
(2017) 01 CAL CK 0025
In the Calcutta High Court
Case No : 33028(W) of 2014

Mira Rani Dey

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 31-01-2017

Acts Referred:

Citation : (2017) 01 CAL CK 0025

Hon'ble Judges : Subrata Talukdar

Bench : SINGLE BENCH

Advocate : Amal Baran Chatterjee, Narayan Chandra Mondal, Sankar Sarkar, Anita Khetri, Himadri Barua, Biswasjit Das, ?Anjusri Mukherjee, Susmita Biswas

Final Decision : Dismissed

Judgement

1. In this writ petition, the petitioner, who worked as a Matron in the School in issue being the Kalinagar High School, P.S.- Sandeshkhali, District- North 24 Parganas (hereinafter referred to for short as the said School), claims her retirement benefits w.e.f. 1st September, 1993. The petitioner claims to have put in 20 years of regular service after her initial appointment on 23rd April, 1972 till the date of her claimed retirement on 31st August, 1993.

2. Mr. Amal Baran Chatterjee, Ld. Senior Counsel appearing for the petitioner submits that the appointment of the petitioner was approved by the District Inspector of Schools (Secondary Education), North 24 Parganas (for short DI (SE) w.e.f. 1st January, 1993. The petitioner regularly worked in the School upto April, 1987 and withdrew her salaries.

3. However, due to mental and physical issues the petitioner had to discontinue her regular service with the School effective from April, 1987 and, the Managing Committee (for short MC) of the School sanctioned leave in her favour for 6 months vide its resolution dated 2nd April, 1987. According to the writ petitioner, on 20th August, 1987 she applied for leave without salary for the period between 1st October, 1987 to 20th February, 1989. The leave without pay was sanctioned

by the MC of the School vide its resolution dated 26th August, 1987.

4. The petitioner claims to have applied for pension-cum-gratuity and, towards such application the pay scale of the petitioner was fixed by the School on 15th August, 1990 and approved by the DI (SE) on 3rd August, 1991. Thereafter, the petitioner claims to have retired from service w.e.f. 31st August, 1993.

5. Mr. Chatterjee further submits that not having received her retirement benefits the petitioner filed a representation before the DI (SE) on 18th April, 2013 and, such representation having remained unanswered, the petitioner filed a writ petition being WP 13628(W) of 2013.

6. By the order dated 11th March, 2014 an Hon'ble Single Bench disposed of WP 13628(W) of 2013 by directing the DI (SE) to decide the representation of the writ petitioner by passing a reasoned order after giving an opportunity of hearing both to the writ petitioner and to the School.

7. Mr. Chatterjee contends that by the reasoned order dated 4th September, 2014 the DI (SE) directed the Headmaster of the School to submit the papers connected to the retirement of the writ petitioner within a prescribed time.

8. The petitioner thereafter, through a further representation, prayed for release of her retirement benefits by treating her service as continuous for a period of 20 years.

9. Appearing on behalf of the School Authority, Mr. Himadri Barua, Ld. Counsel raises some relevant points for consideration. Mr. Barua submits that along with the petitioner's appointment as a Class-IV staff, her son, one Dipak Kumar Dey was also appointed as a Group-D staff of the School w.e.f. 1st January, 1973. The DI (SE) granted approval both to the petitioner and to her son w.e.f. 1st January, 1973.

10. The petitioner worked as a Matron of the School till 14th November, 1986 and thereafter proceeded on medical leave w.e.f. 15th November, 1986 to 31st December, 1986. Mr. Barua points out from the resolutions of the MC, that the medical leave of the petitioner continued from 1st January, 1987 to 31st March, 1987 and thereafter leave without pay was sanctioned in favour of the petitioner from 1st January, 1987 to 28th February, 1989.

11. However, the petitioner resigned from her service with the School and the MC accepted her resignation w.e.f. 1st October, 1987 on the ground that the petitioner is unfit and had remained absent for a long time without any possibility of re-joining her duties.

12. Taking this Court to the daily attendance register of teaching and non-teaching staff of the School, Mr. Barua submits that it is on record that the petitioner last attended the School on 14th November, 1986. From the service book of the writ petitioner, which is annexed to the affidavit-in-opposition to the School, Mr. Barua points out to the self-declaration of the petitioner that her

entire period of service was between 1st January, 1973 to 30th September, 1987, i.e. less than a period of 20 years.

13. The noteworthy feature which has been pleaded on behalf of the School through its affidavit-in-opposition and through a supplementary affidavit, is that it was only after the retirement of her son as a Group-D staff from the service of the same School on 30th April, 2014, did the writ petitioner claim before this Court retirement benefits w.e.f. 1st September, 1993. Mr. Barua points out that simultaneous to the claim of the petitioner for retirement benefits, the School made efforts to trace out the relevant papers and, to its utter shock and surprise, discovered that the resolution book of the MC through which the MC accepted the resignation of the petitioner shows the relevant pages to be torn out and missing. Therefore, the MC came to the suspicion that the papers could have been only removed by the son of the petitioner and accordingly, a First Information Report was lodged with the Officer-in-Charge, Sandeshkhali Police Station.

14. Mr. Barua points out that pursuant to the instructions of the DI (SE) dated 4th September, 2014, the Headmaster of the School submitted the available documents by his letter dated 25th November, 2014.

15. Mr. Barua argues that it is a fact that the petitioner last attended the School on 14th November, 1986 and, did not record her attendance thereafter. It is a further fact that her resignation letter was accepted w.e.f. 1st October, 1987 and steps were taken by the School Authority as well as by the DI (SE) to appoint another Class-IV staff namely, one Bhajahari Sardar in the vacancy left behind by the petitioner, w.e.f. 15th November, 1991. The appointment of Bhajahari Sardar could not have been made except against the permanent vacancy left behind by the petitioner and, in the event the petitioner would have continued in the service of the School, as claimed by her, till 31st August, 1993.

16. Another relevant point raised by Mr. Barua relates to the steps taken by the petitioner to withdraw all her Provident Fund money. Such withdrawal shall appear from the Audit Report as well as the resolution of the MC dated 7th April, 1988. The petitioner however, did not claim any gratuity amount. Therefore, Mr. Barua argues, that the petitioner consciously withdrew her PF dues in 1988 and, is therefore not entitled to claim pension benefits.

17. Arguing on behalf of the State-respondents, Ms. Anjusri Mukherjee with Ms. Susmita Biswas, Ld. State Advocates reiterate the stand taken by the School Authority that the petitioner never retired from her service w.e.f. 1st September, 1993. Ld. State Advocates reiterate that the said Bhajahari Sardar was permanently appointed in place of the petitioner prior to 15th November, 1991 and the resignation letter of the petitioner was accepted by the School w.e.f. 1st October, 1987.

18. Ms. Mukherjee points out that the above facts would be also apparent from the communication of the Headmaster of the School to the DI (SE) dated 23rd

February, 2015 and, the DI (SE) has therefore correctly opined through his reasoned order dated 4th September, 2014 that the petitioner resigned prior to completing 20 years of service. Therefore, the DI (SE) instructed the Headmaster of the School to verify the date of resignation of the petitioner and to submit relevant documents connected to the service of the petitioner.

19. Through the affidavit-in-opposition filed on behalf of the State respondents, the response of the School to the request of the DI (SE) reiterating the above noted facts relating to the resignation of the petitioner have been put on record.

20. Having heard the parties and considering the materials placed, this Court sums up its findings as follows:- A) That it is not a contested position that the petitioner could not continue her service beyond April, 1987. It is not denied on behalf of the petitioner that post April, 1987, the petitioner did not attend to her duties in view of her continuing mental and physical issues.

B) It is also a matter of record that the permanent vacancy left behind by the petitioner was filled up by appointing the said Bhajahari Sardar prior to 15th November, 1981. The said Bhajahari Sardar could not have been appointed and, such appointment confirmed from the records of the School in the event the petitioner was fit to continue in service beyond April, 1987 and, also beyond the period of extraordinary leave without pay granted in her favour till 1989.

C) The petitioner withdrew her PF dues and, in view of withdrawal of such dues, it is apparent that she had knowledge of the fact that her service did not qualify for pension disbursement.

D) In any view of the matter the petitioner did not continue in the regular service of the School beyond 1989 upon expiry of the extraordinary leave without pay granted in her favour by the MC and, therefore was ineligible to receive pension connected to a service which was less than 20 years.

E) It is also on record that from 1993 till 2013, the petitioner did not raise any demand in respect of her pension. A presumption arises with regard to the fact that the petitioner purposefully did not raise her demand for pension during the subsistence of the service of her son, the said Dipak Kumar Dey as a Class-IV staff with the School. It is further evident from the record that the said Dipak Kumar Dey retired from the service of the School in April, 2014 and, only after the retirement of her son the petitioner approached this Court by way of the first writ petition claiming continuity of service and pension.

F) To the mind of this Court it is more than a mere coincidence that the relevant pages of the resolution book of the MC of the School were found torn and missing just contemporaneous to the retirement of the son of the petitioner from the service of the School prompting the petitioner to raise the demand for pension. It is again a relevant issue that the MC of the School lodged a FIR against the said Dipak Kumar Dey. However, understandably with the disappearance of documentary evidence, the FIR closed by filing a FRT (Final

Report as True).

G) This Court therefore finds that both the DI (SE) and the School Authority have concluded correctly that the petitioner, in view of her mental and physical issues, was not in a position to continue beyond April, 1987 and thereafter availing of two long stretches of leave submitted her resignation which was accepted by the MC w.e.f. 1st October, 1987. Contemporaneously steps were taken to fill up the permanent vacancy left behind by the petitioner with the appointment of one Bhajahari Sardar w.e.f. 15th November, 1991.

21. Further in view of the withdrawal of her PF dues, it does stand to reason that the petitioner was not a pension optee and her claim to pension, ventilated through this writ petition can, in the backdrop of the above discussed facts, at the least be described as utterly frivolous.

22. WP 33028(W) of 2014 stands accordingly dismissed.

23. Having regard to the personal condition of the petitioner, although this Court is of the clear view that costs ought to be attached to this frivolous writ petition, this Court restrains itself from awarding costs in the expectation that better legal sense should prevail in future.

24. Urgent certified photocopies of this judgement, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.