

Sl. 40
09.11.2021
Ct. No. 5
tbsr

WPA 15277 of 2021

Aparajita Mukhopadhyay @ Mukherjee
-vs.-
The State of West Bengal & Ors.

Mr. Swapan Banerjee
Ms. Ankita Dey
.....for the petitioner

Ms. Kakali Samajpaty
Mr. Pinaki Dhole
.....for the State

The writ petitioner was an assistant teacher in a government aided High School who made an application on 22nd of February, 2021 to release all her dues including pension, gratuity and provident fund amount since she has been declared permanently incapacitated by a competent medical board. In view of such application made by the writ petitioner for sanction of pension and other outstanding dues for being declared as medically incapacitated, the District Inspector of Schools (S.E.), Purba Bardhaman, issued a memo dated 27th of April, 2021 whereby it has been decided by the concerned D.I. that the pension payable to the writ petitioner would be sanctioned with effect from the date of application or from the date following the date of expiration of leave granted to her, whichever is later. Placing reliance on such decision

of the District Inspector of Schools dated 27th of April, 2021 it has been submitted on behalf of the writ petitioner that the decision taken by the headmistress of Badla Girls' High School (HS), Burdwan, dated 17th of August, 2021 is erroneous since it was decided by the said headmistress that 1st of January, 2018 would be the appropriate date for release of pension in favour of the writ petitioner which according to the writ petitioner is contrary to the decision taken by the concerned District Inspector of Schools.

Ms. Kakali Samajpaty, learned advocate appears on behalf of the State respondents and also relies upon the decision of the concerned District Inspector of Schools dated 27th of April, 2021 and has also brought to the notice of the court the decision of the said DI whereby it has been specifically pointed out by the concerned DI that either the date of an application of the petitioner or the date following the expiration of leave granted to the petitioner, which ever is later, would be appropriate date to be considered for sanction of pension in favour of teacher who has been declared physically incapacitated. It is also submitted on behalf of the State respondents that a decision taken by the headmistress of the concerned school dated 17th of August, 2021 is wrong.

It is categorically decided by the concerned District Inspector of Schools as it appears from his memo dated 27th of April, 2021 that two dates are relevant with regard to grant of pension to a teacher who is declared physically incapacitated, one is date of application and other is the date following the last date of leave granted in favour of the said teacher which one is later. In the present case it appears that the writ petitioner made an application for sanction of pension on being declared permanently incapacitated by a competent medical board on 22nd of February, 2021. Since it has been submitted on behalf of the writ petitioner that no proper leave was granted in favour of the writ petitioner question of considering the date following last date of leave, which might be, according to school authority, is dated 1st January, 2018, does not arise. Even if the contention of the school authority as it emanates from the decision dated 17th of August, 2021 of the headmistress is correct in that event it is to be presumed that date following the last date of leave was 1st of January, 2018. If that be so, in that event, considering the decision of the District Inspector of Schools dated 27th April, 2021, the date of application of the writ petitioner which is 22nd February, 2021 is the later date. Therefore, the writ petitioner is entitled to get

the pensionary benefits for being declared as permanently incapacitated from the date of making application. Accordingly, the respondent authorities are directed to process the claim of the writ petitioner for sanction of pension and other outstanding service benefits considering date of making application by the petitioner as relevant date and release the same within a period of twelve weeks from the date of communication of this order.

With the above direction, the writ petition is disposed of.

Affidavit-of-service filed in court today is kept with the record.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon compliance with the necessary formalities.

(Saugata Bhattacharyya, J.)