
(2011) 05 CAL CK 0087

In the Calcutta High Court

Case No : M.A.T. No. 1461 of 2010 and C.A.N. No. 1352 of 2011

Sri Ram Briksha Singh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

General Clauses Act, 1897 — Section 3(23)

Citation : (2011) 3 CALLT 32

Hon'ble Judges : Shukla Kabir (Sinha), J; Amit Talukdar, J

Bench : Division Bench

Advocate : Partha Sarathi Bhattacharya, for the Appellant; Kanailal Samanta and Ms. Nabanita Pal, for the Respondent

Judgement

Shukla Kabir (Sinha), J.—This appeal has been filed against the Judgment dated 17th February 2010, passed by the Hon'ble Justice Jayanta Biswas in WP No. 3526 (w) of 2008 where the writ petition filed by this appellant was dismissed.

2. The appellant was appointed as Assistant Teacher of Gandhi Vidyalaya Primary School on 1st September 1968. He continued to work there as Headmaster up to 12.12.1984 but upon an advertisement published in the local newspaper, he submitted an application for the post of non language teacher in Ichapur Rifle Factory High School and on 13.12.1984 he joined as non language teacher at Ichapur Rifle factory High School and work there till 31.10.1995. This school is recognized by the West Bengal Board of Secondary Education though the said school is funded and managed by the Ministry of Defense, Government of India. After 31.10.1995, the appellant joined Raghmal Arya Vidyalaya, a Government Aided school on 1.11.1995 as Headmaster and he retired on 30.11.2001. In all these three schools his appointment had been approved. After retirement he submitted a representation dated 16.9.2002 requesting the Director of School Education, West Bengal to count his past service including his service in Ichapur Rifle Factory High School for determining the length of his service for pension under the provision of the West Bengal Recognized Non-Government Educational

Institution Employees (Death-cum-Retirement) Benefit Scheme 1981. After receiving the representation the Principal Secretary, School Education Department gave his decision on 27.10.2005 in which he quoted that after considering all relevant aspect, the School Education Department regrets its inability to consider the admissibility of pensionary benefit in favour of Sri Singh for the period from 1.9.1968 to 31.10.1995. According to him Sri Singh was only entitled to have gratuity for his service period from 1.11.1995 to 10.11.2001, that being less than 10 years. The service rendered in Gandhi Primary School and Raghmal Arya Vidyalaya from 1.9.1968 to 12.12.1984 and from 1.11.1995 to 30.11.2001 could not be considered as continuous service qualifying for consideration of admissible benefits. That the Government on the above basis of the decision issued, the impugned decision dated 15.2.2007 though it had been stated by the petitioner that his service in Ichapur Rifle Factory High School from 13.12.1984 to 30.10.1995 should have been considered by the Government as continuous service. In the letter dated 15.2.2007 issued by the Joint Secretary, the Government of West Bengal, agreed to count the service rendered by Sri Singh under Gandhi Vidyalaya from September 1979 to December 1984. Though it has been wrongly stated that Sri Singh had joined Gandhi Vidyalaya in September 1979 when he actually joined on 1st September 1968 and not September 1979. It was also stated that his service period in Ichapur Rifle Factory High School was treated as "dies none". The appellant therefore filed a writ petition being WP No. 3528 (w) of 2008 challenging the aforesaid decisions of the Respondent Authorities and matter upon being heard by the Hon'ble Trial Judge was dismissed as his Lordship had come to a decision that the Ichapur Rifle Factory High School where the writ petitioner had worked from 13.12.1984 to 30.10.1995 was not an educational institute and therefore the Government was not wrong in saying that the said period could not be counted as qualifying service for pension. This decision of the Hon'ble Trial Court is not actually correct as the Ichapur Rifle Factory High School was actually an educational institute under the West Bengal Board of Secondary Education though only the financial aspect of the said school was under the control of the Ministry of Defense, Government of India. In section 3(23) of the General Clauses Act 1897, the definition of the word Government is as follows "Government shall include both Central Government and any State Government". Therefore it is clear that the appellant had been in continuous service from September 1968 till his retirement on 30.11.2001. Therefore he had worked for 33 years and so he is entitled to receive pension from September 1968 and not from 1.11.1995 as wrongly placed by the Principal Secretary to the Government of West Bengal as stated in the letter dated 27 October 2005. The letter dated 15.2.2007 issued by the Joint Secretary to the Government of West Bengal was also illegal, arbitrary and unreasonable as the service period in Ichapur Rifle Factory High School in so far as the appellant is concerned will be treated as "dies non". The meaning of "dies none" has been placed by Partha Sarathi Bhattacharya the learned Advocate for the appellant as follows "A day which is regarded by the law as one on which no judicial Act can be performed or legal diligence used". But the Learned Trial Court

failed to consider that the said letter dated 15.2.2007 indicating that the service rendered in Ichapur Rifle Factory High School would not be taken into consideration for computation of pensionary benefit, was illegal and arbitrary and the said letter should have been quashed by the learned Trial Court.

3. Sri Parthasarathi Bhattacharya has also produced some cases one of it being Sudhansumoy Majumdar Vs. The State of West Bengal, in which it would be found that in the said judgment it had been observed that the meaning of the word Government is not restricted to Government of West Bengal in so far as the Death-cum-Retirement Benefit Scheme 1981 is concerned. He has also produced The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., , Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, wherein it would be found that when statutory functionary makes order based on certain grounds, its validity must be judged by the reason so mentioned and can not be supplemented by fresh reasons in the shape of affidavit or otherwise, an order bad in the beginning may, by the time its come to Court on account of a challenge, get validated by additional grounds later brought out. At any event, the Judgment of the Trial Court not being correct is liable to be quashed and set aside. The letters dated 15.2.2007 and 27.10.2005 sent by the Respondent Authorities are also to be quashed and set aside. Therefore, the Appeal is being allowed and direction is being given to grant pension to the petitioner from the date he has resigned as Headmaster of Raghmal Arya Vidyalaya along with interest of 10% for his continuous service since 1968 till his retirement in 2001. The Appeal is being disposed of. Urgent Xerox copy if applied for is given to the parties expeditiously.

Amit Talukdar, J.

4. I agree.