

95 15.06.2022
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W.P.A. 12175 of 2017

Tarakeswar Roy

-vs-

The State of West Bengal & Ors.

Mr. Ekramul Bari,
Mr. Syed Maunsum Ali

....for the petitioner.

Mr. V. P. Vaisya,
Mr. Biswarup Biswas

....for the State.

Petitioner was an assistant teacher in a non-Government Aided High School who retired on superannuation on 31st October, 2015. Due to issuance of Memo dated 16th February, 2017 issued by the Assistant Director, Pension Provident Fund and Group Insurance, being the respondent no.7, complication arose with regard to releasing retiral benefits in favour of the petitioner. Memo dated 16th February, 2017 containing observation of the respondent no.7 is under challenge in the present writ petition.

Petitioner was appointed on 19th August, 1981 as an assistant teacher initially on temporary basis and such appointment was duly approved by the concerned District Inspector of Schools (S.E.), Howrah, vide memo dated 4th January, 1982. Subsequently, the appointment of the petitioner was substantively approved with effect from 19th

August, 1981 by the Additional District Inspector of Schools (S.E.) Uluberia Sub-Division, Howrah vide Memo dated 6th January, 2015. After working approximately for thirty four years petitioner retired on superannuation on 31st October, 2015. However, the entitlement of the petitioner to receive retiral dues, as it appears, has been questioned by the respondent no.7 by issuing impugned Memo dated 16th February, 2017 chiefly by referring two Circulars one being G.O. No.439-Edn.(S) dated 3rd August, 1982 and being G.O. No.82-Edn.(S) dated 21st January, 1988.

The respondent no.7 by referring aforesaid two Circulars raised objection in processing the pension case of the petitioner since the testimonials in support of the educational qualification of the petitioner obtained from the institutes of Bangladesh were not verified under said two Circulars one dated 3rd August, 1982 and another dated 21st January, 1988.

Mr. Bari, learned advocate representing the petitioner placed these two Circulars before this Court and has submitted that said two Circulars are not applicable in the present case in view of the date of appointment of the petitioner in the post of assistant teacher.

It has further been submitted that at the time of appointment of the petitioner since no demur was made based upon such requirements as contemplated in those two Circulars and no effort was made by the concerned respondent authorities to take steps during the tenure of the petitioner as an assistant teacher on his superannuation after rendering near about thirty four years of service while processing his pension case such observation/objection is wholly untenable. In support of such submission reliance is also placed on one unreported decision of a coordinate Bench dated 19th September, 2013 on the writ petition being W.P. 19802(W) of 2011 (Bashab Kumar Chatterjee –vs- The State of West Bengal & Ors.).

Mr. Biswas, learned advocate appears on behalf of the State respondents and has made an effort to defend the observation made by the respondent no.7 as contained in Memo dated 16th February, 2017 based on a Circular being No.3033(21) – GA dated 27th November, 2006.

According to Mr. Biswas, said Circular dated 27th November, 2006 empowers the concerned authorities to verify the educational testimonials of the petitioner in connection with the degree which he has obtained from the institute of

Bangladesh.

This Court has heard the learned advocates representing the parties and also perused the relevant materials available on record and the Circulars relied upon on behalf of the respective parties.

It appears from the Memo dated 16th February, 2017 that the respondent no.7 made an objection in processing the pension case of the petitioner based on the Circulars dated 3rd August, 1982 and 21st January, 1988 upon stating that these two Circulars require verification of the educational testimonials of the petitioner as contemplated in the Circulars.

On perusal of these two Circulars one dated 3rd August, 1982 and another dated 21st January, 1988, it appears to this Court that such Circulars were issued by the concerned authorities prospectively. The date of the appointment of the petitioner is 19th August, 1981 and on the date of his appointment there was no requirement to verify the educational testimonials of the petitioner since the qualification was obtained from the institute in Bangladesh. Therefore, the respondent authorities did not make any departure while appointing the petitioner on 19th August, 1981 in the post of

assistant teacher.

It is true that subsequently certain Circulars dated 3rd August, 1982 and 21st January, 1988 as well as another Circular as relied upon on behalf of the State respondents dated 27th November, 2006 were issued but the prescriptions as contained in those Circulars are not applicable in the case of the petitioner considering his date of appointment.

Another aspect does not escape the notice of this Court that admittedly on the date of appointment of the petitioner it was not informed to him by the concerned respondent authorities that he would receive the retiral dues subject to the verification of his educational testimonials in connection with the qualification which he obtained from the institute in Bangladesh. Therefore, after rendering approximately thirty four years of service as an assistant teacher while processing the pension case, it appears to this Court, the respondent authorities, ought not to have raised these issues based on such Circulars which came into force after the appointment of the petitioner.

In view of the aforesaid discussion, the Memo dated 16th February, 2017 containing the observations against processing the pension case of

the petitioner stands set aside.

The respondent authorities are directed to settle the pension case of the petitioner and issue Pension Payment Order within a period of eight weeks from the date of communication of this order.

After the amount is released in favour of the petitioner on issuance of Pension Payment Order it will be open to the petitioner to take steps in accordance with law, if any amount is found not to have been paid.

With the above direction the writ petition stands disposed of.

However, There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)