

**MAT 828 of 2020
With
CAN 1 of 2021**

**Sajal Kumar Khanra
Vs.
The State of West Bengal & Ors.
(Through Video Conference)**

Mr. S.P. Pahari
... ... for the appellant
Mr. Joytosh Majumdar, Ld. G.P.
Mr. Biswabrata Basu Mallick
Mr. Sayan Ganguly
... ... for the State respondents

With consent of the parties the appeal and the application are treated on day's list and disposed of by passing common order.

This appeal is directed against the order dated 7th December, 2020 passed by the learned Single Judge whereby prayer of the writ petitioner to treat him as eligible for pension upon his superannuation with effect from 21st June, 2021, if necessary, by condoning deficiency in service period was spurned.

The writ petitioner being aggrieved by such decision of the learned Single Judge preferred the instant appeal and the connected stay application. The petitioner claimed to be an organizing teacher of Mirzapur Junior High School which was recognized by the West Bengal Board of Secondary Education on 16th September, 2003.

The case which has been made out by the appellant is that though other organizing teachers were approved by the concerned respondent authorities on recognition of the said school, but he was left out and he was denied approval which triggered the writ petition claiming approval of appointment upon consideration of service which he rendered when Mirzapur Jr. High School was not recognized. The writ petition being W.P. No. 13579 (W) of 2004 which was preferred by the appellant was disposed of on 29th November, 2012 and appeal was preferred against the order passed on the said writ petition but the appeal was dismissed. The order dated 29th November, 2012 was passed in favour of writ petitioner for his appointment on substantive basis.

Ultimately, for non-compliance of the order passed on the said writ petition being W.P. 13579 (W) of 2004 one contempt application was filed against the District Inspector of Schools (S.E.), Purba Medinipur.

During the pendency of the contempt application the District Inspector of Schools (S.E.) accommodated the appellant in another school, namely, Uttar Amtalia Gita Rani Vidyabhawan (H.S.), district Purba Medinipur. Such appointment was made by the concerned District Inspector of Schools (S.E.) during the pendency of the contempt Rule being WPCRC 383(W) of 2013, with effect from 25th November, 2014. At present the appellant is rendering service as an Assistant Teacher in the Uttar

Amtalia Gita Rani Vidyabhawan (H.S.) and he will retire on 21st June, 2021 on superannuation.

The appellant apprehends that since he will not be able to complete ten years of continuous approved service which is a pre-condition for sanctioning of pensionary benefit, he preferred the writ petition which was dismissed by the learned Single Judge on the ground that at the time of appointment of the appellant in Uttar Amtalia Gita Rani Vidyabhawan (H.S.), the said appointment was accepted by the appellant without any demur. Therefore, upon acceptance of such appointment with effect from 25th November, 2014 he cannot be found as eligible to get benefit of retiral dues at the time of his retirement on 21st June, 2021.

On consideration of chronological facts we find till date the appellant has not retired. Question of sanctioning retiral benefits will arise upon successful completion of his tenure as Assistant Teacher. Therefore, if the appellant has any grievance with regard to non-sanctioning of retiral benefits in terms of DCRB scheme of 1981 that will arise after his retirement on 21st June, 2021.

In the event of refusal to release retiral dues to the appellant, it will be left open to the appellant to approach the appropriate authorities after completion of his tenure which will end on 21st June, 2021, if permissible under the law.

We are not expressing any opinion with regard to the entitlement of the appellant to get the benefit of retiral dues at this stage since the appellant will retire on 21st June, 2021.

With the above observations, the appeal and the application stand disposed of and the order of the learned Single Judge stands modified, however, there shall be no order as to costs.

Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)