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04.04.2022
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 9177 of 2021

**Sakti Pada Bauri
-versus
State of West Bengal & Ors.**

**Mr. Swapan Banerjee,
Mr. Falguni Bandyopadhyay,
Mr. Sougata Mitra,
Ms. Sreetama Neogi,
Ms. Riya Ballav.
...For the Petitioner.**

**Mr. Supriyo Chattopadhyay,
Ms. Iti Dutta.
...For the State.**

**Mr. Bhaskar Prasad Vaisya,
Mr. Nilay Baran Mondal.
...For DPSC, Purulia.**

The petitioner was serving as Extra Departmental Branch Postmaster of Rajnowagarh Extra Departmental Branch Post Office under Purulia Head Post Office for the period 15th May, 1982 to 12th April, 1986. He was charged of defrauding government money to the tune of Rs. 2,500/- (rupees two thousand five hundred only) from the post office.

A criminal case was initiated against him being Pancha P.S. Case No. 2 dated 4th April, 1987. By a judgment and order of conviction dated 20th April, 2010 and 21st August, 2012 respectively passed in Special Court Case No. 5 of 1990, the learned Additional District and Sessions Judge, 2nd Court Purulia convicted the petitioner for the offence under Section

409 IPC and sentenced him with rigorous imprisonment for five years and also directed to pay fine of Rs.1000/- (rupees one thousand only), in default, to suffer further imprisonment for six months.

In the year 1986, the petitioner was appointed as a primary school teacher by the District School Board, Purulia. He was transferred to another school in the year 2003 and was promoted to the post of headmaster in the year 2008.

Being aggrieved by the order of conviction, the petitioner preferred an appeal before this Court being CRA 296 of 2010. The petitioner was granted bail by this Court on 9th June, 2010 in CRAN 2064 of 2010.

The petitioner was formally suspended by the Chairman of the District Inspector of Schools (P.E.), Purulia on 11th February, 2011 with effect from 20th April, 2010 on the ground that the petitioner was in judicial custody.

The Court was pleased to dispose of the appeal on 22nd September, 2015. The period of conviction was reduced from five years to four years, but at the same time the fine amount was enhanced from Rs.1000/- (rupees one thousand only) to Rs. 20,000/- (rupees twenty thousand only), in default, to suffer further rigorous imprisonment for one year.

The Hon'ble Court was pleased to direct the petitioner to surrender before the Learned Trial Court within 15 days.

The petitioner, accordingly, surrendered before the Court below and underwent period of conviction in custody. He was released from the correctional home on 15th August, 2019.

In the meantime, the petitioner retired from service on attaining his normal age of superannuation on 31st January, 2015. After being released from custody he applied before the respondent authority for releasing his terminal benefits.

On receipt of the application from the petitioner, the Sub-Inspectors of Schools, Kenda Circle, Purulia by a communication dated 11th September, 2019 sought instruction from the District Inspector of Schools (P.E.), Purulia with regard to the prayer of the petitioner for grant of pension, gratuity and provident fund.

The Sub-Inspector of Schools, by a communication dated 10th February, 2020, requested the petitioner to submit a letter for withdrawal of suspension as his pension file was objected by the District Inspector of Schools (P.E.), Purulia citing the reason of non-availability of the letter of the petitioner praying for withdrawal of suspension.

The Sub-Inspector of Schools forwarded all the relevant documents of the petitioner that is Annexure – IX (fixation of ROPA 1990) DCRB option form, Annexure-VII (option form of ROPA 1999), Annexure-VIII (fixation of ROPA 1999) along with the main pension file of the petitioner to the District Inspector of School, Primary Education, Purulia for necessary action.

The petitioner on 3rd March, 2020 requested the Chairman of the District Primary School Council, Purulia through the Sub-Inspector of Schools, Purulia for withdrawal of his order of suspension.

The grievance of the petitioner is that his prayer for withdrawal of the order of suspension has not been considered and disposed of till date.

The petitioner prays for a direction upon the respondent authority to disburse his superannuation benefits.

It has been argued that the offence was committed prior to the petitioner joining the service as a primary school teacher. No disciplinary proceeding has been initiated against the petitioner by the school.

The petitioner further submits that as the offence is no way related with his service, accordingly, his service benefits ought to be disbursed in his favour.

The prayer of the petitioner has been strongly opposed by the learned advocate for the Council and the State respondents.

It has been submitted that as per provisions of the Death-cum-Retirement Benefit Rules, a teacher is not entitled to receive pension, if he is convicted in a criminal case.

It has been submitted that the order of conviction was passed when the petitioner was in service and the petitioner remained in the correctional home.

The notification of the School Education Department dated 5th August, 2008 in relation to the West Bengal Primary Education (Teachers and Employees' Death-cum-Retirement Benefit) Rules, 2008 has been placed. Reliance has been placed on Rule 20 of the said Rules.

The petitioner, in his support, relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of State of Jharkhand & Ors. -vs- Jitendra Kumar Srivastava & anr. reported in (2013) 13 SCC, 210.

The petitioner also relies upon the judgments delivered by this Court on 18th December, 2015 in W.P. 28290 (W) of 2015 (Gunamay Mahato –vs- The State of West Bengal & Ors.) and Anadi Prasad Mahato –vs- State of West Bengal reported in 2014 (2) CHN (Cal) 103.

Relying on the judgment delivered by this Court in the matter of Gunamay Mahato, another coordinate Bench of this Court passed an order dated 16th September, 2016 in W.P. 18979 (W) of 2011 in the matter of Niranjana Mahato –vs- State of West Bengal & Ors.

In Anadi Prasad Mahato (supra), Gunamay Mahato (supra) and Niranjana Mahato (supra) the Court was of the considered opinion that as the criminal proceeding under reference had no nexus with the service of the petitioner and no pecuniary loss has been caused to the respondents accordingly the terminal benefits cannot be withheld by the respondent authority.

In the present case, it appears that decision is yet to be taken by the respondents as to whether the petitioner will be entitled to his superannuation benefits in view of his conviction in a criminal case.

Admittedly, the offence in which the petitioner stood convicted was not committed during his service tenure and the same was no way related to his service.

In the facts of this case, the law laid down by this Court in the matter of Anadi Prasad Mahato (supra), Gunamay Mahato (supra) and Niranjana Mahato (supra) will be squarely applicable.

As it appears that decision is yet to be taken with regard to the prayer of the petitioner for grant of superannuation benefits, accordingly, the instant writ petition is disposed of by directing the District Inspector of Schools (P.E.), Purulia and the Chairman of the District Primary School Council, Purulia to take a decision with regard to the prayer of the petitioner for grant of superannuation benefits, strictly in accordance with law, in view of the facts admitted hereinabove and in the light of the judgments passed by this Court in the matter of Anadi Prasad Mahato (supra), Gunamay Mahato (supra) and Niranjana Mahato (supra).

A decision in the matter shall be taken at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order.

The said respondents shall pass a reasoned order and communicate the same to the petitioner immediately thereafter.

In the event, the respondents are of the opinion that the petitioner will be entitled to the superannuation benefits, then necessary consequential steps shall be taken by the said authorities immediately thereafter.

The petitioner is directed to forward a copy of the judgment delivered by this Court in the matter of Anadi Prasad Mahato (supra), Gunamay Mahato (supra) and Niranjana Mahato (supra) to the aforesaid respondents at the time of communicating the order passed by this Court.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)