

MAT 571 of 2020
With
Re: CAN 1, 2 and 3 of 2020

The State of West Bengal & Ors.
Vs.
Aruna Chatterjee (Dutta) & Ors.

(Via Video Conference)

Mr. Joytosh Majumder, Ld. G.P.

Mr. Raja Saha, Adv.

Mr. Arjun Roy Mukherjee, Adv.

Ms. Sucharita Paul,

.....for the State/Petitioners

Mr. Partha Sarathi Bhattacharya, Sr.
Adv.

Mr. Manisankar Chattopadhyay, Adv.

..... for Respondent No. 1

Mr. Subhrangsu Panda,

...for the Respondent No.4.

Dr. Sutanu Patra, Adv.,

..... for W.B.S.S.C.

Heard On : 21.12.2020 & 22.12.2020

Order Dated : 22.12.2020

CAN No. 2 of 2020

This is an application for condonation of delay in preferring an appeal beyond the statutory period of limitation. We have considered the petition

seeking condonation of delay of 368 days in filing the appeal. In paragraph 6 of the said petition attempt has been made to offer explanation for the delay caused while preferring the appeal. The order, against which the intra-court appeal was preferred, was passed by the learned Single Judge on 9th August, 2019 and the application for obtaining certified copy was made on 8th November, 2019.

It is also stated in the said paragraph 6 of the application that on receipt of the order passed by the learned Single Judge on 9th August, 2019, for compliance of the direction representation of the writ petitioner/respondent no. 1 was considered but subsequently decision was taken to prefer an appeal thus delay caused in presentation of the appeal.

Though we are not satisfied with the explanation offered for condonation of delay occurred in filing the appeal but for the ends of justice and keeping in view of the fact that the prayer for condonation of delay is not seriously opposed on behalf of the writ petitioner/respondent, the delay occurred in filing the appeal is condoned.

Let the appeal be registered if the same is otherwise in form.

MAT 571 OF 2020

CAN 1 of 2020 (Application for Stay)

The appeal as well as application are treated on days' list and disposed of by common order.

The present appeal has arisen out of the order dated 9th August, 2019 passed by the learned Single Judge on the writ petition thereby directing the added respondent no. 9, the Commissioner of School Education, to consider the possibilities of regularizing the period of absence of the writ petitioner from 19th June, 1989 to 29th March, 2010 upon granting an opportunity of hearing to her and to take a decision in accordance with law. Another limb of the order of the learned Single Judge contains direction upon the Commissioner of School Education to issue necessary order towards grant of pensionary benefits to the writ petitioner on account of her service for the period from 31st January, 1978 till 18th June, 1989 upon treating of the same as qualifying service.

The State respondents have preferred the appeal and the stay application, inter alia, challenging the order of the learned Single Judge dated 9th August, 2019 upon raising the contention that apart from gratuity amount for rendering service from 30th March, 2010 to 31st May, 2012 by the writ petitioner, she is not entitled to receive any other service benefits including pension on superannuation.

The writ petitioner was appointed on substantive basis as primary teacher vide order dated 28th January, 1978 and joined the post on 31st January, 1978 in Arrah Harijan Primary School and discharged duty till 18th June, 1989. A show-cause notice dated 22nd June, 1989 was issued against the petitioner which was assailed by her on filing writ petition, W.P. 8665 (W) of 1989, which was ultimately allowed by the Learned Single Judge consequently the said show-cause notice was set-aside vide order dated 11th September, 2009. The order of the learned Single Judge dated 11th September, 2009 allowing the first writ petition of the writ petitioner was questioned by the District Primary School Council, Purulia, by registering an appeal being MAT 1091 of 2009. On the said appeal the Coordinate Bench permitted the writ petitioner to resume her duty as Assistant Teacher of a

primary school upon passing interim order dated 28th January, 2010. Pursuant to such direction of the Coordinate Bench the writ petitioner joined Bhalagora Primary School under Adra circle on 30th March, 2010 in terms of the order passed by the concerned District Primary School Council on 22nd March, 2010 pursuant to the interim order passed by the Coordinate Bench dated 28th January, 2010, subject to the fate of the pending appeal. Finally, the intra-court appeal was dismissed as not pressed by an order dated 16th August, 2011 which allowed the writ petitioner to continue her service till the date of her superannuation on 31st May, 2012.

Since the retiral dues of the writ petitioner was not settled and cleared which triggered the second writ petition being W.P. 36119(W) of 2013 and the same was disposed of by an order dated 19th July, 2018 directing the District Inspector of Schools (Primary Education), Purulia to consider and decide her claim for unpaid dues including retiral benefits. In terms of the order of the learned Single Judge dated 19th July, 2018 the concerned District Inspector of Schools issued order on 12th September, 2018 denying the claims of the writ petitioner resulting in institution of another writ petition being W.P. 20324 (W) of 2018 whereupon the learned Single Judge passed an order on 2nd April, 2019 setting aside the previous decision of the concerned District Inspector of Schools (Primary Education), Purulia and the concerned respondent authority was directed to revisit the issue. As per the said order dated 2nd April, 2019 the District Inspector of Schools (Primary Education), Purulia passed another order dated 23rd May, 2019 which is the subject-matter of challenge in the connected writ petition.

During course of argument Mr. Joyotosh Majumder, learned Government Pleader strenuously argued that break in qualifying service of a teacher for a period exceeding 12 months cannot be condoned and of Clause 7(h)(i) of the Death-cum-Retirement Benefit Scheme, 1981 shall lead to

forfeiture of past service of the teacher in the event break is more than 12 months. Clause 7 (h) (i) is quoted below:

“7.(h)(i) Break in qualifying service of an employee for a period exceeding 12 months shall entail forfeiture of his past service unless this break is condoned by the competent authority (i.e. Director or any officer authorised by him). Break in service not exceeding 12 months would be treated as automatically condoned.”

In deciding the issue relating to applicability of said Clause 7(h)(i) of Death-cum-Retirement Benefit Scheme, 1981 in the present case we are required to rely upon the relevant part of the order dated 11th September, 2009 passed by Girish Chandra Gupta J. (as His Lordship then was) which is quoted below:

“ The show-cause notice dated 27th June, 1989 is, therefore, set aside. The District Primary School Council, Purulia and the Chairman, being the respondent nos.8 and 9 herein, are directed to allow the petitioner to join forthwith preferably within a week from date of service of a copy of the judgement and order. In so far as the question of salary of the petitioner for the period commencing from 19th June, 1989 until the day when the petitioner may join is left to the concerned authorities. They shall consider that question in accordance with law keeping in view inaction of their own.”

The order dated 11th September, 2009 was passed on the writ petition filed by the respondent no.1/writ petitioner herein wherein the show-cause notice dated 27th June, 1989 was questioned. By the said order dated 11th September, 2009 the writ petitioner was allowed to resume her duty at an early date notwithstanding the provision as contained in said Clause 7(h)(i) and the writ petitioner pursuant to the said direction resumed her duty on 30th March, 2010 and worked as approved Assistant Primary Teacher till the date of superannuation on 31st May, 2012. The appellants herein, being aggrieved by the said order dated 11th September, 2009 passed by Girish Chandra Gupta J. preferred intra-court appeal which was subsequently dismissed as withdrawn as a result whereof the order dated 11th September, 2019 of the learned Single Judge attained finality. Therefore at this stage it is not left open to the appellants herein to resist the claim of the writ petitioner for payments of retiral dues including pension for the period from 31st January, 1978 to 18th June, 1989 upon placing reliance on Clause 7(h)(i) of Death-cum-Retirement Benefit Scheme, 1981.

On perusal of the order passed by the learned Single Judge it appears to us that two issues need to be addressed by us in the present appeal.

The first one is whether the writ petitioner is entitled to receive pensionary benefits in view of her superannuation on 31st May, 2012 and secondly whether she is entitled to get service benefits upon regularizing the period of absence from 19th June, 1989 to 29th March, 2010.

It is nobody's case that the writ petitioner did not render service in the substantive post of Assistant Teacher in Primary School for the period from 31st of January, 1978 to 18th June, 1989 which is more than 10 years of qualifying services and the said tenure in view of the relevant provisions of DCRB scheme of 1981 makes the writ petitioner entitled to get retiral dues

including pension. Therefore, we are *ad idem* with the view expressed by the learned Single Judge with regard to entitlement of the writ petitioner to receive retiral dues for the services she has rendered from 31st January, 1978 till 18th June, 1989. On such consideration we feel that reliance on Rule 7 (iv) of the West Bengal Recognised Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 is misplaced.

Question remains undecided whether in view of relevant facts the period of absence from 19th June, 1989 to 29th March, 2010 needs to be regularized. It is not the appropriate stage where we can be invited to express our view with regard to regularization of the said period of absence since the issue of regularizing the period of absence has been remitted back to the Commissioner of School Education for taking decision in accordance with law. Since this issue has not been decided by the learned Single Judge and directed the appropriate authority to take a decision we find no reason to interfere with such direction in the present appeal as the right of the parties to this proceeding has not been finally decided and the issue is pending before the Commissioner of School Education.

In above conspectus the appeal and the application are dismissed confirming the order of the learned Single Judge.

Urgent xerox certified copies of the judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)