

11.01.2022
SL No. 11
Court No. 24
(P.M)

WPA 7890 of 2019

**Sri Amulya Ratan Mahato
Vs
The State of West Bengal & Ors.
(Via Video Conference)**

Mr. Ashis Kumar Paul
... for the petitioner.

Ms. Tuli Sinha
... for the State.

The petitioner retired as Assistant Teacher of a school after serving nine years, nine months and five days. The prayer of the petitioner to condone the deficiency of two months and twenty five days so that he qualifies for pension including family pension in accordance with the West Bengal Recognized non-Government Educational Employees (death cum retirement benefit) Scheme, 1981 has been rejected.

The petitioner is aggrieved by the same.

The Secretary, School Education Department in the impugned order dated 29th September, 2014 was of the opinion that the facts of the case of the petitioner is dissimilar with the facts of the case mentioned in FMA No. 442 of 2012 (Subhas Chandra Chakraborty – vs – The State of West Bengal & Ors.)

The Court in Subhas Chandra Chakraborty held that the appellant/petitioner could not complete the prescribed period of ten years qualifying service

before attaining the age of superannuation due to laches on the part of the respondent.

In the instant case, the petitioner has averred that he appeared in the selection test for filling up the post of Assistant Teacher under the Purulia District Primary School Council and selection for appointment in terms of the interview and panel was prepared in the year 1984. Due to pending litigation no appointment could be given to any of the teachers and ultimately the matter was disposed of by the Hon'ble Court and the petitioner was given appointment in 1997 after lapse of thirteen years.

The Court directed the Secretary of School Education Department to exercise authority in terms of Clause 7 (e) (iv) of the Scheme of 1981 by condoning the deficiency in qualifying service of the appellant/petitioner in order to enable the said appellant/petitioner to enjoy the pensionary benefit.

It appears that there is hardly any difference between the facts of the case of Subhas Chandra Chakraborty (supra) and the case at hand.

The Hon'ble Division Bench in MAT 1917 of 2019 (The State of West Bengal –vs- Rabindra Nath Ghosh) dealt with all the issues raised by the parties in details and after considering the submissions of the parties the Court passed judgment by holding that the object of the Scheme will be defeated and rendered

nugatory by taking recourse to harsh and irrational views in denying the legitimate claim of the employee.

The Court was pleased to affirm the order passed by the learned Single Judge by allowing the writ petition upon condoning the deficiency of twenty-six days in the qualifying service of the teacher concerned.

The Scheme of 1981 contains a provision for condoning deficiency of six months in qualifying service of the employees of non-government/sponsored /aided educational institutions/ organisations. The Scheme mentions that fraction of a year equal to six months and above shall be treated as completed six monthly period for the purpose of calculation of pension under the Scheme.

In view of the above the impugned order dated 22nd September, 2014 is set aside and quashed. The Commissioner of School Education is directed to take necessary step to exercise authority in terms of Clause 7(e) (iv) of the Scheme and condone the deficiency of two months and twenty five days so that the petitioner may qualify for pension including family pension. The Commissioner shall take steps in the matter at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order.

The writ petition stand disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)