
(2002) 07 CAL CK 0074
In the Calcutta High Court

Case No : Writ Petition No's. 4382 (W) of 2000 and 17575 (W) of 2001

Tapan Kumar Mondal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 26-07-2002

Acts Referred:

Appointment of Leave Rule and Condition of Service Rules, 1940 — Rule 3, 3A, 3B, 3C, 3D

Citation : (2002) 2 ILR (Cal) 284

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Sukuipar Sarkar, for the Appellant; A.K. Maity, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—In the instant application, a short question is involved as to whether the appointment on compassionate ground under die-in-harness category would be available to a ward and/or dependent of a primary school teacher, who breathed last while functioning in the school on extended term of service after crossing the age of 60 years. The Division Bench in M.A.T. 1442 of 1998 in the case of Ad-hoc Committee, Nadia District Primary School Council v. Md. Monirul Islam M.A.T. No. 1442 of 1998 (unreported), an unreported judgment passed on February 17, 1999, on consideration of the legal points involved, answered the points in negative way by holding that even on application of Rule 4A of the old rules as framed and constituted under the Bengal (Rural) Primary Education Act, 1930 named as "Appointment of Leave Rule and Condition of Service, 1940" held that no benefit would be available for appointment under die-in-harness category.

2. However, the learned Advocate for the Petitioner in this case has relied upon the judgment passed /by a Single Bench of this Court being an unreported judgment passed on September 3, 1993 in the case of Subrata Sekhar Samanta v. State of West Bengal and Ors. CO. No. 9628 (W) of 1993 (unreported), as well

as a Single Bench judgment passed on July 31, 1998 in the case of Shyama Prasad Roy v. State of West Bengal and Ors. C.L.T. 1998(3) H.C. 434 in support of his contentions that a Primary School teacher in terms of the said Rule 4A was eligible to get all the benefits including the benefits as available to their wards for appointment under die-in-harness category. Further the learned Advocate for the Petitioner has challenged the impugned order whereby reliance was placed to G.O. No. 111-Edn. (P) dated February 12, 1992 on contending that the said G.O. was quashed by Dilip Kumar Basu, J. (as His Lordship then was) in the said case of Subrata Sekhar Samanta.

3. In this writ application, it appears that the Petitioner's father breathed last at the age of 62 years while functioning as primary school teacher in second extension period. The deceased teacher opted the pre-revised scale of pay with the view to have the consideration of his payer for extension of service after crossing the superannuation age of 60 years till the age of 65 years on year to year basis subject to physical fitness and mental alertness. Accordingly, the deceased teacher was guided and controlled by the old rule namely, the Appointment of Leave Rules and Condition of Service as introduced by Notification No. 1493 Edn. dated July 25, 1940 (hereinafter referred to as "Appointment of Leave Rule, 1940). The Rule 3D whereby the provision was made for appointment of a ward of a primary teacher, who died-in-harness was introduced by Notification No. 731-Edn. (P)9A/10/79 dated September 11, 1980. In the Rule 4A provision for extension of service on year to year basis subject to physical fitness and mental alertness was made.

4. The aforesaid two provisions, which are relevant for adjudication of this matter namely Rule 3D and Rule 4A are quoted herein below:

Rule 3D.- Notwithstanding anything contained in Rule 3, Rule 3A of Rule 3B, but subject to the provisions of Rule 3C, a ward of a primary teacher who dies in harness may be appointed, with the approval of the Director of Public Instruction, West Bengal, as an assistant teacher/school mother against regular vacancy irrespective of whether the available vacancy is to be reserved for trained or untrained candidates, provided that he/she fulfils the minimum qualifications for such appointment.

Rule 4A.- A teacher appointed by the Board may be retained in service upto the age of 60 years, but the Board may, if the thinks fit, grant thereafter extension of service of a teacher in a year to basis upto the age of 65 years, provided the teacher continues to be physically fit arid mentally alert.

Explanation- The continuous period of service extended beyond the age of 60 years of the teacher will count towards increment in the scale of pay, terminal benefits and other benefits with the approval of the Government.

5. Admittedly the service condition of the deceased teacher was guided and controlled by the Leave and Appointment Rules of 1940. On a mere reading of the aforesaid Rule 4A it appears that a teacher got the right to retain the service

upto the age of 60 years and thereafter in terms of the decision of the Board and Subject to the fulfillment of other conditions that is physical fitness and mental alertness, on year to year basis, service could be allowed to be extended with a maximum period upto 65 years. Hence, the very language of the word extension of service and with a rider year to year basis and subject to fulfillment of the conditions of physical fitness and mental alertness, it is clear that the extended service when is allowed, is a limited service for a particular year.

6. Hence, it was not a matter of right of any teacher concerned to claim extension of service till 65 years but it is conditioned by different factors. Under the explanation as appearing under Rule 4A, the continuous period of service as extended beyond 60 years of age, has been considered to be counted towards increments of the scale of pay, terminal benefits and other benefits. On a simple reading of the explanation, it further appears that the extended period of service was directed to be counted with definite purpose for increment of the scale of pay, terminal benefits and other benefits. Since the other benefit has not been defined in the explanation, the problem dropped up.

7. The Division Bench in the said case Ad-hoc Committee, Nadia District Primary School Council(Supra) held that since the explanation in a statute is not a substantive provision, the other benefit could not be considered as the benefit for grant of appointment to a ward under die-in-harness category in terms of Rule 3D. The Division Bench further held that Rule 3D is limited to its application in respect of the teaching and non-teaching staff, who breathed last prior to age of superannuation that is 60 years of age. Since the word "other benefits" have not been defined, now this point is to be looked into. Before using the word "other benefits" in the said explanation, the same is preceded with by two other benefits, scale of pay and terminal benefits.

8. The scale of pay always relates to the payment of salary in the money value, terminal benefit also provides the benefit in the money value. The gratuity, Provident Fund, pension etc., are called as "terminal benefits". Hence the other benefits as appearing in the statute preceded by the word "scale of pay and terminal benefits" will assume its meaning and colour from the preceding word "scale of pay and terminal benefits", which means that such type of other benefit in respect of the money value, which is to be available to the teacher concerned.

9. Applying the doctrine of ejusdem generis principle, the other benefit must be construed as of a word within the class namely scale of pay and terminal benefits, but it cannot be construed in the class of appointment of a word of deceased teacher under die-in-harness category. The explanation, if it is looked into otherwise, the pint is clear that the said benefit does not mean the benefit as would be available to the ward of the deceased teacher. In the explanation it has been said that the continuous period of service extended beyond the age of 60 years will count towards the benefit as mentioned, which means that for calculating of the benefits as available under the explanation, such benefits to be counted, calculated or decided by considering the extended period of service,

which means the service after 60 years of age. So, logically it means that the other benefits must be such type of benefits which would be available by considering the extended period of service only.

10. Under the die-in-harness scheme for appointment of a dependent on compassionate ground the cause of action starts from the date of death of the deceased teacher and such cause of action allowing the right to dependent for consideration of his case for being appointed is given for a social object to mitigate the suffering of the family due to loss of bread earner in pre-matured stage, that is prior to retirement in normal way.

11. The social welfare object has protected the family by providing such benefits for pre-matured death of the concerned teacher. Furthermore, the extension of service is always limited with reference to the particular year. In the instant case, it appears to complete the second extension period only few months were required to be expired and prior to that the concerned teacher breathed last. The concept of providing job under died-in-harness category on pre-matured death of any teacher prior to reaching of 60 years which as a matter of right, as available to a teacher cannot be equated with the situation due to death, in the extended period when only few months were left to complete such extension of service.

12. The extension of service is the factor which is completely dependent upon the physical fitness and mental alertness in a given case. It may happen that after one year of extended service the teacher concerned may not be fit to work due to physical illness and/or mental illness whatever it may be and accordingly that teacher would not be entitled to get the benefit of further extension of service. Hence the extension of service in the instant case in terms of Rule 4A is purely a contractual service limited for a particular year. From the angle also the concept of providing job under die-in-harness category cannot be incorporated when the work period is limited for one year.

13. Having regard to the object providing the job under die-in-harness category and the nature of service being an extended service, this Court is not in favour of granting any relief. Besides the judgment of the Division Bench passed on February 17, 1999 in M.A.T. 1442 of 1998 is not only a binding judgment to me sitting singly but on merit this Court is also humbly accepting the ratio of the said judgment.

14. The judgment of the Single Bench, one of Dilip Kumar Basu, J. (as His Lordship then was) and another Basudeva Panigrahi J. (as His Lordship then was) cannot be considered by this Court as precedent in view of the said Division Bench Judgment.

15. Having regard to such legal position, no relief can be granted to the Petitioner in this case.

16. Hence, this writ application stands dismissed.

17. There will be no order as to costs.