

(2008) 08 CAL CK 0040
In the Calcutta High Court
Case No : Writ Petition No. 5608 (W) of 2006

Sudhansumoy Majumdar

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Citation : (2008) 3 CALLT 481 : (2008) 4 CHN 341

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : P.S. Bhattacharya and Sudip Sarkar, for the Appellant; Bhudeb Bhattacharya, for the Respondent

Judgement

Indira Banerjee, J.—In this writ application, the petitioner has prayed for orders on the respondents, to count the period of service rendered by the petitioner with Indian Railways, that is, the period from 6th May, 1955 to 1st May, 1964 towards the period of total service rendered, for computation of pension.

2. The petitioner was appointed Assistant Teacher of Channdannagore Institute, hereinafter referred to as the Institute on 2nd September, 1964.

3. In the writ petition it is stated that the petitioner joined the Institute after obtaining permission from his earlier Employer, that is, the Indian Railways (Eastern Railway), Howrah Division.

4. The petitioner retired from service of the School on 28th February, 2005. The pension payable to teachers of recognized non government Schools aided by the Government of West Bengal is governed by the West Bengal Recognized Non government Educational Institution Employees' (Death-cum-retirement) Benefit Scheme, 1981. The 1981 Scheme provides that service rendered by an employee under Government, if any, would count towards pension. The scheme clarifies that service in an Institution prior to its recognition cannot be counted for pension.

5. On behalf of the respondent authorities, Mr. Bhudeb Bhattacharya has argued, that only service under the government of West Bengal could count towards total service for the purpose of pension.

6. In the Scheme State Government has been defined to mean the Government of West Bengal. Government has, however, not been defined in the Scheme.

7. Mr. P.S. Bhattacharya, learned Counsel appearing for the petitioner, referred to the definition of Government in the General Clauses Act, 1887. Government has been defined to include the Central Government and any State Government. However, Government has not been defined in the Bengal General Clauses Act, 1899 which applies to the State laws.

8. Notwithstanding the fact that in paragraph 5(L) of the 1981 Scheme State Government has specifically been defined, the word "government" has been used in Paragraph 6 of the 1981 Scheme.

9. The use of the word government in paragraph 6, but the words "State Government" in paragraph 5 (L) and 5 (b) makes it clear that a restricted meaning "Government" to mean only the Government of West Bengal, was not intended, for the purpose of counting of qualifying service and /or total service for the purpose of pension. In other wards, service under the Government of India was not intended to be excluded, as otherwise the expression "State Government" would have been used in paragraph 6 as well.

10. It is a well settled principle interpretation that when two different expressions are used in different parts of a statute, it may ordinarily be presumed that different meanings were intended. This principle would also apply to statutory rules and regulations having the force of law.

11. The use of the word Government in paragraph 6 makes it clear that service with any Government including the Central Government is to count towards total service and/or qualifying service for computation of pension.

12. In the affidavit-in-opposition affirmed on behalf of the respondent authority's objection has been taken on the ground of the petitioner not having obtained approval from his erstwhile Employer before joining service with the Institution. The appointment of the petitioner has never been questioned. The Railway Authorities have also not at any point of time raised any objection with regard to the resignation of the petitioner from the Indian Railways and his appointment to the Institution. Failure, if any, to submit the requisite no objection cannot be a ground to deny the petitioner the benefit of pension for the period during which he rendered service under the Indian Railways, if the petitioner is otherwise entitled to the same.

13. The communication dated 13th March, 2006 being annexure S-I to the supplementary affidavit affirmed on behalf of the petitioner is patently misconceived and no further effect can be given thereto.

14. The writ application, thus, succeeds. The respondents are directed to compute pension of the petitioner by counting his past service under the Central Government (Indian Railways) subject to production of proof of service under the Central Government. The pension shall be computed and released at an early date, preferably within eight weeks from the date of communication of this order.

15. Xerox certified copy of this order, if applied for, be supplied to the advocates appearing for the parties, subject to compliance of requisite formalities.