
(2018) 05 CAL CK 0205
In the Calcutta High Court
Case No : Writ Petition 24154 (W) of 2017

Md. Abdul Towab

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 16-05-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2018) 05 CAL CK 0205

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Kamalesh Bhattacharyya, Surojit Basu, Subhranshu Panda

Final Decision : Allowed

Judgement

Affidavit of service is taken on record. I am satisfied that the respondents have been properly served. One of the respondents is the respondent no.4

who is the District Inspector of Schools concerned. The respondent no.1, State of West Bengal is a party. It is a body corporate. So, in terms of Rule

24 of the Rules of this Court relating to applications under Article 226 of the Constitution of India it has to be specified through whom the respondent

no. 1 is being made a party and which officer represents it. The respondent no. 1 is shown to be represented through the Principal Secretary, Minority

Affairs and Madrasah Education department. The writ petition has been served on the respondent no. 1 through the learned Government Pleader.

None appears for the respondent no.1 as also the respondent no.4 despite service.

This writ petition under Article 226 of the Constitution of India depends upon a litany of dates for ascertaining the cause of action. The writ petitioner

approached this Court by way of W. P. no. 64 of 2000 seeking a direction for

approval of his appointment as organizer teacher. On such writ petition being made, a coordinate Bench of this Court, by an application dated January 7, 2000, was pleased to allow it in terms of the said order, which appears at page 31 of the writ petition. the operative portion of this order is set out hereinbelow:-

Â â??â?|â?| â?|â?|â?| â?|â?|â?|. I direct the concerned District Inspector of Schoos (S.E.), Malda, to approve the appointments of the petitioners as organisor teachers and/or non-teaching staff in the existing available vacancies within a period of four weeks from the date of communication of the order. Since the cause of action arose prior to the School Service Commission Act coming into force the concerned District Inspector of Schools will be entitled to proceed in accordance with prevailing Act and Rules prior to such Act coming into forceâ??.

The said order dated January 7, 2000 was carried in an appeal by the State of West Bengal by way of APOT no. 397 of 2000 which was ultimately

dismissed by an order dated March 26, 2003. The writ petitioner submits that this order was allowed to achieve finality. The order admittedly was

passed on the basis of default in appearance of the appellant. It appears from the documents annexed to the writ petition that despite the order having

achieved finality on March 26, 2003, the respondent/District Inspector of Schools granted provisional approval to the appointment of the writ petitioner

only on February 24, 2011 and thereafter accorded the final approval of appointment on February 7, 2017 with effect from February 24, 2011.

No justification has been given why the provisional appointment was not given with effect from January 7, 2000 the date when the writ petition was

allowed or at the latest March 26, 2003 when the appeal was dismissed. This becomes particularly reprehensible. None of the respondents, in the writ

petition, ever challenged the order passed in appeal. Therefore, merely by taking advantage of their position as giants, the State of West Bengal and its

officers without having the faintest whisper of an excuse, chose not to comply with the orders of a Court which had achieved finality.

As a result of this institutional obstinacy of the then respondent no.4 and whoever was the arbiter of the fate of minority institutions at the relevant

time, for no fault of his own, the writ petitioner was not placed in the felicitous position of a person who would be eligible for pension in accordance

with law on his retirement, considering his recorded date of birth, based on qualifying service from the date of approval. That of course would be the

case if all that the petitioner has said is true. On the first day that the matter is taken up, even on service on the respondents, under Rule 26 of the Writ

Rules I cannot dispose of the writ petition passing a final order, without issuing notice where some respondents, despite service, have not appeared;

especially where they are essential respondents.

However, I can certainly pass an interim order while considering that the writ petitioner admittedly demitted office after superannuation on January 31,

2017, and on the face of the records, prima facie he was entitled to have approval of his service and to calculate his qualifying service from March 26,

2003 at the latest, and that he filed the writ petition shortly after superannuation, to the following effect: -

a) The respondent no.4 shall calculate the amount of provisional pension which would be payable to the writ petitioner on his service being approved

with effect from March 26, 2003;

b) Since the respondent/Director of Madrasah Education has placed nothing today as would dispute the allegations of fact made by the writ petitioner,

prima-facie I find that he had a right to be approved with effect from March 26, 2003 on that basis and the above qualification, I have directed the

payment of provisional pension treating the service of the writ petitioner from March 26, 2003 for the purpose of qualification. This shall be entirely

subject to the result of the writ petition;

c) The question of whether the writ petitioner would be entitled to arrears of provisional pension and also to other calculations based on approval of his

service with effect from March 26, 2003 shall also be considered after Affidavits. I make it clear apart from the provisional pension, gratuity and leave

salary, if admissible, for the period that he actually worked shall all be decided at time of final hearing of the writ petition.

The respondents shall be at liberty to file Affidavits-in-opposition within four weeks from the reopening after the summer vacation. Reply, if any,

thereto be filed within two weeks thereafter. The parties shall have the liberty to mention for inclusion in the list for hearing after the Affidavits are

complete. I make it clear that first instalment of provisional pension shall be made by the respondent no. 5 not later than June 10, 2018 and thereafter

shall be paid in accordance with law by the tenth day of each succeeding month.

The respondent no. 4 is to complete the exercise of making calculation according to direction (a) and the other respondents are to so put the

respondent no. 5 in funds and release necessary orders/pay advice/cheques as the case may be so that my directions as in this paragraph for making

the payment and further regular payments are strictly complied with. The respondents No.4 and 5 are to report compliance with these directions by

June 4, 2018 by filing a compliance report through the Learned Government Pleader. The matter will appear as â??To Be Mentioned: For

Complianceâ? on June 4, 2018. The parties are to act on a website copy of this order. I also make it clear that all findings are tentative prima-facie

and subject to the result of the writ petition.