
(2019) 08 CAL CK 0265
In the Calcutta High Court
Case No : Writ Petitions (WP) No. 393 Of 2019

Sourendra Mukhopadhyay	Vs	APPELLANT
State Of West Bengal & Ors		RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0265

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Anjan Bhattacharya, Anita Shaw, Arka Kr. Nag

Final Decision : Disposed Of

Judgement

Tapabrata Chakraborty, J

The present writ petition has been preferred challenging inter alia an order dated 2nd July, 2019 passed by the Principal Secretary, Government of West Bengal, School Education Department.

Mr. Bhattacharya, learned advocate appearing for the petitioner, submits that the petitioner was appointed to the post of an assistant teacher in Barighati Primary School on 26th May, 2006. His date of birth is 8th January, 1956 and accordingly, he retired on 31st January, 2016 upon rendering service for a period of 9 years 8 months and 5 days. As the qualifying service rendered by the petitioner was less than 10 years, the authorities did not take any step towards disbursement of pensionary benefits in his favour. The petitioner submitted a representation praying for condonation of such deficiency of 3 months 25 days in qualifying service but the same was not considered. Aggrieved thereby, the petitioner preferred a writ petition being W.P. No. 21286(W) of 2017 and the same was disposed of by an order dated 8th January, 2018 directing the respondent no.3 to consider the petitioner's claim. Pursuant to the said order, the said respondent no.3 passed an order on 2nd April, 2018. Aggrieved by the said order, the petitioner again approached this Court by a writ petition being W.P. No. 5308(W)

of 2019. The said writ petition was allowed by an order dated 16th April, 2019 setting aside the order passed by the respondent no.3 and directing the petitioner to submit a comprehensive representation to the Secretary, School Education Department for consideration. Pursuant to the said order, the petitioner submitted a representation and the Principal Secretary, School Education Department considered and passed an order dated 2nd July, 2019.

Drawing attention of this Court to the order impugned dated 2nd July, 2019, Mr. Bhattacharya submits that there is an apparent contradiction in the impugned order. Upon observing that no relief can be granted to the petitioner, the Principal Secretary has sent the matter to the Finance Department for sympathetic consideration and concurrence so that the petitioner may get pension.

He further submits that the West Bengal Recognized Non-Government Educational Institution Employees (Death-Cum-Retirement Benefit) Scheme, 1981 (hereinafter referred to as the said scheme) confers jurisdiction upon the Secretary to condone a deficiency to the extent of six months in qualifying service of an employee. The scheme is a beneficial one and the benefits pertaining to the said scheme cannot be denied mechanically. In support of such contention reliance has been placed upon judgments delivered in the cases of Kartick Chandra Das v. State of West Bengal & Ors. reported in 2014(2) CLJ (Cal) 498 and Subhas Chandra Chakraborty v. State of West Bengal reported in 2013(1) CHN (Cal) 438 and in the case of Sudhir Kumar Mallick v. State of West Bengal & Ors. (W.P. No. 1241(W) of 2015).

Per contra, Mr. Nag, appearing for the state respondents submits that the order passed by the Principal Secretary is a reasoned one and the same does not suffer from any infirmity warranting interference of this Court.

Heard the learned advocates appearing for the respective parties and considered the materials on record. As the facts are not in dispute, no affidavit has been called for.

In Chapter-III of the said scheme there is a specific provision that a deficiency of less than 6 months can be condoned by the Secretary of the concerned department. No relief has been granted to the petitioner placing reliance upon the note appended to clause 7(e)(iv) of the said scheme. The said issue is no longer res integra. In similar matters the authorities denied condonation of such deficiency placing reliance upon the note appended to clause 7(e)(iv) of the said scheme. The said issue was considered by this Court and it was held that two different yardsticks cannot be applied for the purpose of calculation of length of qualifying service under clause 7(e)(iii) and clause 7(e)(iv) and that the benefits under the scheme cannot be scuttled by limiting the period of condonation inasmuch as such restriction would lead to discrimination.

In view thereof, question of relegation of the issue to the Finance Department for further consideration does not occasion. Once the Court holds that the petitioner is entitled to the benefit, the Court can itself grant the same and need not direct

the petitioner to move the Government for reconsideration. [See the judgment delivered in the case of Government of India & Ors. versus B. Anil Kumar & Ors. reported in 2010 (4) Supreme 77].

Accordingly, the impugned order dated 2nd July, 2019 passed by the Principal Secretary, School Education Department is set aside and the respondents are directed to condone the deficiency in qualifying service rendered by the petitioner and to disburse the consequential benefits in favour of the petitioner within a period of six weeks from the date of communication of this order.

The writ petition is, accordingly, disposed of.