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21-04-2021

Ct. 17

MAT 41 of 2021
With
CAN 1 of 2021
With
CAN 2 of 2021

Bijan Kumar Ghosh
Versus
State of West Bengal & Ors.

(Through Video Conference)

Mr. Kamalesh Bhattacharya, Adv.
Mr. Aninda Bhattacharya, Adv.
...for the appellant

Ms. Chaitali Bhattacharya, Adv.
Mr. Subhendu Raychowdhury, Adv.
...for the respondents

Re: CAN 1 of 2021.

This is an application for condonation of delay in preferring the appeal.

Though there is substantial delay in preferring the appeal against the order passed by the learned Single Judge, considering the fact that the petitioner has retired in the meantime and due to outbreak of covid-19, the applicant might have not been able to approach this Court by filing an intra-court appeal questioning the order of the learned Single Judge, we are satisfied with the explanation given in support of condonation of delay in preferring the appeal and the delay occurred in preferring the appeal is condoned.

Accordingly, CAN 1 of 2021 is allowed.

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

Re: MAT 41 of 2021 and CAN 2 of 2021.

The present appeal is directed against the order dated 29th June, 2018 passed by the learned Single Judge whereby the School authority of Telenipara High School, Barrackpore, North 24-Parganas was directed to forward the pension papers of the appellant to the authorities for taking appropriate steps relating to release of retiral dues and it was further directed that while calculating the retiral benefits of the appellant, the authorities concerned shall also look into the aspect of sanctioning higher scale of pay in favour of the appellant in terms of the relevant Rules.

The appellant was appointed as an Assistant Teacher with effect from 14th January, 1988 in Pass Graduate category in Work Education and Physical Education Group. The appellant from the date of his initial appointment was enjoying pass-graduate scale of pay.

The case has been made out on behalf of the appellant that upon introduction of ROPA-1990 vide Notification dated 7th March, 1990 being 33-Edn.(B) and Clause 16(3) therein, he is entitled to enjoy post-graduate scale of pay keeping in view the fact that after appointment of the appellant in 1988 he acquired post-graduate qualification in Physical Education. It further appears from page 54 of the stay application vide letter dated 18th March, 2004, the concerned School authority approached the District Inspector of Schools (Secondary Education), Barrackpore, 24 Parganas (North) for considering the entitlement of the appellant to enjoy post-graduate scale of pay in view of acquiring M.Ed qualification in Physical Education in the year 1989. Such communication of the concerned School authority on the basis of the acquisition of higher qualification of the appellant, was kept pending before the concerned District Inspector of Schools for sometime and ultimately, by passing order as

contained in Memo dated 7th November, 2007, the prayer of the appellant was spurned upon referring to Sections 14, 16 and 20 of the West Bengal Schools (Control and Expenditure) Act, 2005 (hereinafter referred to as “Act of 2005”). There was a subsequent memo issued by the Assistant Secretary, School Education Department, Secondary Branch dated 18th May, 2009 addressed to the Director of School Education, West Bengal whereby the School authority was directed not to draw salary of the appellant in the post-graduate scale of pay which he was not otherwise entitled to as it was found by the concerned Department and there was further direction that steps to be taken for recovery of the overdrawn amount for releasing salary in post-graduate scale, if any.

We have heard Mr. Kamallesh Bhattacharya, learned Advocate representing the appellant and Ms. Chaitali Bhattacharya, learned Sr. Government Advocate representing the respondent authorities and considered the materials on record.

On perusal of the relevant documents, it appears that on 18th March, 2004 the authority of Telinipara high School forwarded relevant documents relating to educational qualification of the appellant to the office of the concerned District inspector of Schools for taking decision with regard to the entitlement of the appellant to enjoy post-graduate scale of pay. The question arises whether the authority concerned, while taking decision regarding entitlement of the appellant to enjoy the post-graduate scale of pay, can rely upon the relevant provisions of the said Act of 2005. In view of the fact that an application was made by the appellant prior to promulgation of the said Act of 2005 and the relevant papers were forwarded by the concerned School authority to the office of the District Inspector of

Schools in the year 2004 and the Act of 2005 came into effect in the year 2005 the concerned respondent authorities ought to have taken note of these facts while taking decision on sanction of post graduate scale of pay. Both the orders dated 7th November, 2007 issued by the District Inspector of Schools (SE) concerned and order dated 18th May, 2009 issued by the Assistant Secretary are silent on these facts and mechanically rejected the case of the appellant upon placing reliance on some of the provisions of the said Act of 2005.

In the present case, as we have discussed above, since it appears that the application was made through the concerned School authority prior to promulgation of the Act of 2005, the concerned respondent authorities are required to consider whether the relevant provisions of the Act of 2005 impedes the sanction of post-graduate scale of pay to the appellant before us. The orders dated 7th November, 2007 and 18th May, 2009 are cryptic orders and no tenable reason has been assigned in support of the decision taken by the authorities save and except placing reliance upon the Act of 2005.

Considering this shortcoming of the orders passed by the concerned respondent authority, the order dated 18th May, 2009 as well as 7th November, 2007 are set aside and the Secretary, School Education Department is directed to consider the prayer of the appellant for sanctioning of post-graduate scale of pay in view of acquiring higher qualification in the year 1989, within a period of eight weeks from the date of communication of this order after granting opportunity of hearing to the appellant as well as the concerned school authority.

The School authority is also directed to produce the necessary

records relating to service of the appellant before the Secretary, School Education Department, at the time of hearing. It is made clear that if the prayer of the appellant is turned down, adequate reasons in support of such decision is required to be indicated by the Secretary, School Education Department while communicating its decision in terms of the above direction.

It has been brought to the notice of this Court that during the pendency of the writ petition before this Court, the appellant has superannuated from the post of Assistant Teacher in 2016 and till date no retiral benefits have been released in his favour. The concerned respondent authorities are directed to settle the terminal benefits of the appellant and issue pension payment order by taking into consideration the last pay drawn by the appellant at the time of his retirement within a period of eight weeks from the date of communication of this order.

However, it is made clear that such direction relating to release of retiral dues upon issuance of the pension payment order will be subject to final decision to be taken by the Secretary, School Education Department as per our above direction as it relates to fixation of pension of the appellant.

In view of the above conspectus, the appeal and the application are treated on day's list and with the consent of the parties disposed of and the order of the learned Single Judge dated 29th June, 2018 is set aside.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)