

Item No. 18

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 21.03.2022, 22.03.2022,
22.04.2022, 09.06.2022, 15.06.2022 & 16.06.2022

DELIVERED ON: 16.06.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

**WPA 8055 of 2019
With
I.A. No.CAN 1 of 2020**

**Subir Kumar Sinha.
VERSUS
The State of West Bengal & Ors.**

Appearance:-

**Mr. Sayan De
Mr. Kaustav Shome
Mr. Sayan Kanjilal**

.....for the Petitioner

**Mr. Supriyo Chattopadhyay
Mr. Sabyasachi Mondal**

.. for the respondents/State.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The instant writ petition has been filed praying for issuance of a writ in the nature of mandamus directing the respondent authorities to set aside and cancel the memo dated

March 14, 2019 issued by the Deputy Director of School Education, West Bengal.

2. By the said memo, the authorities of the Golepukuria Joykali High School was directed to fix the pay of the petitioner by taking into consideration that the past service of the petitioner from September 16, 1987 to July 03, 1989 rendered in the said School would not be counted for the purpose of his pay fixation with effect from July 04, 1989 and related benefits including pensionary benefits in terms of para 7(k) of Annexure 1 of the G.O. No. 136-Edn (B) dated May 15, 1985.

3. The petitioner claims that he joined Chandrakona Road Saradamoyee High School after being released by the authorities of Golepukuria Joykali High School, where he was employed as an Assistant Teacher on temporary basis for a period of two years. Thus, according to the petitioner, the past service rendered by the petitioner in Golepukuria Joykali High School for the period from September 16, 1987 to July 03, 1989 is to be counted for the purpose of pay fixation with effect from July 04, 1989.

4. The learned advocate appearing for the petitioner submits that the authorities of the Chandrakona Road Saradamoyee High School forwarded all the papers in connection with the service of the petitioner including the copy of the appointment letter of Golepukuria Joykali High School as well as the copy of the release order issued by the Secretary of such school to the District Inspector of Schools (SE), Paschim Medinipur (hereafter referred to as the 'D.I.') under a covering letter dated May 12, 2009 and the concerned D.I. after taking into consideration all such documents, fixed the pay-scale of the petitioner at Rs. 6975/- in the scale of Rs. 5500-11325/- with effect from September 02, 1996 in terms of G.O. No. 25-SE(B) dated February 12, 1999. The petitioner was also awarded the twenty years benefit with effect from September 16, 2007. Thus, the learned advocate for the petitioner contends that there cannot be any question of any suppression by the petitioner, as observed by the Deputy Director of School Education, West Bengal in the memo dated March 14, 2019 as the petitioner submitted all the documents pertaining to the service rendered by him at Golepukuria Joykali High School at the time of appointment at Chandrakona Road Saradamoyee High School.

5. Mr. Chattopadhyay, learned advocate appearing for the State submits that on the basis of a complaint, an inquiry was made and the Deputy Director was of the view that in view of paragraph 7(k) of the West Bengal Recognised Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981, the past service of the petitioner is liable to be forfeited.

6. I have heard the learned advocates appearing for the parties and have considered the materials on record. It is not in dispute that the petitioner was initially appointed as an Assistant Teacher with effect from September 16, 1987 on temporary basis for a period of two years. Thereafter the petitioner was sponsored by the employment exchange for appointment and the petitioner was appointed as an Assistant Teacher at Chandrakona Road Saradamoyee High School with effect from July 04, 1989. Record reveals that the petitioner tendered his resignation before the Golepukuria Joykali High School for the purpose of joining Chandrakona Road Saradamoyee High School as an Assistant Teacher. It is not in dispute that the petitioner was released by the authority of Golepukuria Joykali High School with effect from July 03, 1989 i.e. prior to the

date of appointment of the petitioner as an Assistant Teacher at Chandrakona Road Saradamoyee High School. It is further evident from the record that all documents pertaining to the appointment and service of the petitioner at Golepukuria Joykali High School was submitted before the authorities of the Chandrakona Road Saradamoyee High School who forwarded those documents along with several other documents to the concerned D.I. for the purpose of approval of the service of the petitioner. Thus, it cannot be said that the petitioner has suppressed the fact of his employment at Golepukuria Joykali High School at the time of his appointment to Chandrakona Road Saradamoyee High School.

7. Furthermore, the D.I. after considering such documents approved the appointment of the petitioner and at a subsequent stage also fixed the pay-scale of the petitioner with effect from September 02, 1996 and also granted twenty years benefit with effect from September 16, 2007.

8. Paragraph 7(k) of the West Bengal Recognised Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 specifically states that in case an employee tenders his resignation for taking another appointment under any educational institution with prior permission, such shall not entail forfeiture of past service.

9. Mr. Chattopadhyay submits that the petitioner did not take prior permission from the authorities of the Golepukuria Joykali High School. In the instant case, it is not in dispute that the authorities of the Golepukuria Joykali High School issued release order in favour of the petitioner before he joined the subsequent school. Thus, it shall be deemed that the petitioner took prior permission from the authorities of the said school before taking appointment at Chandrakona Road Saradamoyee High School as such authorities did not raise any objection at the time of releasing the petitioner from the service of Assistant Teacher.

10. It is not in dispute that the petitioner enjoyed all the benefits during his service tenure after taking into account the past service of the petitioner at Golepukuria Joykali High School and it is only after the petitioner retired from service that the authorities have raised such an objection at the time of processing the pension papers of the petitioner. Such objection is without any basis and could not have been raised at such a belated stage.

11. This Court is, therefore, of the considered view that the ground on which the Deputy Director of School Education directed

forfeiture of past services of the petitioner cannot be sustained and the same is liable to be set aside and quashed.

12. Thus, for the aforesaid reasons, the memo dated March 14, 2019 is set aside and quashed.

13. It is hereby recorded that the petitioner is enjoying provisional pension in terms of the order passed by this Hon'ble Court on an earlier writ petition.

14. It has been submitted by the learned advocate for the petitioner that all papers for the purpose of processing the pension of the petitioner is at present lying at the office of the D.I., respondent no. 5 herein. In view of such submission, the respondent no. 5 is directed to forward the papers of the petitioner in terms of this order to the appropriate authority for the purpose of issuance of pension payment order as expeditiously as possible and preferably within a period of four weeks from the date of communication of this order upon compliance of all formalities in this regard, if any.

15. With the above directions, W.P.A. No.8055 of 2019 along with I.A. No. CAN 1 of 2020 (not in file) are disposed of.

16. No costs.

17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

PALLAB, AR (Ct.)