

13.12.2021

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(Through Video Conference)

**W.P.A. 6156 of 2014**

**With**

**W.P.A.17716 of 2018**

**I.A. CAN 1 of 2019 (old No. CAN 671 of 2019)**

**With**

**W.P.A.25407 of 2018**

**I.A. CAN 1 of 2019 (old No. CAN 7390 of 2019)**

**With**

**W.P.A. 5819 of 2015**

**Bidyadhar Mandal**

**Vs.**

**The State of West Bengal & ors.**

**Mr. Chittapriya Ghosh**

**Mr. Goutam Acharya**

**Ms. Priyanka Saha**

**Ms. Komal Singh**

**.... for the petitioner**

**Mr. Kajal Ray**

**... for the respondent no.11**

**in W.P.A. 6156 of 2014**

**Mr. Arindam Chattopadhyay**

**Ms. Lipika Chatterjee**

**...For the State in W.P.A. 6156 of 2014**

**Ms. Chaitali Bhattacharya**

**Mr. Kartic Chandra Kapas**

**... For the State in W.P.A.25407 of 2018**

**Ms. Chaitali Bhattacharya**

**Mr. Somnath Naskar**

**... For the State W.P.A. 5819 of 2015**

Four writ petitions are taken up analogously for consideration by this Court in presence of the learned Advocates representing the writ petitioner, State-respondent and the private respondent. However, Lakshi Avinaba Vidyalaya, District Purba Medinipur (for short, 'the said school') has been made party but the said school

is not represented today before this Court. In all the four writ petitions, Bidyadhar Mandal is the writ petitioner.

W.P.A. 6156 of 2014 was preferred by the writ petitioner inter alia, challenging the memo no. 368/L(9) Dated 5<sup>th</sup> August, 2013 issued by the District Inspector of Schools (S.E.), Purba Medinipur (for short, 'the concerned D.I. of schools') whereby the writ petitioner was dismissed from his service as Group-D staff of the said school and there was an observation to the extent of refunding the entire salaries which he drew during his tenure. By the said writ petition a corrigendum dated 30<sup>th</sup> August, 2013 issued by the concerned D.I. of schools was also questioned whereby the concerned D.I. of schools altered his stand and instead of dismissing the writ petitioner from his service the said school was directed to take legal proceeding against the writ petitioner in accordance with Rule 28(8) of the Management Rules. On this writ petition at the motion stage no interim order was passed save and except direction for exchange of pleadings by the parties.

The writ petitioner had to file another writ petition being W.P.A. 5819 of 2015 whereby challenge was thrown to the subsequent order passed by the concerned D.I. of schools dated 16<sup>th</sup> January, 2015 by which the concerned D.I. of schools directed the Administrator of the said school to restrain the writ petitioner from putting his signature on the staff attendant register of the said school

and the school authority was directed to submit a report in this regard. This writ petition was heard at the motion stage on 3<sup>rd</sup> March, 2015. On 3<sup>rd</sup> March, 2015 when a coordinate Bench of this Court stayed the operation of the said order of the concerned D.I. of schools dated 16<sup>th</sup> January, 2015 primarily for a period of fortnight and subsequently the interim order was extended by order dated 9<sup>th</sup> March, 2015 by the coordinate Bench until further orders. Therefore, on combined reading of these two orders of the coordinate Bench dated 3<sup>rd</sup> March, 2015 and 9<sup>th</sup> March, 2015 it appears that interim order was passed staying the operation of the decision of the concerned D.I. of schools dated 16<sup>th</sup> January, 2015 is still continuing.

The third writ petition being W.P.A. 17716 of 2018 is preferred by the writ petitioner, inter alia, challenging the decision of the concerned D.I. of schools contained in memo dated 7<sup>th</sup> May, 2018 whereby it was decided that the writ petitioner is neither entitled to receive salary for the period he discharged his duties in terms of the interim order passed by this Court in W.P.A. 5819 of 2015 nor release of the retiral dues in view of superannuation of the petitioner on 30<sup>th</sup> September, 2016. On this writ petition, another coordinate Bench passed an order dated 13<sup>th</sup> November, 2018 whereby direction was given for exchange of affidavits between the parties with a direction if there be any admissible dues

payable to the writ petitioner or other benefits which cannot be withheld under any circumstances under the law the same shall be released in favour of the petitioner within certain time and the fourth writ petition being W.P.A. 25407 of 2018 was preferred by the writ petitioner assailing the memo dated 6th June, 2018 of the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal (for short, 'the D.P.P.G.') whereby the said D.P.P.G. also refused to process the retiral dues in favour of the writ petitioner by placing reliance on the decision of the concerned D.I. of Schools taken against the writ petitioner whereby the entitlement of the writ petitioner to receive retiral dues was denied.

For the aforesaid reasons, the aforementioned four writ petitions are before this Court and are considered in presence of the learned Advocates representing the parties.

Mr. Chittapriya Ghosh, learned Advocate representing the writ petitioner in all the four writ petitions has submitted that the writ petitioner was appointed as a Group-D staff of the said school on 1<sup>st</sup> of March, 1980. During his tenure the writ petitioner's elder brother, Bhaghyadhar Mondal, lodged a complaint against the writ petitioner alleging the production of forged school leaving certificate while obtaining employment as Group-D staff of the said school and pursuant thereto an order of the Magistrate was passed

under Section 156(3) of the Cr. P.C.; Khejuri P.S. Case No.3 was started under Section 468/471/120B of the I.P.C. against the writ petitioner. After a full-fledged trial before the criminal court, a final judgement was delivered by the Judicial Magistrate, (1<sup>st</sup> Class), 3<sup>rd</sup> Court Contai, on 24<sup>th</sup> March, 2008, annexure P4 to the writ petition being W.P.A. 17716 of 2018, the relevant part of the said judgement is quoted below :

*“So it appears from the evidence of P.W.-1, that Bidyadhar Mondal in conspiracy with Rabindra Nath Bera obtained a fact certificate and on the basis of which he obtained job. But in his cross examination he stated that he could not say what was written on the appointment letter of Bidyadhar. He further stated in cross examination that he has not seen the attendance register of the school,. Other witness failed to narrate anything about the Incident. Only signature of the defacto complainant and other witnesses on seizure list were marked as Exhibit. Prosecution also failed to produce the seized alamats of this case. Seizure lists were also not marked as Exhibit. Exhibit 2 i.e. petition of complaint only corroborates the deposition of the defacto complainant. Except this neither any witness examined nor any document produce which can corroborate the story of the prosecution. Prosecution also failed to produce any documentary evidence by which it can be substantiated that certificate obtained by Bidyadhar Mondal was a fake one. So in the result prosecution case fails and accused persons merit acquittal from this case.*

*Hence, it is.*

**ORDERED**

*That accused persons namely 1) Bidyadhar Mondal 2) Amaresh ch. Bera 3) Badal Ch. Das 4) Prabodh Kr. Pal 5) Durga Pada Acharjee 6) Suresh Ch. Das 7) Manoranjan Gayen are found not guilty for the offence punishable U/S 465/468/471/120(B) I.P.C.. They are acquitted from this case U/S 248 (1) Cr. P.C. They be released from the bail bond and be set at liberty at once. Seized articles be returned to the person from whom seized after expiry of appeal period.*

*Sd/- Arvind Mishra  
24/3/08  
Judicial Magistrate (1<sup>st</sup> Class)  
3<sup>rd</sup> Court, Contai.'*

The decision of the Judicial Magistrate, Contai dated 24<sup>th</sup> March, 2008 was questioned by the defacto complainant by filing a criminal revisional application before this High Court and the criminal revisional application being CRR 725 of 2009 was disposed of by order dated 3<sup>rd</sup> January, 2012 by a coordinate Bench taking up criminal revisional matter and the relevant part of the said order is also quoted below :

*“Taking everything into consideration, this Court finds that it would be wastage of time and money of both the parties, if the Trial Court is directed to start again the trial after issuing summons on the rest of the witnesses whose names have been mentioned in the charge sheet and pass a fresh judgement. This appears to be an impossible and useless job after such a long period of 23 years. Passing direction of like nature would itself amounting to miscarriage of justice and abuse of the process of the Court.*

*Therefore, this Court finds it inexpedient to allow the application.*

*As far as report of the judgement is concerned, this Court finds that the learned Trial court has assigned reasons as to why the oral testimony of the P.Ws 1 and 2 has not been found acceptable to it. That being the fact, this Court is reluctant also to upset the order which is based on some reasons. The revisional application fails.*

*The revisional application thus stands disposed of.”*

On reading of the two judgements, one delivered by the Trial Court on 24<sup>th</sup> March, 2008 and the order of the High Court while disposing of the connected criminal revisional application, according to the writ petitioner, it goes to show that the writ petitioner was not found guilty of committing any fraud as alleged against him by lodging complaint by his elder brother. It has also been submitted that in terms of the order of the coordinate Bench passed on a writ petition being W.P.A. 5819 of 2015 dated 3<sup>rd</sup> March, 2015 the writ petitioner worked as a Group –D staff of the said school till the date of his superannuation on 30<sup>th</sup> September, 2016.

It is contended that in view of the acquittal of the writ petitioner by the criminal court and subsequent affirmation of the said order by the High Court while disposing of the connected criminal revisional application and absence of initiation of any disciplinary proceedings by the said school authority being the competent authority to initiate proceedings in terms of the relevant

provisions of the Management Rules of 1969, the writ petitioner is entitled to receive his retiral dues including arrear salaries for discharging his duty till the date of his superannuation which has wrongly been denied by the concerned D.I. of Schools as well as by the D.P.P.G.; the orders of whom have been put under challenge in two separate writ petitions as aforesaid. In support of such contention, attention of this Court has been drawn to Clause 19(5) of the West Bengal Recognised Non-Government Educational Employees (Death cum Retirement Benefit) Scheme, 1981 (for short, 'the D.C.R.B. Scheme of 1981'). By placing reliance upon the said D.C.R.B. Scheme of 1981 it is submitted that on the date of retirement of the writ petitioner, no judicial/disciplinary proceeding was pending against the writ petitioner and therefore, in terms of the said Clause 19(5), the petitioner is entitled to receive the retiral dues including arrear salary which was not paid to him by the respondent authorities though he discharged his duty in terms of the interim order dated 3<sup>rd</sup> March, 2015.

In support of such contention, reliance has also been placed upon the following Division Bench judgements:

- (i) Durgadas Mukhopadhyay Vs. State of West Bengal & ors., reported in 2007(4) C.H.N. 382, paragraphs 10,13 and 15; and

- (ii) Gour Kanti Samanta Vs. State of West Bengal reported in 2013(2) C.H.N. (Cal) 649, paragraphs 23 and 24.

Per contra, Ms. Chaitali Bhattacharya, learned Advocate appears on behalf of the State-respondent in W.P.A. 25407 of 2018 and in W.P.A. 5819 of 2015 has made the following submissions for consideration by this Court at the time of disposal of the four writ petitions. –

The concerned District Inspector of Schools by passing necessary orders though directed the said school authority to initiate disciplinary proceeding against the writ petitioner in terms of Rule 28(8) of the Management Rules, 1969 and following such direction of the concerned D.I. of schools, the said school authorities failed to initiate proceeding to unearth the truth relating to the allegations levelled against the writ petitioner for committing fraud upon submitting forged school leaving certificate while obtaining employment as Group-D staff in the said school.

As per appreciation of Ms. Bhattacharya, the order of the Trial Court dated 24<sup>th</sup> March, 2008 was passed without taking note of the relevant materials and evidence produced before the trial court including the forensic report which is annexed to the affidavit-in-opposition affirmed by the concerned D.I. of schools. It is also contended on behalf of the State-respondent that since the order of the trial court dated 24<sup>th</sup> of March, 2008 is

not based on the relevant materials and the forensic report, therefore, the Writ Court being the court of equity can exercise its authority in order to find out the veracity of the charges levelled against the writ petitioner by his elder brother specially when, the allegation is commission of fraud by the writ petitioner. It is also submitted that since it is a case of fraud without initiating disciplinary proceeding, decision can be taken by the concerned respondent authorities not to release retiral dues in his favour. It is contended that the writ petitioner did not cooperate with the concerned D.I. of schools while taking decision relating to his entitlement to continue his service by attending the school regularly as well as his entitlement to receive retiral dues after his superannuation by producing necessary documents. Lastly, it is submitted that one Sekhar Manna lodged a complaint against the writ petitioner which led to initiation to Khejuri P.S. Case No.210 of 2013 dated 19<sup>th</sup> August, 2013 and the connected criminal proceeding is alive, therefore the writ petitioner is not entitled to receive pension and gratuity during the subsistence of the said criminal proceeding.

Ms. Bhattacharya has strenuously argued on the point that the order of Judicial Magistrate while acquitting the writ petitioner was not based on relevant materials, therefore, the Writ Court being the court of equity is empowered to enter into the complaints and the

veracity of the allegation levelled against the writ petitioner while adjudicating the present writ petition in order to decide the entitlement of the writ petitioner to receive retiral dues.

Mr. Arindam Chattopadhyay, learned Advocate representing the State-respondent in W.P.A. 6156 of 2014 wherein the decision of the concerned D.I. of schools dated 5<sup>th</sup> August, 2013 and the subsequent corrigendum have been questioned.

Mr. Chattopadhyay had defended the corrigendum dated 30<sup>th</sup> August, 2013 issued by the concerned D.I. of schools wherein the said school authority was directed to take legal proceeding against the writ petitioner in accordance with Rule 28(8) of the Management Rules.

Mr. Chattopadhyay has reiterated the submission made by Ms. Chaitali Bhattacharya while defending the case of the State-respondents in two other writ petitions.

W.P.A. 17716 of 2018 is also heard which is one of the four writ petitions, which are taken into consideration by this Court. But on repeated occasions the State-respondents in W.P.A. 17716 of 2018 have remained unrepresented.

Mr. Kajol Roy, learned Advocate appears on behalf of the respondent no.11, one Sekhar Manna, in W.P.A. 6156 of 2014 and submits that said Sekhar Manna is residing in the same village where the said school is situated, who lodged complaint against the writ petitioner

on 19<sup>th</sup> August, 2013, which gave rise to Khejuri P.S. Case No.210 of 2013 dated 19<sup>th</sup> August, 2013. On query of this Court, it is submitted on behalf of the respondent no.11 that said Sekhar Manna is neither guardian nor member of the Managing Committee of the said school and is no way related to the said school in question. However, it has been submitted that after initiation of the criminal case being Khejuri P.S. Case No.210 of 2013, the writ petitioner challenged the same by filing criminal revisional application being CRR\_ 2439 of 2017 before the High Court and a co-ordinate Bench passed an interim order on 26<sup>th</sup> July, 2017 thereby staying of proceedings in Khejuri P.S. Case No. 210 of 2013 dated 19<sup>th</sup> August, 2013 under sections 420/468/470/471/34 of the Indian Penal Code corresponding to GR Case No. 979 of 2013 which is pending before the learned Additional Chief Judicial Magistrate, Contai initially for a period of six weeks. It appears that the said interim order passed on 26<sup>th</sup> July, 2007 was extended by the High Court on several occasions and last order was on 11<sup>th</sup> March, 2020 when the co-ordinate Bench extended the interim order for a period of four weeks with effect from 11<sup>th</sup> March, 2020. Thereafter, there was a general extension of interim order passed by the Special Bench of this Hon'ble High Court in WPA 5323 of 2020 which was also time to time extended by the Special Bench up to 8<sup>th</sup> October, 2021.

It is submitted by Mr. Roy, learned advocate appearing for the private respondent that the said criminal revisional application is appearing before the appropriate Bench of the High Court for final adjudication.

This Court has heard the learned advocates representing the writ petitioner, State respondents and private respondent and also considered the materials available on record in all the four writ petitions. After consideration of all four writ petitions, it appears that the writ petitioner has retired from the post of Group-D on 30<sup>th</sup> September, 2016 and prior to that in terms of the interim order passed by a co-ordinate Bench on 3<sup>rd</sup> March, 2015 in WPA 5819 of 2015 he has resumed his duty from 4<sup>th</sup> March, 2015 and worked till the date of his superannuation.

The question remains whether the petitioner is entitled to receive his retiral dues in view of initiation of criminal proceeding based on the allegation lodged by his elder brother which was culminated into an order of acquittal dated 24<sup>th</sup> March, 2008; the said order of acquittal was questioned by the defacto complainant before the High Court by filing a criminal revisional application being CRR 725 of 2009 which was disposed of vide order dated 3<sup>rd</sup> January, 2012 without interfering with the order passed by the trial court. It is also indisputable that till the date of superannuation of the

writ petitioner no disciplinary proceeding was initiated by the said school authority in terms of the relevant provisions of the Management Rules of 1969, in spite of direction given by the concerned District Inspector of Schools directing the school authority to initiate proceedings. Therefore, on the date of superannuation of the writ petitioner on 30<sup>th</sup> September, 2016 neither the disciplinary proceeding nor the criminal proceeding being Khejuri P.S. Case 3 dated 8<sup>th</sup> December, 1988 under sections 468/471/120B of the Indian Penal Code were pending save and except a criminal proceeding being Khejuri P.S. Case No. 210 of 2013 dated 19<sup>th</sup> August, 2013 on which an order of stay was subsequently passed on 26<sup>th</sup> July, 2017 after the date of superannuation of the writ petitioner on 30<sup>th</sup> September, 2016. In order to decipher the entitlement of the writ petitioner on his retirement to receive the retiral dues, I need to consider Clause 19(5) of the D.C.R.B. Scheme on 1981. This Court finds it proper to quote Clause 19(5) for appropriate appreciation of the issue involved in these four writ petitions :

**“Clause 19 (5) :** *Final pension, gratuity etc, shall not be sanctioned to an employee against whom departmental/judicial/proceedings have been instituted/continued. In case of misconduct of the pensioner, the pension sanctioning authority has the power to withhold pension or reduce the pension.*

*Where any departmental or judicial proceeding is instituted or where a departmental proceedings is*

*continued against an employee who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying services up to the date of retirement or if he was under suspension on the date of retirement up to the date immediately proceeding the date on which he was placed on suspension, but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon.*

*Payment of this provisional pension shall be adjusted against the final retirement benefits sanctioned to such employee upon conclusion of the aforesaid proceeding but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”*

It has been provided under the said Clause 19(5) that final pension, gratuity etc., shall not be sanctioned to an employee against whom departmental/judicial proceedings have been instituted/continued. It is also provided therein that where any departmental or judicial proceeding is instituted against the employee who has retired on attaining the age of retirement or otherwise he shall be paid provisional pension not exceeding the maximum pension which would have been admissible on

the basis of his qualifying service up to the date of retirement. Here in the present case though no departmental proceeding has been initiated by the disciplinary authority at the materials point of time but the fact remains that one of the two criminal proceedings initiated against the writ petitioner was culminated into an order of acquittal which was affirmed by the Hon'ble High Court while disposing of the connected criminal revisional application but another criminal revisional application at the instance of the writ petitioner is still pending and this Court has been informed by the learned advocates representing the parties that the same is running in the list of the Bench having determination. It is true that on the said criminal revisional application being CRR 2439 of 2017 which has arisen out of Khejuri P.S. Case No. 210 of 2013 dated 19<sup>th</sup> August, 2013 a co-ordinate Bench passed an order of stay of such proceedings upon the same being found to have been initiated on selfsame fact wherein the writ petitioner had been acquitted. But the said criminal revisional application is still pending for final adjudication before the High Court.

If at this stage Clause 19(5) of the D.C.R.B. Scheme of 1981 is applied, the Court is required to come to conclusion that the writ petitioner is entitled to receive provisional pension subject to the result of the criminal revisional application being CRR 2439/2017. This Court

also does not find any reason to deny the arrear salary of the writ petitioner for the period he rendered service as a Group-D staff of the said school from 4<sup>th</sup> March, 2015 till the date of superannuation on 30<sup>th</sup> September, 2016 as per the interim order dated 3<sup>rd</sup> March, 2015.

Accordingly, this Court directs the respondent authorities including the District Inspector of Schools (SE) Purba Medinipur to sanction and release the provisional pension to the writ petitioner in terms of Clause 19(5) of the DCRB Scheme of 1981 within a period of four weeks from date and also release the arrear salary for the period from 4<sup>th</sup> March, 2015 till the date of superannuation of the writ petitioner on 30<sup>th</sup> September, 2016. The release of arrear salary shall be made by the respondent authorities within a reasonable period of time but not later than eight weeks from the date of communication of this order.

It is submitted on behalf of the writ petitioner that he was not paid salary from 14<sup>th</sup> February, 2013 after the order passed by the District Inspector of Schools (S.E.), Purba Medinipur addressed to the Additional District Inspector of Schools (SE), Contai Sub-division wherein the said Additional District Inspector of Schools was requested to withhold the salary of the writ petitioner. The petitioner submits that on and from 14<sup>th</sup> February, 2013 though the petitioner had attended the school regularly and signed the attendant register but he was

not paid salary and therefore the petitioner prays for a direction for release of salary from 14<sup>th</sup> February, 2013 up to 3<sup>rd</sup> March, 2015, since this Court has already directed the respondent authorities to release salary of the petitioner with effect from 4<sup>th</sup> March, 2015. Since the orders of the concerned respondent authorities as contained in memoranda dated 5<sup>th</sup> August, 2013 being No. 368/L(9); dated 30<sup>th</sup> August, 2013 being No. 418/L(9); dated 16<sup>th</sup> January, 2015 being No. 14/L and dated 7<sup>th</sup> May, 2018 being No.101/Law (6) and dated 6<sup>th</sup> June, 2018 being No.292/L/1(3)/DPPG/L-751/17, are set aside, this Court grants liberty to the writ petitioner to make representation to the concerned District Inspector of Schools (S.E.), Purba Medinipur for releasing arrear salary for the period from 14<sup>th</sup> February, 2013 to 3<sup>rd</sup> March, 2015, which according to the writ petitioner, has not been paid to him in spite of attending the school regularly within a period of four weeks from this date. The concerned District Inspector of Schools (S.E.), Purba Medinipur on receipt of such representation shall consider the same and pass a reasoned order relating to releasing arrear salary for the said period within a period of twelve weeks thereafter, after granting an opportunity of hearing to the writ petitioner and the said school authority. This Court has restrained itself from giving necessary direction for release of salary for the period from 14<sup>th</sup> February, 2013 to 3<sup>rd</sup> March, 2015 since it

requires factual exercise whether the writ petitioner has attended the school and rendered service during the said period and relegate the matter to the concerned District Inspector of Schools (S.E.), Purba Medinipur for taking appropriate decision. If the District Inspector of Schools finds that the writ petitioner attended the school regularly and put signature on the attendance register during this period and discharged his duty regularly in that event necessary order will be passed by the said District Inspector of Schools for releasing the arrear salary in favour of the writ petitioner for the said period.

In view of disposal of all the four writ petitions and the order passed hereinabove the respondent authorities are also directed to release Provident Fund dues of the writ petitioner within a period of four weeks from the date of communication of this order.

With the above directions, all the four writ petitions being **WPA 6156 of 2014, WPA 17716 of 2018, WPA 25407 of 2018 and WPA 5819 of 2015** along with applications, if pending, stand disposed of. However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

**(Saugata Bhattacharyya, J.)**