
(2019) 08 CAL CK 0209

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 5895 (W) Of 2019

Tapan Jyoti Halder

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0209

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : T.K. Das, Arka Bhattacharya, Supriyo Chattopadhyay, Pinaki Bhattacharya, Gourav Das

Final Decision : Disposed Of

Judgement

Tapabrata Chakraborty, J

Affidavit of service filed by the petitioner be kept on record.

Mr. Das, learned advocate appearing for the petitioner submits that the petitioner was appointed to the post of an assistant teacher in Panchanan Free Primary School on 7th May, 1988. Thereafter, he was transferred to Chaksubuddhi Free Primary School as Headmaster. On 25th August, 2005 he was again transferred to Uttar Rameswarpur Free Primary School under Kulpi-III Circle in the district of South 24-Parganas. For the period from 27th December, 2009 till 10th January, 2013 the petitioner was unable to discharge his duties as he was suffering from severe ailments. Subsequent thereto, the petitioner was not allowed to resume his duties. Aggrieved thereby, the petitioner approached this Court by a writ petition, being W.P. No. 4262 (W) of 2012. The said writ petition was disposed of by an order dated 3rd April, 2012 directing the respondent no. 5 therein, being the Chairman of the South 24-Parganas District Primary School Council (in short, the said Council) to consider the petitioner's grievances and to take a decision pertaining to the petitioner's claim. Pursuant to the said order, the petitioner's claim was considered and by a letter dated 7th November, 2013 the

petitioner was allowed to resume his duties. The petitioner thereafter completed his service tenure and retired on 31st October, 2016. According to Mr. Das, as the petitioner was allowed to resume his duties on and from 11th January, 2013 on the basis of the letter dated 7th November, 2013 issued by the respondent no. 5, the period of absence from 27th December, 2009 till 10th January, 2013 should be regularized and all pensionary benefits should be disbursed in favour of the petitioner.

Mr. Chattopadhyay, learned advocate appearing for the State respondents submits that the period of absence of the petitioner from 27th December, 2009 till 10th January, 2013 had not been regularized and as such the pensionary benefits could not be disbursed in favour of the petitioner. In support of such contention, he has drawn the attention of this Court to a memo dated 16th November, 2016 issued by the Assistant Director, Pension, Provident Fund and Group Insurance. The said memo has been annexed to the report filed by the respondent no. 4 in the form of an affidavit. Let the said report, as filed, be kept on record.

Drawing the attention of this Court to the representation submitted by the petitioner to the Secretary of the said Council on 7th June, 2017, as annexed at page 29 of the writ petition, Mr. Chattopadhyay further submits that due to non regularization of the period of absence, the petitioner's pension file has been returned to the said Council by a memo dated 6th February, 2017.

In the memo dated 16th November, 2016 the audit observations were as follows :

" the date of retirement of the incumbent reflected from certificate by District Inspector of Schools vide memo no. Pen/DIS/PRI/256/16 dt. 20-09-16 is 31-10-2016. As per available records it is found that the unauthorized leave from 27-12-09 to 10-01-13 hasn't been sanctioned by the School Education Department, till date. The incumbent opted for as well as the P.S.A. recommended for pension for service period upto 26-12- 2009. But as per DCRB'81 rule this particular case of pension doesn't fall in any category of pension mentioned therein. So, P.S.A. is requested to resubmit the case along with copy of leave sanction order for the above mentioned period from School Education Department and the service verified upto 31-10-16 i.e., the date of retirement and do the needful as per rule."

A perusal of the said audit observations reveals that the pension sanctioning authority, being the respondent no. 4, had been directed to resubmit the petitioner's claim along with copy of leave sanction towards the period of absence of the petitioner from the School Education Department. It also appears from the said audit observations that the Department of School Education is the competent authority to take a decision as regards regularization of petitioner's period of absence from 27th December, 2009 till 10th January, 2013. In the event the period of absence is regularized, the petitioner becomes entitled to avail the pensionary benefits for his entire period of service from the initial date

of appointment till the date of his superannuation on 31st October, 2016. In the event the said period is not regularized, then also the petitioner becomes entitled to pension for the qualifying service discharged on and from the date of joining the post in the year 1988 till 26th December, 2009. However, due to absence of appropriate order of the competent authority, the petitioner has not yet been disbursed the pensionary benefits for which he is under extreme financial distress.

Under such circumstances, I am of the opinion that no useful purpose will be served by keeping the writ petition pending and the issue needs to be relegated to the competent authority, being the Secretary of the School Education Department.

Accordingly, this Court directs the Secretary of the School Education Department to consider the petitioner's claim towards regularization of the period of absence from 27th December, 2009 till 10th January, 2013 and to take a decision, in accordance with law upon granting an opportunity of hearing to the petitioner, the respondent nos. 4 and 5 and to communicate such decision to the petitioner within a period of six weeks from the date of communication of this order along with a copy of the writ petition and the report filed by the respondent no. 4. It is made clear that the Secretary, School Education Department would be at liberty to call for all necessary records from the office of the respondent nos. 4 and 5. The decision taken by the Secretary, School Education Department shall also be communicated to the respondent no. 3 immediately so that expeditious steps can be taken by the said respondent towards disbursement of the pensionary benefits in favour of the petitioner on the basis of the decision taken by the Secretary, School Department.

With the above observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be handed over to the parties on compliance of necessary formalities.