

17.11.2020
Item No.11
(P.J & S.M)

(Via Video Conference)

WPA 8625 of 2020

**Biswanath Ghosh
-Vs-
The State of West Bengal & Ors.**

Mr. Sounak Bhattacharya,
..... For the petitioner.

Mr. Supriyo Chattopadhyay,
Mr. Sabyasachi Mondal
..... For the State.

Mr. Bhaskar Prasad Vaisya,
Mr. Sagnik Chatterjee,
.... For the Respondents.
Mr. Gourab Das,
.... For the Respondent No.5.

The petitioner was appointed as an Assistant Teacher (Primary) by the respondent No.5 with effect from February 16, 2020 and he has rendered his services as an Assistant Teacher at Dumnan Free Primary School under the Baruipur Circle. Thereafter he was transferred to Kumarhat Chandkhali Junior Basic School under the Baruipur South Circle. With effect from January 31, 2020, the petitioner has retired from his service with an unblemished record. Thereafter, he applied for pension before the Sub-Inspector of Schools, Baruipur Circle, District 24-Parganas (South) and submitted all the relevant documents.

On May 1, 2020 when the petitioner logged in E-Pension Portal of the concerned respondent, he found an observation that since he served for less than 10 years, he has not fulfilled the qualified services for eligible pension, i.e, ten years. It is the said refusal by the concerned respondent which has been challenged in this writ petition.

In support of his claim for obtaining pensionary benefit, the petitioner has referred to a Memorandum dated February 2, 2009 issued by the Department of School Education, Budget Branch, Bikash Bhavan, Salt Lake, Kolkata- 91, Government of West Bengal, laying down, inter alia, as follows:-

“After careful consideration of the matter the Governor is pleased to decide that a fraction of a year equal to three months and above shall be treated as completed six monthly period of service and reckoned as qualifying service for determining retirement benefits and the period of service below three months will be ignored....”

It is further submitted that by an order dated June 19, 2014 passed in W.P No. 14229(W) of 2014, a Co-ordinate Bench of this Court has allowed the prayer of another Assistant Teacher of a school for

obtaining pension by condoning the said writ petitioner's deficiency period of 1 month 12 days i.e. 42 days in qualifying for the pensionary benefit.

On February 10, 2020 the petitioner filed a representation before the District Inspector of Schools (PE), South 24 Parganas, the respondent no. 4 herein, for obtaining the benefit of the said office Memorandum dated February 2, 2009 as well as various orders passed by the co-ordinate Benches of this Court and prayed for condonation of his deficiency period of 30 days only for completing the ten years required service to obtain pensionary benefit. The said representation dated February 10, 2020 evoked no response. Thus, the petitioner has filed the present writ petition praying for a writ of mandamus commending the respondent authorities to condone the deficiency of 30 days in qualifying for his pensionary benefit and other consequential relief.

Mr. Supriyo Chattopadhyay, Learned Counsel appearing for the State Respondents, submitted this Court should dispose of the writ petition by directing the petitioner to file a representation before the Secretary, Department of School Education, for considering his claim for pensionary benefit. According to him, it is the Secretary, Department of School Education, upon whom the discretionary

power has been conferred under the DCRB Scheme to condone the delay.

Learned Counsel appearing for the respondent No. 5, the Chairman, District Primary School Council, 24-Parganas (South), further submitted that under the DCRB Scheme it is the Secretary, Department of School Education, who has the discretion to allow the prayer of the petitioner for condoning the deficiency period.

Considering the said Memorandum Dated February 2, 2009, I find the same confers a right on the petitioner to obtain the deficiency of 30 days in qualifying for the pensionary benefit being condoned. This view is also supported by the ratio of the order dated June, 19, 2014 passed by a Co-ordinate Bench in W.P No. 14229(W) of 2014, which has not been challenged by any of the respondents before the higher forum.

There is no doubt that the Secretary, Department of School Education has received a copy of this writ petition. He shall treat the writ petition as a representation by the petitioner to consider his prayer for obtaining condonation of deficiency period of 30 days to qualify for the pensionary benefit.

The Secretary, Department of School Education who act in terms of the Memorandum dated February 2, 2009 and condone the petitioner's deficiency of 30 days in qualifying for his pensionary benefit.

The Secretary, Department of School Education shall pass the decision to condone the 30 days deficiency of the petitioner in qualifying for the pensionary benefit within two weeks from the date of communication of this order.

Thereafter, the respondent no. 3, the Director, Directorate of Pension, Provident Fund and Group Insurance, shall complete the process of fixation of the pensionary benefit receivable by the petitioner and inform the latter of the same positively within December 31, 2020.

The Secretary, Department of School Education, is directed to ensure that the petitioner receives his pensionary benefit from the month of February, 2021.

In view of the above decision involving interpretation of the said Memorandum dated February 2, 2009 and the DCRB Scheme, 1981, I do not find any reason to call upon the respondents to file their affidavit-in-opposition or to keep the writ application pending.

The writ petition, WPA 8625 of 2020 stands disposed of with the above direction.

All parties shall act on Website copies of this order.

(Ashis Kumar Chakraborty, J.)