

14.12.2020
D/L No.12
Court No.25
s.biswas

WPA 9637 of 2020

Subir Nath Sarkar
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Ekramul Bari	
Mr. Syed Mansur Ali	 for the petitioner
Mr. Suman Dey	
	 for the State
Mr. Ranjay De	
Mr. Basabjit Banerjee	 for the respondent no.4 & 5

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

The present writ petition has been preferred challenging *inter alia* the objections raised by the respondent no.9, as contained in the memo dated 18th April, 2019. In the said memo, the primary objection is that the service rendered by the petitioner at Kolaghat Thermal Power Station High School (in short, the first school) cannot be considered as qualifying service for grant of pensionary benefits.

Mr. Bari, learned advocate appearing for the petitioner submits that the petitioner was initially appointed in the first school on 10th May, 1991 and served there till 26th September, 2007, as would be explicit from the last pay certificate issued by the Secretary of the first school and counter-signed by the respondent no.7.

Subsequent thereto, the petitioner was appointed and approved as the Headmaster of Atila Anchal H.P. Vidyapith (High) (in short, the second school) on substantive basis with effect from 27th September, 2007 *vide* memo dated 11th January, 2008 issued by the Additional district Inspector of School (S.E.), Uluberia Sub-division, Howrah. The petitioner's pay was also fixed at Rs.24,770/- in terms of the Government Orders dated 8th October, 2009 and 10th February, 2010 *vide* memo dated 17th February, 2017.

Mr. Bari contends that the service rendered by the petitioner in the first school should be treated as qualifying service towards grant of pensionary benefits since in respect of a teacher similarly situated with him, the competent authority had treated the entire period of service rendered by the said teacher in the first school as qualifying service towards disbursement of pensionary benefits. In support of such contention reliance has been placed on a memo dated 7th March, 2008 issued by the Officer-on-Special Duty & Ex-officio Joint Secretary, School Education, Government of West Bengal.

He submits that responding to the contents of the memo dated 18th April, 2019 issued by the respondent no.9, the teacher-in-charge of the second school submitted a representation to the Secretary, School Education Department, Government of West Bengal but the same has not been considered.

Mr. Dey, learned advocate appearing for the State respondents submits that no document has been produced by the petitioner to show that the first school had received aid from the Government at the time of superannuation of the petitioner on 31st October, 2018. In view thereof, the objections raised in the memo dated 18th April, 2019 issued by the respondent no.9 do not suffer from any infirmity.

Mr. Ranjay De, learned advocate appearing for the first school submits that the said school received Government aid till 31st October, 1995 and thereafter with effect from 1st November, 1995, it was taken over by the West Bengal Power Development Corporation Limited.

Indisputably, the petitioner had rendered service in the first school with effect from 10th May, 1991 to 26th September, 2007. The said service was also duly approved by the respondent no.3, as would be explicit from the memo dated 8th February, 1996. The petitioner was appointed as approved Headmaster of the second school with effect from 27th September, 2007 and retired on 31st October, 2018.

In the case of one Sri Amalendu Ghara, who was appointed in the first school on 20th November, 1992 and served till 2nd December, 2002, the Government counted the said period of service for calculation of his pension and gratuity. While taking such decision, it was within the knowledge of the State respondents that the said school

received aid till 31st October, 1995. In view thereof, the respondents cannot take a different stand in respect of the petitioner, who is similarly situated with Sri Amalendu Ghara. No explanation is forthcoming as to why an objection has been raised in respect of the petitioner. It appears that the memo dated 18th April, 2019 has been issued by the respondent no.9 being oblivious of the decision in respect of Sri Amalendu Ghara, as contained in the memo dated 7th March, 2008.

In view thereof and as the issue pertains to acceptance and counting of a period of service as qualifying service towards determination and disbursement of the pensionary benefits, the same needs to be relegated to the Secretary, School Education Department, Government of West Bengal.

Accordingly, this Court directs the Secretary, School Education Department, Government of West Bengal to take a decision towards acceptance of the period of service rendered by the petitioner in the first school with effect from 10th May, 1991 to 26th September, 2007, as qualifying service towards grant of the pensionary benefits, in accordance with law and in the light of the observations made in this order, upon granting an opportunity of hearing to the petitioner and the authorities of the first school and to issue necessary directions to the respondent nos.3, 8 and 9 to take follow up steps towards

settlement of the petitioner's claim and disbursement of the pensionary benefits.

The above exercise shall be completed within a period of six weeks from the date of communication of this order along with a copy of the writ petition.

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

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on completion of all necessary formalities.

(Tapabrata Chakraborty, J.)