

07-01-2021
ct no. 13
Sl.25
sp

WPA 11633 of 2020

Abdul Latif

-Versus-

The State of West Bengal & Ors.

Mr. Siddhartha Sankar Mandal

...for the petitioner

**Mr. Tapan Kumar Mukherjee,
Mr. Shamim-ul Bari**

...for the State

The petitioner was an Assistant Teacher in Budhra Umedia Junior Madrasah. He worked from March 2, 2009 till February 28, 2019 as a permanent teacher without any blemish.

Upon retirement, the petitioner was informed that he was one day short of the minimum requirement of ten years of service for the purpose of pensionary and retirement benefits.

He made representation to the Minority Affairs and Madrasah Education Department for condonation of one day in qualifying service for pensionary benefits. The Additional Secretary of Minority Affairs and Madrasah Education Department by communication dated July 13, 2020 rejected the same relying upon para 7(e)(iv) of the West Bengal Recognized Non-Government

Educational Institution employees (Death-cum-Retirement Benefit) Scheme 1981.

Mr. Tapan Kumar Mukherjee, learned senior counsel representing the State placed Rule 7(e) under Chapter-III of Annexure-1 of the Scheme called “West Bengal Recognized Non-Government Educational Institution employees (Death-cum-Retirement Benefit) Scheme 1981” and placed the note to Rule 7(e)(iv) which is set out herein below.

Note: *The deficiency should not be condoned with a view to make up the minimum prescribed qualifying service for the purpose of death gratuity of family pension. In other cases power should be restricted to the employees drawing pay not exceeding Rs. 425.00 per month at the time of retirement on invalid or compensation pension.*

He argues that the impugned order dated July 13, 2020 was, therefore, strictly in accordance with the Scheme in question.

Per contra, the learned counsel for the petitioner has placed a Memo dated February 2, 2009, which stated to be, inter alia, as follows.

“In terms of para 7(e)(iii) of the West Bengal Recognized Non-Government Educational Institution Employees (DCRB) Scheme, 1981, fractions of a year equal to six months and above shall be treated as completed six monthly period for the purpose of calculation if any pension under the said scheme in case of Government employees, a fraction of a year equal to three months and above is treated as completed six monthly period of service and reckoned as qualifying service for the purpose of pensionary benefits in terms of Memo No. 14971-F dated 16-12-83 Government in School Education for sometime past was considering extension of the said benefit to employees of Non-Govt. Aided Educational Institutions.

After careful consideration of the matter the Governor is pleased to decide that a fraction of a year equal to three months and above shall be treated as completed

six monthly period of service and reckoned as qualifying service for determines retirement benefits and the period of service below three months will be ignored.

This order shall be deemed to have taken effect from the date of issue of this order.

This order issues with the concurrence of Finance Department vide their U/O No.896, Pension Br., Dated 17-12-08.

The Pension cases already settled need not to be re-opened.

*Sd/-
S. Mahapatra
O.S.D.E.O Joint Secretary”*

It is therefore apparent and clear that relaxation is permitted for payment of pension in terms of the aforesaid Memo dated 02.02.2009.

In addition thereto, counsel for the petitioner would rely on a decision of a Co-ordinate Bench of this Court dated November 17, 2020 passed in WPA 8623 of 2020 (Bhupesh Candra Bhowmick vs. State of West Bengal & Ors.), where a period of 28 days short of ten years was directed to be condoned and pension and retirement benefits were allowed to the petitioner therein. The petitioner therein was also an Assistant Teacher in Uttar Padua Free Primary School under the Joynagar Circle. The Co-ordinate Bench relied upon another decision of another Co-ordinate Bench of this Court dated June 19, 2014 passed in WP 14229 (W) of 2014, where a period of 42 days being shortfall

from ten years was condoned and retirement benefits were allowed.

This Court notices in the instant case that there is only one-day shortfall from ten years.

In those circumstances, taking an equitable view of the matter and given fact that the petitioner has diligently and without blemish served as an Assistant Teacher in the Madrasah concerned, the Minority Affairs and Madrasah Education Department of the West Bengal is hereby directed to condone the delay of one-day that the petitioner is falling short of and approve his case for pension and other retirement benefits under the DCRB Scheme of 1981 of the Government of West Bengal.

Let such clearance be effected within a period of one month from the date of communication of a copy of this order. Upon such clearance, the Secretary, Minority Affairs and Madrasah Education Department, Government of West Bengal shall forward the petitioner's case to the Directorate of Pension and Provident Fund and Group Insurance who shall complete the computation of pensionary and other retirement benefits payable to the petitioner within a period of one month thereafter and pension must be released to the petitioner immediately thereupon.

It is needless to mention all formalities in this regard as required by the Minority Affairs and Madrasah Education and the Directorate of Pension shall be complied with by the petitioner and the Madrasah in question as also the D.I. of Schools (SE), Uttar Dinajpur expeditiously.

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

There shall be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)