
(2012) 08 CAL CK 0003
In the Calcutta High Court
Case No : F.M.A. No. 442 of 2012

Subhas Chandra Chakraborty

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Citation : (2013) 1 CHN 438

Hon'ble Judges : Tarun Kumar Das, J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : Amal Baran Chatterjee, Narayan Ch. Mondal, Anita Khattri, Sipra Maity and Sankar Sarkar, for the Appellant; Sambhunath De for Respondent No. 4 and Rabindra Narayan Dutta for State, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal has been preferred challenging the order dated 6th March, 2004 passed by a learned Judge of this Court whereby and whereunder the said learned Judge dismissed the writ petition on merits without granting any relief to the appellant-petitioner herein. The appellant-petitioner herein is aggrieved since the pensionary benefits of the said appellant-petitioner were denied for non-fulfillment of minimum qualifying service.

2. It is not in dispute that the appellant-petitioner herein was required to complete 10 years of qualifying service on the date of superannuation for the purpose of enjoying the pensionary benefits. In the present case, said appellant-petitioner completed only 9 years 11 months 17 days of service on the date of superannuation and thus, there is a clear deficiency of 13 days service to complete the prescribed period of 10 years qualifying service in order to be eligible for enjoying the pensionary benefits in accordance with law.

3. Mr. Chatterjee, learned Counsel representing the appellant-petitioner submits that the appellant-petitioner was duly empanelled for appointment to the post of Primary School Teacher but the authority concerned did not issue appointment

letter in time in favour of the said appellant-petitioner as a result whereof, the appellant-petitioner could not join the service earlier in spite of being empanelled as a successful candidate. Mr. Chatterjee further submits that the appellant-petitioner was appointed by the authority concerned on 14th May, 1987 pursuant to the specific order passed by this Court in the writ petition filed by the appellant-petitioner herein.

4. It is the specific case of the appellant-petitioner that the respondent authorities wrongfully and illegally denied appointment to the said appellant-petitioner in time and due to the intervention of the Court, ultimately, the appellant-petitioner herein was able to join the service on 14th May, 1987.

5. Mr. Chatterjee submits that the appellant-petitioner could not complete the prescribed period of 10 years qualifying service before attaining the age of superannuation due to the laches and/or lapses on the part of the respondent authorities. Mr. Chatterjee also submits that the aforesaid 13 days delay should not be a bar to deny pensionary benefits to the appellant-petitioner specially when there is a clear provision in the West Bengal Recognised Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 for condoning the deficiency upto six months in the qualifying service of the employees of non-government/sponsored/aided educational institutions.

6. Clause 7(e)(iv) of the aforesaid Scheme of 1981 is set out hereunder:

Cl. 7(e)(iv). Upon any condition which it may think fit to impose, Government may condone a deficiency of six months in the qualifying service of the employees of non-Government/Sponsored/Aided Educational Institutions/Organisations.

7. Furthermore, from the records we find that pursuant to the earlier order passed by a learned Judge of this Court, Director of School Education, West Bengal considered the aforesaid aspect and referred the matter to the School Education Department for condoning the aforesaid deficiency of 13 days in the qualifying service of the appellant-petitioner. The relevant extracts from the order dated 10th April, 2002 passed by the Director of School Education, West Bengal are set out hereunder:

After careful consideration of the all aspects of the matter it is decided to send the case to the School Edn. Deptt. to condone the said deficiency of 13 days in the qualifying service as per Para 7e(iv) of G.O. No. 136-Edn (B) dt. 15.5.85. The matter is thus disposed of. All concerned be informed accordingly.

Sd/- Director of School Education West Bengal

No. 149/1(5) LC

Date: 10/4/2002

8. The Assistant Secretary, School Education Department, Government of West Bengal thereafter, by the written communication dated 29th May, 2003 informed

the appellant-petitioner regarding inability of the State Government to condone the aforesaid deficiency in the minimum qualifying service of the said appellant-petitioner. The aforesaid written communication of the Assistant Secretary, School Education Department dated 29th May, 2003 is set out hereunder

Government of West Bengal School Education Department Law Branch Bikash Bhavan, Salt Lake, Kolkata-91

No. 331-SE(Law)/PL/5S-116/02 the

29th May, 2003

From: Shri S.K. Ghosh Assistant Secretary to the Govt. of West Bengal

To: Shri Subhas Chakraborty Kaccharipara, P.O. Basirhat, Chakraborty Bhavan, Dt. 24-Pgs (N)

Sub: A.S.T. No. 1413 (W) of 1999 W.P. No. 10506 (W) of 1999

Subhas Chakraborty vs. Govt. of West Bengal & Ors.

(Condonation of deficiency in qualifying service for pensionary benefit)

Sir,

With reference to your letter dated 02.09.2002 on the above noted subject, I am directed to inform you that the Government of West Bengal regrets its inability to condone the deficiency in minimum qualifying service to make you eligible for pension, as this will lead to reopen several hundred cases which have been turned down earlier, which are no less deserving than yours.

Yours faithfully, Sd/- (Assistant Secretary)

9. Going through the aforesaid written communication of the Assistant Secretary, School Education Department dated 29th May, 2003, we find that the Government of West Bengal refused to condone the deficiency in minimum qualifying service of the appellant-petitioner in order to make the said appellant-petitioner eligible for pension on the ground that the same will lead to reopen several hundreds of cases which have been turned down earlier.

10. The learned Advocate representing the State-respondents, however, submits that the State Government has rejected the claim of the appellant-petitioner on appropriate grounds and the appellant-petitioner herein is not entitled to enjoy pensionary benefits due to the aforesaid deficiency in minimum qualifying service. The learned Advocate of the State-respondents further submits that the Government has taken appropriate decision in respect of the appellant-petitioner strictly in accordance with law and following the specific provisions of the Scheme of 1981.

11. The learned Advocate representing the North 24-Parganas District Primary School Council adopted the arguments advanced on behalf of the State of West

Bengal.

12. We are, however, not at all impressed by the aforesaid arguments advanced on behalf of the respondent authorities herein.

13. Undisputedly, the Government of West Bengal refused to condone only 13 days deficiency in minimum qualifying service of the appellant-petitioner in order to make the said appellant-petitioner eligible for pension only on the ground that the same will reopen several hundreds of cases which have been turned down earlier.

14. We are unable to appreciate the reasons furnished by the Government of West Bengal to deny the claim of the appellant-petitioner herein for condonation of deficiency in qualifying service for pensionary benefits.

15. When an authority is empowered to take any decision under the scheme or statute for the benefit of an employee, then the said authority cannot refuse to take such decision only on the ground that the same will open the floodgate of litigation.

16. The Hon''ble Supreme Court has repeatedly held that possibility of floodgate litigation cannot be a valid ground to deprive a valuable right of a citizen. In the case of Coal India Ltd. and Others Vs. Saroj Kumar Mishra, , Hon''ble Supreme Court observed:

23. The floodgate argument also does not appeal to us. The same appears to be an argument of desperation. Only because, there is a possibility of floodgate litigation, a valuable right of a citizen cannot be permitted to be taken away. This Court is bound to determine the respective rights of the parties.

17. The specific provision engrafted in the Scheme of 1981 authorises the State Government to condone the deficiency in qualifying service upto six months in respect of an employee in order to enable the said employee to enjoy pensionary benefits.

18. In the present case, the appellant-petitioner could not join the service earlier due to the laches and/or lapses on the part of the respondent authorities in spite of being empanelled as a successful candidate. Ultimately, due to the intervention of this Court, said appellant-petitioner could join the service at a belated stage as a result whereof, there was only 13 days deficiency in qualifying service of the appellant-petitioner herein which should have been condoned by the State of West Bengal upon exercising power under Clause 7(e)(iv) of the Scheme of 1981.

19. The reason furnished by the Government of West Bengal while rejecting the prayer for condoning the deficiency in qualifying service of the appellant-petitioner cannot be held to be valid and proper ground as the authorities concerned are under an obligation and duty bound to exercise the power under the Scheme of 1981 for condoning the deficiency in the qualifying service of an

employee upto a period of six months in appropriate case and cannot refuse to exercise such power apprehending a possibility of floodgate litigation. In the present case, there was no valid ground for refusing to condone the deficiency of 13 days in minimum qualifying service of the said appellant-petitioner in order to make him eligible for enjoying the pensionary benefits.

20. The learned Single Judge, in our opinion, has committed an error by approving the erroneous and illegal decision of the State Government which was communicated to the appellant-petitioner by the written communication dated 29th May, 2003.

21. For the aforementioned reasons, the order passed by the Government of West Bengal and communicated to the appellant-petitioner by the Assistant Secretary, School Education Department by the written communication dated 29th May, 2003 cannot be sustained and the same is accordingly, quashed.

22. The Secretary, School Education Department, Government of West Bengal is directed to exercise authority in terms of Clause 7(e)(iv) of the Scheme of 1981 by condoning the deficiency in qualifying service of the appellant-petitioner in order to enable the said appellant-petitioner to enjoy pensionary benefits at an early date.

23. Since a considerable time has already lapsed, we direct the Secretary, School Education Department to pass appropriate order condoning the deficiency in qualifying service of the appellant-petitioner herein within a period of two weeks from the date of communication of this order positively. The respondents are also directed to take immediate appropriate steps thereafter so that the admissible pensionary benefits of the appellant-petitioner are disbursed within a period of four weeks from the date of condonation of the deficiency in qualifying service of the appellant by the Secretary, School Education Department in terms of this order.

24. With the aforesaid observations and directions, we allow this appeal after setting aside the impugned order under appeal passed by the learned Single Judge.

25. In the facts of the present case, there will be no order as to costs. Let urgent xerox certified copy of this order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Tarun Kumar Das, J.

I agree.