

1 19.4.2022
Ct. No. 15
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W.P.A. 7248 OF 2007

with
I.A. No.CAN 2 OF 2017
(Old No.CAN1586 of 2017)
with
I.A. No.CAN 1 OF 2017
(Old No.CAN 1576 of 2017)
with
I.A. No.CAN 3 OF 2019
(Old No.CAN 6037 of 2019)
with
I.A. No.CAN 4 OF 2019
(Old No.CAN 6038 of 2019)

Madan Mohan Pal
Vs.

Secretary, Department of
Education, Government of West Bengal
(Secondary Education) & Ors.

Mr. Milon Ch. Bhattacharya
Ms. Sulagna Bhattacharya.

.... For the Applicant/
Petitioner

Ms. Sanghamitra Nandy
Ms. Manika Pandit.

... For the State

The application being I.A. No. CAN 2 of 2017 (Old No. CAN 1586 of 2017) is taken out for condonation of delay in filing the restoration application being I.A. No. CAN 1 of 2017 (Old No. CAN 1576 of 2017). These two applications, one for condonation of delay in presenting the restoration application and another for recall of the order dated 14th May, 2012, are taken up together.

The learned advocates representing the applicant as well as the State respondents are heard. While considering these two applications the Court has found it fit to consider the writ petition on merits too.

Mr. Milon Ch. Bhattacharya, learned senior advocate appears on behalf of the applicant/petitioner and has submitted that the writ petition pertains to denial of Post Graduate Scale of Pay which the petitioner was enjoying with effect from 1st January, 1986. It has been submitted on behalf of the petitioner that suddenly vide Memo dated 9th March, 2007/14th March, 2007 the Director of School Education, West Bengal being the respondent no. 2 under Memo No. 4G-955/85 intimated the concerned District Inspector of Schools (SE), South 24-Parganas expressing regret on sanction of Post Graduate Scale of Pay to the petitioner upon placing reliance on the Government Order dated 27th January, 1995 and provisions of the West Bengal Schools (Control of Expenditure) Act, 2005. Such Memo dated 9th March, 2007/14th March, 2007 is under challenge in the writ petition.

During pendency of the writ petition, the petitioner retired on superannuation on 31st October, 2011. It has been submitted by Mr. Bhattacharya that due to such decision of the respondent no. 2, not to sanction Post Graduate Scale of Pay in favour of the petitioner, while calculating the retiral dues an alleged overdrawn amount was found which was paid in excess to the petitioner i.e. to the tune of Rs.1,04,491/- vide Memo dated 15th June, 2011. The concerned District Inspector of Schools (SE), South 24-Parganas intimated the Head Master of the

school that the petitioner was required to refund such amount of Rs.1,04,491/-.

It has further been submitted by Mr. Bhattacharya that the petitioner decided not to deposit such amount as demanded by the concerned respondent in view of the pendency of the writ petition where challenge has been thrown to the decision of the respondent no. 2 on refusal to sanction Post Graduate Scale of Pay in favour of the petitioner. Since the deposit has not been made as per demand of the concerned District Inspector of Schools vide Memo dated 15th June, 2011, pension case of the petitioner till date, has not been finalised and inspite of superannuation of the petitioner on 31st October, 2011, he has not received any retiral dues.

Meanwhile, the writ petition was dismissed for default vide order dated 14th May, 2012 by a coordinate Bench and the restoration application has been filed on 20th February, 2017 accompanied by an application for condonation of delay in preferring such restoration application.

There are two other applications being I.A. No. CAN 3 of 2019 (Old No. CAN 6037 of 2019) and I.A. No. CAN 4 of 2019 (Old No. CAN 6038 of 2019) whereby the applicant has prayed for amendment of the prayer as made in the application for recall and application for condonation of delay.

In view of above state of facts as submitted by Mr. Bhattacharya appearing for the applicant/petitioner, it

appears to this Court that there is a considerable delay in filing the recalling application. Since the petitioner is not in receipt of retiral dues after his superannuation far back on 31st October, 2011, this Court finds it fit to allow the application for condonation of delay in presenting the recalling application as well as the recalling application considering the plight of the petitioner being a senior citizen.

Accordingly, all the four applications being I.A. No. CAN 2 of 2017 (Old No. CAN 1586 of 2017), I.A. No. CAN 1 of 2017 (Old No. CAN 1576 of 2017), I.A. No. CAN 3 of 2019 (Old No. CAN 6037 of 2019) and I.A. No. CAN 4 of 2019 (Old No. CAN 6038 of 2019) are allowed and stand disposed of.

The connected writ petition is restored to its original file and number and is also heard on merits today.

Ms. Sanghamitra Nandy, learned advocate appears on behalf of the State respondents and she has relied upon one written instruction which she has received from the State respondents under Memo dated 18th April, 2022, which is taken on record.

A copy of such instruction under Memo dated 18th April, 2022 has been handed over to the learned advocate of the petitioner in Court today.

The attention of this Court has been drawn to the impugned Memo dated 9th March, 2007/14th March, 2007, issued by the respondent no. 2 wherein entitlement

of the petitioner to enjoy the Post Graduate Scale of Pay which, in fact, he was receiving from 1st January, 1986, was abruptly denied without assigning any reason save and except referring Government Order No.57-SE (B) dated 27th January, 1995 and the West Bengal Schools (Control of Expenditure) Act, 2005.

It appears to this Court that this impugned decision of the respondent no.2 is cryptic and bereft of any reason. It also appears that such decision of the respondent no. 2 has civil and evil consequences since abruptly the Post Graduate Scale of Pay was withdrawn pursuant to the Memo dated 9th March, 2007/14th March, 2007 but no opportunity of hearing was afforded to the petitioner at the time of taking such decision. It also appears to this Court that how the Government Order dated 27th January, 1995 has a bearing on entitlement of the petitioner to get the Post Graduate Scale of Pay since the petitioner, on acquiring higher qualification in the relevant subject, was allowed to enjoy such higher scale of pay with effect from 1st January, 1986. At the same time, the West Bengal Schools (Control of Expenditure) Act, 2005 may not have any application in the case of the petitioner since such Act came into being in 2005 and the petitioner was sanctioned the Post Graduate Scale of Pay with effect from 1st January, 1986.

In view of the above discussion, Memo of the respondent no. 2 dated 9th March, 2007/14th March, 2007 stands set aside.

The Commissioner of School Education, West Bengal is directed to take a decision on entitlement of the petitioner to enjoy the Post Graduate Scale of Pay which was sanctioned in his favour with effect from 1st January, 1986, within a period of six weeks from date of communication of this order, after granting an opportunity of hearing to the petitioner or his representative and the school authority where the petitioner was serving prior to his superannuation.

At the time of consideration of the issue by the Commissioner of School Education the petitioner shall be at liberty to rely upon all the relevant documents which support his case relating to enjoyment of Post Graduate Scale of Pay.

The Commissioner of School Education is further directed to pass a reasoned order and communicate the same to the petitioner as well as the respondent authorities within a week thereafter.

Since the petitioner has superannuated on 31st October, 2011, the Commissioner of School Education is directed to take expeditious decision as aforesaid and based on the decision to be taken by the Commissioner of School Education consequential steps shall be taken by the concerned respondent authorities for finalisation of pension case of the petitioner and upon compliance of all

formalities, the respondent authorities are also directed to issue Pension Payment Order in favour of the petitioner immediately thereafter.

Department is directed to add Commissioner of School Education, West Bengal and Director of Pension, Provident Fund and Group Insurance as additional respondents on amending the cause title of the writ petition within seven days.

With the above direction, the writ petition stands disposed of. There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be furnished expeditiously on usual undertaking.

(Saugata Bhattacharyya, J.)