
(2018) 07 CAL CK 0121
In the Calcutta High Court
Case No : WP 9854 (W) of 2016

Paresh Chandra Ghosh, Paresh Ghosh APPELLANT
Vs
State of West Bengal & Ors. RESPONDENT

Date of Decision : 18-07-2018

Acts Referred:

West Bengal Primary Education Act, 1973 — Section 5(2)(c), 105, 105(2)(c)
West Bengal Primary Education (Appointment and Punishment of Staff of Primary
School Councils) Rules, 2007 — Rule 21

Citation : (2018) 07 CAL CK 0121

Hon'ble Judges : ARIJIT BANERJEE, J

Bench : Single Bench

Advocate : Partha Sarathi Bhattacharya, Raju Bhattacharjee, Jayak Kumar
Gupta, Supriyo Chattopadhyay, Iti Dutta

Final Decision : Disposed Off

Judgement

Arijit Banerjee, J

(1) The writ petitioner challenges an order dated 11 April, 2016 passed by the Principal Secretary, School Education Department, Government of

West Bengal, whereby the prayer of the petitioner to switch over from the CPF-cum-Gratuity Scheme to the GPF-cum-Pension Scheme has been

turned down.

(2) The petitioner was working as an Upper Division Clerk in the office of the District Primary School Council, Dakshin Dinajpur (in short the said

DPSC).

He retired from service on 31 May, 2017. He had earlier opted for the CPF-cum-Gratuity Scheme. He submitted a revised option on 24 July,

2014 for switching over to the GPF scheme in terms of notification no. 749-SE(L)/

SL/5S-56/73 dated 13 June, 2014 issued by the School Education

Department, Government of West Bengal.Â Â In view of the delay on the part of the authorities to take a decision, the petitioner filed a writ petition

being WP 24710(W) of 2015 in this Court.Â Â Â By an order dated 26 November, 2015 a learned Single Judge disposed of the writ petition by

directing the Secretary, School Education Department to decide the prayer of the petitioner in accordance with law within six weeks from the date of

communication of the order to him.

(3) Pursuant to the said order the Principal Secretary of the School Education Department, Government of West Bengal gave an opportunity of

hearing to the petitioner and passed the order which is under challenge in the present writ application.Â Â Â The Principal Secretary was of the view

that the benefit under the Government notification dated 13 June, 2014 was available only to the teaching and non-teaching staff of recognized Non-

Government Aided Educational Institutions and the petitioner being an employee of the DPSC, he did not come under the purview of the said

Government notification.Â Â Â Accordingly, the petitionerâ??s prayer was rejected.

(4) Essentially the petitioner seeks benefit of the West Bengal recognized Non-Government Educational Institutions Employees (Death-cum-

Retirement Benefit) Scheme, 1981 (in short the said â??DCRB Schemeâ??).Â Â Learned Counsel for the petitioner as well as the State have both

referred to the relevant clauses of the said scheme.Â Â Clause 2 of the said scheme provides that the retirement benefits under the said scheme will be

admissible to all whole-time approved teaching and nonteaching employees of the Non-Government/Sponsored/Aided Institutions as shown in

Statement-I who were in active service on or after 01.04.1981 subject to the conditions mentioned in the said scheme.Â Â Item no. 13 in Statement-I

refers to approved employees of District School Boards.Â Â District School Board has been defined in paragraph 5(c) of the said scheme as

meaning the Board established under the Bengal Rural Primary Education Act, 1930.Â Â The employees of District School Boards are entitled to the

benefit of the DCRB Scheme.

(5) By Sec. 105 of the West Bengal Primary Education Act, 1973, the Bengal Rural Primary Education Act, 1930 was repealed.Â Â Sec. 105 (2)(c)

of the 1973 Act provides that all officers, teachers and other staffs of primary schools employed by the District School Board established for a District and continuing in office or primary schools immediately before such repeal shall be deemed to be employed by the Primary School Council established for the District on such terms and conditions as may be determined by the State Government.

(6) Mr. Bhattacharyya, learned Sr. Counsel appearing for the petitioner drew my attention to a judgment dated 16 July, 2013 delivered by a Special

Bench of this Court in the case of District Inspector of Schools (SE), Calcutta *Anr.-vs.Abhijit Baidya & Ors.* reported in 2013 (3) CLJ (Cal) 178

and in particular my attention was drawn to paragraph 76 of the said judgment which reads as follows:-

“76. We direct the State Government to give opportunity to all the petitioners and other employees similarly situated to submit option to switch over

to Pension-cumGratuity by issuing public notice in at least four newspapers having wide circulation in this State. A Three months time period

be given to them to exercise option and let the amount be specified to each and every employee who elects to switch over to Pension-cumGratuity to

deposit the amount of employer's share of contribution with interest and additional interest which is required to be refunded to the Government

within the period specified.”

(7) The Special Leave Petition filed by the State of West Bengal against the said judgment was dismissed. Subsequently, the Government

notification dated 13 June, 2014 was issued whereby three months time was given to the teaching and non-teaching staff of recognized Non-

Government Aided Educational Institutions whether in service or retired to switch over to the DCRB Scheme.

(8) Mr. Bhattacharyya submitted that the petitioner is entitled to the benefit of the judgment in *Abhijit Baidya's* (supra) case and is entitled under

the Government Notification dated 13 June, 2014 to switch over from the CPF Scheme to the DCRB Scheme. He submitted that the DPSC is a

creature of statute being the West Bengal Primary Education Act, 1973 and the employees of the DCRB are at par with the employees of the

erstwhile District School Boards. This view would be fortified by the fact that Sec. 105 (2) (c) of the 1973 Act mandates that the employees of the

District School Boards shall be deemed to be employees of the District Primary School Councils. Since the employees of the District School Boards

were entitled to the benefit of the DCRB Scheme, the employees of the DPSCs should also be entitled to the same benefit, submitted Mr.

Bhattacharyya. He relied on the three Apex Court decisions in K.I. Shephard & Ors.-vs.-Union of India, AIR 1988 SC 686, Bir Bajrang Kumar-vs.-

State of Bihar, AIR 1987 SC 1345 & Abid Hussain & Ors.-vs.-Union of India, AIR 1987 SC 820 in support of his contention that the benefit of the

ratio of the judgment in Abhijit Baidya's (supra) case should be extended to the petitioner. Mr. Bhattacharyya finally submitted that the

employees of other DPSCs have been granted the benefit of pension and in this connection he referred to pages 68 to 82 of the affidavit in reply filed

by the petitioner. He submitted that in that view of the matter, the petitioner should be permitted to switch over to the DCRB Scheme.

(9) Mr. Chattopadhyay, learned Counsel appearing for the DPSC supported the stand of the petitioner. He referred to a memo dated 18 August,

2014 issued by the Chairman/Secretary of the Dakshin Dinajpur DPSC addressed to the Secretary, Government of West Bengal, School Education

Department which reads as follows:-

In connection with the above I beg to submit herewith the prayers of Sri Paresh Ch. Ghosh, UDC, DPSC (in service) & Sri Subhash Kr. Deb,

retired S.A.E of the DPSC which are self explanatory.

In view of the above it is stated that as per G.O. No. 136Edu(B) Dt.-15/05/1985 the said two employees opted to come under C.P.F. scheme 1981 in

which one Sri Paresh Ch. Ghosh 1st appointed in the office in the year 1984 who had no knowledge about the DCRB-81.

Now, both the staff of the office are willing to switchover to Pension-Cum-Gratuity scheme as per G.O. No. 749 SE Dt. 13/06/2014, but after

observing the G.O. it is not clear to this office that whether the benefit for exercising option will be extended towards council employee or not.

Therefore, considering the matter as above as well as the family of the two applicants I fervently request you please issue order in favour of the

Council employee or accept the prayers as a special case from your good self.

(10) Appearing for the State respondents, Mr. Gupta, learned Counsel submitted that the petitioner was a staff of DPSC and as such was a

Government servant. Hence, he is not covered by the DCRB Scheme which covers only teaching and non-teaching employees of Non-

Government/Sponsored/Aided Institutions as shown in Statement-I of the Scheme. He submitted that there is no infirmity in the order of the

Principal Secretary, School Education Department, which is under challenge in the present writ application.

(11) I have considered the rival contentions of the parties.

(12) It is not in dispute that the petitioner was a whole-time non-teaching employee of the said DPSC as on 1 April, 1981. The benefit of the DCRB

Scheme is available to teaching and non-teaching employees of the non-Government/Sponsored/Aided Institutions as shown in Statement-I.

Statement-I at the end of the said scheme reads as follows:-

1. Approved teaching and non-teaching staff of Junior Technical Schools (Sponsored and Non-Sponsored)

2. Approved teaching and non-teaching staff of Training Institutions for Primary teachers (including Government Sponsored Junior Basic Training Institutions).

3. Approved teaching and non-teaching staff of Aided Primary Schools and Primary Schools under the District School Boards, but excluding dearness allowance getting Schools.

4. Approved teaching and non-teaching staff of non-Government Aided/Sponsored Secondary Schools (High and Higher Secondary) but excluding dearness allowance getting Schools.

5. Approved employees on non-Government Libraries (Sponsored/Aided).

6. Approved teaching and non-teaching staff of School Mother Training Centres.

7. Approved Teaching and non-teaching staff of Government Sponsored Free Primary Schools, Junior Basic Schools, Pre-Basic Schools, Pre-Primary

Schools, Nursery Schools and primary including Junior Basic Schools appointed in Municipalities under the Scheme of Free and Compulsory

Primary Education Act, 1963.

8. Approved teaching and non-teaching staff of Junior High Schools including erstwhile Senior Basic Schools.

9. Approved staff of the Institutions for the handicapped (Sponsored and non-Sponsored).

10. Approved teaching and non-teaching staff of Tols and Madrasah (Senior, High and Junior High).

11. Approved staff of the Audio-Visual units and Community Centres.

12. Approved staff of the Voluntary Organizations under Social Education as shown in the statement attached to Government Order No. 519-Edn.

(SE) dated the 23rd August, 1983.

13. Approved employees of District School Boards.

14. Approved teaching and non-teaching staff of Sponsored Polytechnics.

15. Approved staff of the taken-over Polytechnics including Regional Institute of Printing Technology who have not been absorbed as Government

employees. N.B. The staff of different non-Government educational institutions who receive fixed pay or only dearness allowance as sanctioned by

Government from time to time, will not be covered by this Scheme.â??

(13) Although DPSC was introduced by the West Bengal Primary Education Act, 1973, Statement-I to the DCRB Scheme did not include the DPSCs

as institutions whose employees would be entitled to the benefit of the said Scheme.â? Statement-I, however, mentions District School Boards.â? Sec.

5(2)(c) of the West Bengal Primary Education Act, 1973 provides that all staffs of primary schools employed by a District School Board and

continuing in employment immediately before repeal of the Bengal Rural Primary Education Act, 1930 shall be deemed to be employed by the Primary

School Council established for that District.â? This deeming provision, however, does not have the effect of making the employees of the DPSCs

eligible for the benefit of the DCRB Scheme.

(14) I was casually discussing the facts of this case with my learned brother Judge, the Honâ??ble Justice Tapabrata Chakraborty.â?â? His

Lordship very kindly drew my attention to a notification bearing No. 253-SE(Pry) dated 14 March, 2007 issued by the Primary Branch, School

Education Department, Government of West Bengal.â? His Lordship also drew my attention to a memorandum bearing No. 75-SE(B)/IM-4/2009

dated 19 May, 2009 issued by the Law Branch, School Education Department, Government of West Bengal.

(15) By the notification of 2007 referred to above, the West Bengal Primary Education (Appointment and Punishment of Staff of Primary School

Councils) Rules, 2007 were brought into force.Â Rule 21 of the said Rules which pertain to the pension and retiral benefits of the members of the staff of Primary School Councils reads as follows:-

â??21. Pension and retiring benefits._The pension and retiring benefits in respect of the members of the staff of the Primary School Council shall be governed by the West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 as subsequently amended.â??

(16) In view of the aforesaid, there is no scope for any doubt that the employees of the District Primary School Councils would be entitled to the benefit of the DCRB Scheme, 1981.

(17) This view is fortified by the 2009 memorandum referred to above.Â The said memorandum lays down the additional relief to be paid to the West Bengal Non-GovernmentÂ Aided Â EducationalÂ InstitutionsÂ pensioners/familyÂ pensioners.

Annexure I to the said memorandum specifically mentions employees of District Primary School Councils.

(18) It is also pertinent to note that the members of the staff of other DPSCs have been granted the benefit of the DCRB Scheme as would appear from the documents annexed at pages 68-82 of the affidavit-in-reply filed by the writ petitioner.Â Â Â Hence, denying such benefit to the writ petitioner who was admittedly an employee of the Dakshin Dinajpur District Primary School Council would be violative of Art. 14 of the Constitution of India.

(19) In view of the aforesaid, this writ petition succeeds.Â The impugned order dated 11 April, 2016 passed by the Principal Secretary, School Education Department, Government of West Bengal is set aside.Â The respondent authorities are directed to extend the benefit of the DCRB Scheme, 1981 to the writ petitioner from the applicable date.Â Considering the fact that the writ petitioner retired from service on 31 May, 2017 i.e.

more than one year ago, the respondent authorities are directed to complete all necessary formalities within a period of eight weeks from date so that

the writ petitioner starts receiving pension at an early date.Â Needless to say that the writ petitioner shall cooperate with the respondent authorities

for completing all requisite formalities as and when called upon to do so.

(20) I must express my deep gratitude to my learned brother Judge, the Honâ??ble Justice Tapabrata Chakraborty, for drawing my attention to the

aforesaid notification and memorandum neither of which was placed before me by the parties nor was I aware of them otherwise.

(21) WP No. 9854 (W) of 2016 is accordingly disposed of, without however, any order as to costs.

(22) Urgent certified photocopy of this judgment and order, if applied for, begiven to the parties upon compliance of necessary formalities.