
(2001) 11 CAL CK 0011
In the Calcutta High Court
Case No : C.O. No. 3629 (W) of 1993

Rabindra Nath Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Recruitment and Leave of Teachers of Primary Schools of West Bengal Rules, 1991 — Rule 14, 2

Citation : (2002) 1 CALLT 536

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Ashok Kumar Ganguly, for the Appellant; A.P. Sircar, Subir Sanyal and S. Das, for the Respondent

Judgement

A. Lala, J.—In this writ petition, the petitioner in effect, asked for an order upon two respondent authorities to absorb him by Issuing appointment letter forthwith pursuant to G.O. No. 130(60) L.W. dated 25th January, 1978 along with other Incidental prayers. Service of the petitioner's father was extended by the Chairman, Adhoc Committee, Birbhum District, Primary School Council under memorandum No. 480(28) dated 19th March, 1992, The petitioner was interviewed under the letter of such authority dated 21st March, 1992. According to the petitioner, his father made several representations before the concerned authority under G.O. of the Labour Department No. 196(60) EMP dated 19th June. 1978 for his Illness. However, ultimately, his father died before his retirement. Although the date of the superannuation of his father was 13th October, 1991 but he was bed-ridden on and from October, 1991 and considering his representation the Interview, as aforesaid, was held. Therefore, he was entitled for absorption in the service.

2. The petitioner further contended that the petitioner's case is supported by an unreported Judgment of this Court in C.O. No. 9628(W) of 1993 (Subrata Sekhar Samanta v. State of West Bengal and Ors.) wherein the service of the petitioner

therein on compassionate ground was refused because his father died in harness within the extended period of service since the father of the Incumbent submitted his option and received salary in terms of ROPA-1990. However, upon acceptance of undertaking to refused the excess amount the petitioner's service was directed to be regularised. In any event the present case was not covered by ROPA-1990 but by ROPA-1981 as available from the annexure "A" to the writ petition. From circular No. 372-Edn. (B) dated 31st July, 1981 it appears that those who were in service on 31st July, 1981 will have the option either to retain their existing scale of pay and existing terms and conditions of service or to come under the revised scale of pay to come with revised terms and conditions of service as may be determined by the State Government. The option will have to be exercised within 90 days from the date of Issue of this order and they may come under the revised scales and revised terms and conditions of service of this order not later than April, 1982. The teachers in all governmental aided educational Institutions opting for the revised scale of pay shall retire at 60 years provided that who were above 54 years but below 57 years of age on April, 1981 shall retire on completion of 62 years of age or on 31st March, 1989 whichever is earlier and for such teachers who were above 57 years of age on 1st April, 1981 retirement will be on completion of 65 years or on 31st March, 1987 whichever is earlier. Under memorandum No. 768-Edn. (P) dated 22nd November, 1991 recruitment and leave rules of teachers in Primary Schools of West Bengal was given effect and duly published in Calcutta Gazette on 25th November, 1981. Under 2(P) of such rule "superannuation" means superannuation of a primary school teacher on completion of 60 years of his age. Rule 14 says that the council may appoint primary teachers with the approval of the Director on compassionate ground on certain conditions which are given therein. The conditions under Rule 14 are that the teacher dies in harness before the date of his superannuation leaving a family which, in the opinion of the council, shall be in extreme economic hardship etc. and other is a teacher who is declared permanently incapacitated and prematurely retired about 2 years before his age of superannuation and the family is in extreme economic hardship etc. In such cases, a compassionate consideration can be made and an Incumbent may be appointed on such ground. In any event, as per such rule the age of superannuation is 60 years and there is no scope of extension of service so that the case of the Incumbent can be considered accordingly.

3. It appears from the affidavit of the respondent's council that in terms of Government order No. 33-Edn. (B) dated 7th March, 1990 the father of the petitioner exercised his option for coming into revised scale of pay with protest Accordingly, prayer of the teacher concerned for extension of service, in terms of the Government order No. 323-Edn. (P) dated 3rd September, 1990 was granted by the council upto 31st August, 1991, After the expiry of the extension period of service, the teacher concerned worked upto 12th December. 1991 without any approval from the appropriate authority and accordingly, such period of service was not duly accorded by the council. The teacher concerned died on 13th

December, 1991 after superannuation from service on attaining the age of 60 years with effect from 30th September, 1990. Although the interview was taken and the name of the petitioner was forwarded to the concerned Director of School Education under memorandum dated 17th December, 1992 being annexure "A" to the writ petition, approval of appointment of the petitioner was not considered since the teacher died after completion of 60 years of age and opted for ROPA-1990 with protest.

4. In reply thereto, the petitioner contended that the service of the writ petitioner was extended from 1st September, 1991 to 13th December, 1991 by the memorandum No. 480(28) dated 19th March, 1992 Issued by the then Chairman, Adhoc Committee District Primary School Council. So, it is not a fact that his father since deceased superannuated from service on and from 30th September, 1990. On the ground of acceptance of ROPA-1990 it cannot held to be carried as available from annexure "A" to the writ petition whereunder scale of pay was as per ROPA -1981, Therefore, the factual dispute unless come forward with a reason of refusal based on the real factual matrix one can neither be thrown out nor be allowed to get a positive order. It is not a case of consideration of compassionate appointment any more because the consideration has already been made and remedy was exhausted by way of interview and selection. Therefore, it can also be said that the matter is hardly to the extent for sympathetic consideration but refusal of right accrued by way of selection when others were given appointment in the similarly placed situation.

5. Therefore, I dispose of the writ petition with a direction upon the Director of School Education to give a fresh hearing to the incumbent to come to a definite conclusion with reasons based on materials on record in this respect. If an affirmative order is being passed in favour of the petitioner, age bar, if any, will be condoned under the effect of the order of this Court since he was positively within the age on the date of interview for which his name was forwarded by the council to the Director of School Education after holding an interview and verifying the particulars in support of the eligibility candidature of the candidate.

6. Thus, the matter is disposed of with such direction as aforesaid to be completed within a period of 2 months from the date of communication of this order upon giving fullest opportunity of hearing and by passing a reasoned order thereon. For the purpose of effective adjudication necessary papers in connection with the writ petition and affidavits will be placed before the authority and will be treated as part and parcel of the representation.

However, no order will be passed as to costs.

Let an urgent xeroxed certified copy of this Judgment if applied for, be given to the learned advocates for the parties within 2 weeks from the date of putting the requisites.