of the said school and pursuant thereto an inspection was conducted by the respondent No. 5 on 18th December, 1979 as would be explicit from the Memorandum annexed at page 38 of the writ application. But even after such inspection the recognition of the said school was withheld. Subsequent thereto a further District Level Inspection was held on 29th September, 1992 and in the said report, the name of the petitioner featured in the list of teaching and non-teaching staff serving in the unrecognized school and the date of appointment of the petitioner in the said school was said to be 8th November, 1971.

2. Pursuant to the said District Level Inspection Team (hereinafter referred to as the DLIT) report the school was ultimately recognized as a 4 Class Junior High School with effect from 1st May, 2000, and pursuant thereto the petitioner's service was approved as an Organizing Teaching Staff of the said school with effect from 1st May, 2000 vide Memorandum dated 10th October, 2000 issued by

the respondent No. 5. Thereafter, the petitioner's approval was further extended till 30th April, 2006 vide Memorandum dated 27th May, 2003 issued by the respondent No. 5 and in the midst thereof the petitioner attained the date of superannuation on 26th February, 2005 and as his qualifying service was short of 10 years, the authorities only disbursed the gratuity in favour of the petitioner vide Pension Payment Order dated 28th December, 2005. Aggrieved by the denial of the respondents to count the past service notionally for the purpose of granting benefits of usual pension and gratuity, the petitioner made repeated representations on 22.02.2004, 21.06.2004, 16.09.2004, 22.11.2004 and the last representation made to the respondent No. 5 was dated 25th January, 2006.

3. Aggrieved by the denial of authorities to consider the said representation dated 25th January, 2006, the petitioner preferred the instant writ application and the same was initially admitted by an order dated 19th April, 2006 with a direction towards exchange of affidavits. In spite of such direction, the State authorities did not file any affidavit-in-opposition till date.

4. Mrs. Maity, learned Advocate appearing for the petitioner, submits that there is no dispute that the petitioner had discharged his service in the said school as an Assistant Teacher with effect from 1971 and that such discharge of service stands admitted by the respondents as would be explicit from the DLIT report at clause "F" wherein it had been categorically incorporated that the petitioner was appointed on 8th November, 1971.

5. Mrs. Maity, further submits that the DLIT report leading to recognition of the said school was dated 29th September, 1992 but the State Government took almost eight years, after such inspection, to recommend for recognition of the said school, vide Memorandum dated 14th February, 2000 and thereafter the West Bengal Board of Secondary Education (hereinafter referred to as the said Board) granted recognition to the said school as a 4 Class Junior High School with effect from 1st May, 2000.

6. Mrs. Maity further submits that for the delay and laches of the respondents towards grant of recommendation and recognition, the petitioner cannot be made to suffer through denial of pensionary benefits on a plea that the petitioner had not completed ten years of qualifying service.

7. Mrs. Maity, further submits that under the West Bengal Recognized Non-Government Educational Institution Employee (Death-cum-Retirement Benefit) Scheme, 1981 (hereinafter referred to as the Pension Scheme) authority stands conferred upon the Government to condone deficiency in the qualifying service. But in the instant case the respondents had simply sat tight over the prayer for such condonation as made by petitioner way back in the year 2006.

8. Mrs. Maity, relies upon a judgment delivered in the case of Haradhan Mahato Vs. The State of West Bengal and Another wherein the Hon'ble Court had, inter alia, observed, that long uninterrupted service rendered by the petitioner cannot be overlooked while calculating the actual period of service of the petitioner for

the purpose of granting benefit of pension and gratuity.

9. Mrs. Maity, further placed reliance upon an unreported judgments, delivered in W.P. No. 20869 (W) of 1998 and in W.P. No. 16004 (W) of 2004 wherein the Hon"ble Court had, inter alia, observed that when there is no dispute as regards actual service rendered by the petitioner, the authority should grant notional approval and condone the deficiency of qualifying service for the purpose of grant of pensionary benefits.

10. Mr. Rahaman, learned Advocate appearing for the State respondents submits that the shortage of qualifying service of the petitioner is of more than five years and that the past unapproved service cannot be taken into consideration for the purpose of condonation of deficiency of qualifying service.

11. Rahaman, further submits that the petitioner had not challenged the approval granted to him by the respondent No. 5 with effect from 1st May, 2000.

12. Mr. Rahaman, had further argued that by accepting the approval of service with effect from 1st May, 2000, the petitioner had waived all his right but such argument is not acceptable in as much as by the Memorandum dated 10th August, 2000, the prospective effect given by the respondent No. 5 was only in order to ensure that the petitioner is not to be paid any arrears of difference of salaries for the period from the actual date of appointment of the petitioner in the year 1971 till the date of approval with effect from 1st May, 2000.

13. The provision of the Pension Scheme confers jurisdiction upon the competent State authority to consider and condone the deficiency of qualifying service for the purpose of availing full pensionary benefits and such authority, as conferred by the said Pension Scheme cannot be scuttled by limiting the period of condonation in as much as such restriction would lead to discrimination.

14. Pension is a retirement benefit partaking of the character of regular payment to a person in consideration of the past service rendered by him and is claimable as a matter of right and such right is in the nature of a property in the hands of the employee which cannot be denied only on the ground of alleged delay and that as such the argument of Mr. Rahaman to the effect that the petitioner, having belatedly approached the authorities, is not entitled to pensionary benefits, is not sustainable. Furthermore, the repeated representations made by the petitioner prior to retirement had been left unattended by concerned respondents.

15. The DLIT inspection leading to recognition of the said school was made in the year 1992 and accepting the petitioner and others as organizing staff, the recognition and approval was given with effect from 1st May, 2000 and that for such belated recognition and for the laches on the part of the respondents, the petitioner cannot be made to suffer.

16. The aforesaid delay in issuing the formal office order regularizing the service of the petitioner cannot deprive the petitioner of the benefits of usual pension

and other retiral benefits on an alleged ground that the petitioner did not complete ten years of qualifying service.

17. Upon hearing the submissions made on behalf of the respective parties and upon considering the materials on record, I find that the discharge of service of the petitioner with effect from 8th November, 1971 does not stand disputed by the respondents and in the DLIT report dated 29th September, 1992 leading to recognition of the said school the petitioner's name features as a teaching staff serving in the unrecognized school and in the backdrop of such factual scenario, the period of service rendered by the petitioner, though in an unrecognized school, should not be altogether ignored and should be taken into consideration to make up the short fall in computing the service for the purpose of granting benefit of usual pension and gratuity to the petitioner. A grant of pensionary relief to the retired person was introduced by the Government as a social beneficial scheme and when admittedly there is no dispute that the petitioner had rendered service since the year 1971, the respondents cannot deny to condone the deficiency of qualifying service of the petitioner through grant of notional approval only for the purpose of disbursement of pensionary benefits.

18. In the aforesaid circumstances, I direct the respondents to grant usual pension and gratuity to the petitioner treating the said petitioner in permanent service at least for a period of ten years before retirement on attaining the age of superannuation, through grant of notional approval.

19. The respondents are directed to grant the aforesaid pensionary benefits to the petitioner within a period of twelve weeks from the date of communication of this order.

20. I make it clear that the petitioner will not be entitled to any arrears of salary and the notional approval would be only for the purpose of grant of pensionary benefits to the petitioner.

21. The writ application, accordingly, stands disposed of.

22. There will be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be handed over to the parties on compliance of necessary formalities.