

11 29.09.2021
rkd Ct.05

W.P.A. 14740 of 2021
(Through Video Conference)

Srikanta Kumar Jana

-vs-

The State of West Bengal & Ors.

Mr. Anjan Bhattacharya

....for the petitioners.

Mr. Subhabrata Datta,
Mr. Debashis Sarkar,
Mr. Paritosh Sinha

....for the State.

Affidavit-of-service filed in Court is taken on
record.

Writ petitioner was an assistant teacher in a Government aided recognized school who retired on superannuation on 31st January, 2021. The grievance of the writ petitioner is that on the date of superannuation of the writ petitioner he completed 9 years 5 months 29 days service in stead of 10 years service which is according to DCRB Scheme of 1981 is a precondition for sanction of pension in favour of the retired assistant teacher working in Government aided secondary school. It has been contended on behalf of the writ petitioner that there was a considerable delay on the part of the concerned authority while giving appointment to the writ petitioner. It appears from the interview letter dated 16th October, 1995 issued to the writ petitioner that the petitioner was asked to

participate in the selection process on 5th November, 1995. Pursuant to the interview held on 5th November, 1995 a panel was prepared and the petitioner got aggrieved by preparation of such panel where the petitioner was not placed at the first place though according to the petitioner he should have been positioned at the first place in the panel in question which triggered filing of the first writ petition being W.P. 19037(W) of 1997 (Srikanta Jana -vs- State & Ors.). The said writ petition was disposed of vide order dated 10th March, 2011 thereby directing the concerned respondent authorities to take necessary steps with regard to appointment in the post in question. Pursuant to the said order passed by the Hon'ble High Court on 10th March, 2011 panel prepared based on interview held on 5th November, 1995 was recast wherein the writ petitioner was placed at the first position. The recast panel was finalized vide Memo dated 14th July, 2011 which appears from page 23 of the writ petition. The writ petitioner was appointed as per the said recast panel vide appointment letter dated 29th July, 2011 and he joined the post of assistant teacher on 3rd August, 2011. Placing the chronology of facts it is contended on behalf of the writ petitioner had the

school authority as well as the concerned respondent authorities would have been more vigilant to take steps in terms of the recast panel as contained in Memo dated 14th July, 2011 petitioner's appointment as assistant teacher could have been made prior to 3rd August, 2011. It also appears that the order was passed by the Hon'ble High Court on 10th March, 2011 since the panel was recast on 14th July, 2011. Prompt action on the part of the school authority as well as the concerned State respondent could have made the writ petitioner eligible to complete 10 years' continuous service which is one of the conditions for making an assistant teacher eligible to receive his or her retiral dues in terms of DCRB Scheme of 1981. Petitioner upon placing reliance on these facts prays for condonation of period which fell short in making the writ petitioner eligible to receive retiral dues.

Mr. Datta, learned advocate appears on behalf of the State respondents and submits that in terms of the relevant provision of the DCRB Scheme of 1981 the writ petitioner is not eligible to receive retiral dues since the qualifying service of the writ petitioner fell short of ten years. In addition thereto by placing the judgement of the Division

Bench dated 28th May, 2021 which has already been relied upon by Mr. Bhattacharya, while advancing argument on behalf of the writ petitioner, it has been submitted by Mr. Datta that in case of the writ petitioner/respondent in MAT 1917 of 2019 there was delay of 26 days whereas the period which fell short in the case of the writ petitioner in the present case is six months one day. Therefore this judgment passed in MAT 1917 of 2019 (The State of West Bengal –vs- Rabindra Nath Ghosh) may not be applicable in case of the writ petitioner.

This Court has considered submissions made on behalf of the learned advocates representing the parties and finds in apposite to give direction to the Principal Secretary, School Education Department, Government of West Bengal, respondent no.2, to take decision on the eligibility of the writ petitioner to receive retiral dues upon condoning the period which fell short of qualifying service of ten years in view of the facts which have been discussed above within a period of twelve weeks from the date of communication of this order. It is also directed by this upon the respondent no.2 to follow the observations made by the Hon'ble Division Bench in the judgement dated

28th May, 2021 passed in MAT 1917 of 2019 Rabindra Nath (Supra) while taking decision on this issue. Such decision is to be taken after granting opportunity of hearing to the writ petitioner and the school authority where the petitioner was serving prior to his retirement. The decision to be taken by the respondent no.2 shall be communicated to the writ petitioner within two weeks thereafter.

Accordingly, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)