

08 04.02.22

Ct. No. 04

Akd

F.M.A 1832 of 2006
CAN 1 of 2008 (Old No. CAN 5006 of 2008)

Janendra Nath Bhattacharyya
Vs.
The Secretary,
Board of Secondary Education & Ors.

Mr. Lal Ratan Mondal.
... for the appellant.
Ms. Koyeli Bhattacharyya.
... for the Board.
Mr. Tapan Kumar Mukherjee.
... for the State.

The appellant filed a writ petition assailing the action of the State Government in not appointing him as Headmaster of the concerned school, though he possessed all the requisite qualifications for the same. The writ petition was dismissed with categorical finding that the appellant does not possess the requisite qualifications required for the post of Headmaster.

The fact remains that the appellant/petitioner was appointed as Assistant Teacher on a permanent post and was discharging his duties without any hindrance. There is no case made out in the instant matter that there was any dereliction in discharge of duties at the behest of the writ petitioner nor any disciplinary proceeding was ever initiated. The writ petition was confined to an issue whether the petitioner is entitled to be a Headmaster possessing all requisite qualifications. The appeal is pending before this Court since 2001 and in the meantime the appellant has attained superannuation.

The learned Advocate appearing for the appellant submits, on instruction, that his client is

not pursuing the cause of action for which the writ petition was filed and a direction may be passed upon the State authorities to release the retiral benefits admissible to the post of Assistant Teacher.

There is no dispute that the appellant was appointed as an Assistant Teacher and had attained superannuation. The retiral benefits, which is attached to the post of Assistant Teacher, cannot be withheld by the nodal employer nor any attempt to defer the same on the pretext of pending the matter before this Court is acceptable. On attaining the superannuation it is the bounden duty of the employer to disburse the retiral benefits and cannot unreasonably withhold the same. Furthermore there was no interim order passed in the instant appeal, which may stand in the way of the employer to disburse the said retiral benefits to the appellant/petitioner on attaining superannuation.

We, thus, direct the District Inspector of Schools (SE), Paschim Medinipur, to immediately release the retiral benefits attributable to the post of Assistant Teacher within four weeks from date.

It goes without saying that we do not find any justification in not releasing such retiral benefits to the appellant/petitioner on his attaining superannuation, as there was no interim order putting any fetter on the State respondents passed in the instant appeal.

The State respondents while releasing the retiral benefits to the appellant/petitioner shall also pay the interest at the rate of 5% per annum to be calculated from the date of superannuation till the actual payment.

With these observations, the appeal and connection application are disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)