

Court No. 17

WPA 2926 of 2021

27.04.2022

(AD 1)

(S. Banerjee)

Asim Ghosh

Vs.

The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. Siddhartha Sankar Mandal
Ms. Arunima Das Sharma

... for the petitioner

Let the affidavit of service filed in court today be kept with the record.

The prayer of the writ petitioner in this writ application is to direct the respondent no. 2 to revoke/cancel/quash etc. the reasoned order dated 24.09.2019. The reasoned order is as follows:

“ Hon’ble Justice Shampa Sarkar was pleased to pass an order on 17.04.2019 in Writ Petition no-11427(W) of 2018 directing the District Inspector of Schools (SE), North 14 Parganas to consider and dispose of the representation of the petitioner dated 22nd May, 2018 in accordance with law and upon taking into consideration the documents and relevant judgments passed by this court in this regard and to pass a reasoned order.

In pursuance of the solemn order dated 17.04.2019 a hearing was held on 13.08.2019 at 12 Noon in the office chamber of the District Inspector of Schools (SE), North 24 Parganas. The petitioner and the Headmaster of Saktigarh High School (HS) were present in the hearing.

All concerned were heard and submissions made by them were taken into consideration. The

Additional District Inspector of Schools, Bongaon Sub Division had accorded approval of appointment in favour of Asim Ghosh as a clerk of Saktigarh High School (HS) e.e.f. 27.02.2009 vide memo no- 845/G dt 03.11.2014. His date of birth is 11.01.1958 and he retired on 31.01.2018 after attaining the age of superannuation. His total length of approved service is 8yrs 11 months & 4 days.

As per para -8, chapter -IV of G.O.No- 136- (B) dt-15.05.85 an employee shall be entitled to pension provided that the employee concerned has completed at least ten years of qualifying service and as per para- 7(D) chapter-III of the said order continues service of a whole time approved employee in any educational institution, shall count as qualifying service. As per rules there is no provision for condonation of deficiency of qualifying service for 1 year 26 days which will be required for completion of 10 years qualifying service and getting pension.

The judgment of the Hon'ble Justice Tapabrata Chakraborty dt 25.01.2018 in W.P.No-9903(W) of 2016 Gostha Bihari Guchhait Vs The State of West Bengal & Ors. is not applicable in this matter. In the said writ application the petitioner was service as a teaching staff w.e.f.01.07.82 in the unrecognized section of the school and that matter was mentioned in the DLIT report dt.29.09.92 leading to recognition of the school. The Hon'ble Justice Tapabrata Chakraborty in his order dated 25.01.2018 directed the respondent to condone the deficiency of 1 year 2 month as qualifying service and to disburse the pensionary benefits. This is specific order for this instant writ petition.

Hence the petitioner's prayer for condonation of deficiency of 1 year 26 days qualifying service for pensionary benefit cannot be considered as per rules. Thus no relief can be granted in this matter to the petitioner. Hon'ble Court's Order dated 17.04.2019 is thus complied with and the matter is disposed of.

All concerned be informed accordingly.

Sd/-

District Inspector of Schools
(SE),

North 24 Parganas.

Dated, Barasat, 24.09.2019 ”

Learned advocate for the petitioner has submitted that there is a deficiency of one year 26 days as qualifying service for getting pension by the petitioner who was appointed as a clerk of the school on 27.02.2009 and retired on 31.01.2018.

Before his appointment on 27.02.2009, he was also working as a clerk of the said school and it has been submitted that the said appointment was not legal, at best it can be said that the appointment was irregular.

The petitioner came before this court in 2018 for allowing him to participate in the selection process for the regular appointment which the court allowed and the petitioner appeared before the selection board and he was selected as the clerk and he got the regular employment with effect from 27.02.2009.

Learned advocate for the petitioner has submitted that the appointment in the period between 1995 and 2009 was irregular and, therefore, this part actually cannot be ignored by the authority for considering the qualifying service since this appointment was made following one guideline which was existing at that point of time and it was only a guideline and not any rule or

any other thing having the force of law. Therefore, he should not be deprived of his pension for deficiency of only 1 year 26 days.

His other point is that this court in a matter, being WP No. 9903(W) of 2016, reported in (2018) 2 WBLR (Cal) 131, in paragraph 9 held that two different yardsticks cannot be applied for the purpose of calculation of length of qualifying service under Clause 7(iii) and Clause 4 of the DCRB Scheme and the benefits under the said scheme cannot be scuttled by limiting the period of condonation inasmuch as such restriction would lead to discrimination.

In this regard my view is that – culling out only a paragraph bereft of the facts and circumstances of the matter as reflected in the whole of the judgment, is not acceptable to this court. This observation was made in a case of organising teachers which has been fairly submitted by Mr. Bari, learned advocate for the petitioner. The facts and circumstances of organising teachers cannot be equated with the facts and circumstances of this case and, therefore, I am not inclined to accept the submission made on the basis of the said reported judgment.

I have perused the reasoned order dated 24.09.2019 which has been quoted above. I do not find any infirmity in the said reasoned order for which this court can exercise its writ jurisdiction for interfering with the said reasoned order.

Another thing which is written large in this matter is that as soon as the petitioner appeared before the selection committee in the year 2008, he abandoned all his known rights, if there was any, for his appointment with effect from 1995 following a guideline.

As the petitioner waived his right and did not espouse his cause before the court of law, I hold that this is a clear case of waiver on the part of the petitioner whereby he has abandoned his known right, i.e., irregular service (not illegal as per petitioner) and, therefore, now it cannot be agitated by the petitioner that as he was appointed in the year 1995 in the school as a clerk, his qualifying service is not at all suffering from any deficiency of any period of time. This contention is not accepted by this court. It is his regular service which is considered for pensionable service, not the irregular appointment.

For the reasons as aforesaid, I am not entertaining this writ application and this writ application is dismissed.

There shall be no order as to costs.

(Abhijit Gangopadhyay, J.)