

07 04.10.2021
rkd Ct.05

W.P.A. 14766 of 2021
(Through Video Conference)

Md. Mainul Hoque
-vs-
The State of West Bengal & Ors.

Mr. Ekramul Bari,
Ms. Kiran Kumari Mahato

....for the petitioner.

Ms. Koyeli Bhattacharyya

....for the W.B.B.S.E..

Mr. Sirsanya Bandopadhyay,
Mr. Shubhendu Sengupta

....for the State.

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

Writ petitioner is an approved assistant teacher who was appointed on 30th August, 2012 in terms of the order of a coordinate Bench dated 30th August, 2012 passed on a writ petition being W.P. 10429(W) of 2003. Pursuant to the said order dated 30th August, 2012 approval was granted in favour of the writ petitioner by the concerned District Inspector of Schools (SE), Murshidabad by issuing Memo dated 27th February, 2013. After rendering service in terms of the said approval Memo dated 27th February, 2013 writ petitioner has ultimately retired on superannuation on 31st December, 2020 after rendering service for a period of eight years four months. Petitioner made approach to the

concerned respondent authorities for release of pension which was turned down by the concerned authorities upon finding the writ petitioner was not eligible to receive pension since the tenure of the writ petitioner fell short of ten years of qualifying service. Such refusal on the part of the respondent authorities prompted the writ petitioner to approach this Court by preferring writ petition being WPA 8964 of 2020 which was disposed of by a coordinate Bench by order dated 18th January, 2021. Pursuant to such direction the Commissioner of School Education, West Bengal, took decision vide impugned Memo dated 18th June, 2021 whereby the case of the writ petitioner for sanction of pension was spurned on certain grounds and one of the grounds which was assigned by the Commissioner of School Education was that the Commissioner had no authority to condone any deficiency of qualifying service for getting pension.

Mr. Bari, learned advocate appears on behalf of the petitioner and submits that since the Commissioner did not have the power and authority to take decision on this issue let the matter be decided by the appropriate authority having power to take such decision.

Mr. Bandopadhyay, learned junior standing counsel appears on behalf of the state respondents and opposes the prayer of the writ petitioner and also defended the decision of the Commissioner of School Education as contained in the impugned Memo dated 18th June, 2021. He has submitted that in terms of the order of the coordinate Bench dated 30th August, 2012 approval was granted in favour of the writ petitioner with effect from 30th August, 2012 and as such there is no scope left open to the concerned respondent authorities to condone the deficiency in service for sanction of pensionary benefits in favour of the writ petitioner.

This Court has heard the learned advocates representing the parties to this writ petition and also perused the decision of the Commissioner of School Education, West Bengal issued vide Memo dated 18th June, 2021. Since the Commissioner of School Education, respondent no.3 was not empowered to take any decision on condoning deficiency in qualifying service for getting pension this Court finds it apposite to direct the Principal Secretary, School Education Department, Government of West Bengal, who is the appropriate authority as submitted by the

learned advocates representing the parties, to take decision on the entitlement of the writ petitioner to receive pension upon condonation of deficiency of service of one year eight months, within a period of twelve weeks from the date of communication of this order after granting opportunity of hearing to the writ petitioner and the authority of the school where petitioner served as an assistant teacher. The decision which is to be taken in terms of this order to be communicated to the writ petitioner within a period of two weeks thereafter. The Memo dated 18th June, 2021 issued by the Commissioner of School Education, West Bengal is set aside.

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

There shall be no order as to costs.

Since no affidavit is called for the allegations contained in the writ petition are deemed not to have been admitted.

Leave is granted to the advocate-on-record of the writ petitioner to amend the cause title by correcting the designation of respondent no.2 in course of this day.

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.)