

**07**  
**08.09.2022**  
Ct. No.25  
b.das

**W.P.A. 12444 of 2017**

**Niharendu Som**  
**Vs.**  
**The State of W. B. & Ors.**

Mr. Dwarika Nath Mukherjee  
Mr. Biswarup Biswas .....for the petitioner.

Mr. Pinaki Dhole  
Mr. Avishek Prasad ...for the State.

The teacher of Sukchar Swami Mahadebananda Junior High School, (for short the 'School') filed this writ petition praying for a direction upon the respondents to release pensionary benefit and other retiral benefits by notionally fixing the date of appointment as 02.01.1987.

The petitioner claims to have been appointed as an Assistant Teacher on 02.01.1987 in the said school and discharged his functions as an Assistant Teacher in the said school till his superannuation on 31.12.17.

The petitioner claims that his name appeared in the report of the District Level Inspection Team (for short DLIT) dated 09.05.1988. Pursuant to an order passed by a Co-ordinate Bench of this Court on January 16, 2001 on the prayer for revival of recognition of the school was recognised with effect from May 1, 2009. The service of

the petitioner along with another teacher and a non-teaching staff was approved by the concerned District Inspect of Schools (SE), Barrckpore, North 24 Parganas (for short D.I.) with effect from May 1, 2009.

The petitioner retired from service on superannuation with effect from December 31, 2017. During the tenure of his service, the petitioner submitted a representation dated April 11, 2016 requesting the authorities to give notional fixation from the date of his appointment so that the petitioner may be entitled to pensionary and other benefits. However, since such representation did not yield any fruitful result, the petitioner was compelled to approach this Court with this writ petition.

Mr. Mukherjee, learned Advocate ably assisted by Mr. Biswarup Biswas, contended that the petitioner was serving as an Assistant Teacher in the said school even prior to the date of inspection held by the DLIT. He submits that since the name of the petitioner finds place in the DLIT report dated May 9, 1988 as an Assistant Teacher of the said school and rendered continuous service in the said school till the date of his retirement, the period of service rendered by the petitioner from the date of DLIT report, that is, 09.05.1988 till the date of grant of approval of his service, which is with effect from May 1, 2009 should be taken into consideration only for the purpose of grant of pension to the petitioner. He

submits that though the service rendered by the petitioner with effect from May 1, 2009 till the date of his retirement falls marginally short of the minimum qualifying service of 10 years for pensionary benefit, if the aforesaid period of service rendered by the petitioner is taken into consideration, the same would exceed the minimum qualifying service necessary for the purpose of entitling the petitioner to pensionary benefit.

Mr. Biswas placed reliance upon a decision of a Co-ordinate Bench of this Court in the case of Kartick Chandra Das vs. State of West Bengal & Ors. reported at 2014 (4) WBLR Cal. 273 and submits that the Co-ordinate Bench, on identical facts, after taking into consideration the service rendered by the petitioner therein prior to the date of approval held that the Kartick Chandra Das is entitled to pensionary benefit. He submits that the said decision which was carried in appeal before a Division Bench of this Court and thereafter to the Hon'ble the Supreme Court, has not been interfered with and the same is a binding precedent.

By drawing the attention of the Court to the order dated January 16, 2001 passed by a Co-ordinate Bench in WP 16476 (W) of 2000, he contended that by the said order four month's time was granted to the Secretary, Education Department to consider the matter afresh for revival of the recognition of the school, but such authority took a much longer than that was granted by this Court

for taking a decision. He thus contends that the respondent authorities cannot take the benefit of their own wrong in order to deprive a retired person of his valuable right to get pension. In support of such contention, Mr. Biswas relied upon a Division Bench decision of this Court in *State of West Bengal vs. Aparesh Chandra Datta* reported at 2016 (2) CHN (Cal.) 494.

Mr. Dhole, learned Advocate for the State submits that the petitioner is claiming his right to get pension in terms of the West Bengal Non-government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 (for short DCRB Scheme), which came into force with effect from April 1, 1981.

By placing the provisions of Paragraph 7 of the said DCRB Scheme, Mr. Dhole contends that the said Scheme specifically prohibits counting of service rendered by an employee prior to the recognition of such institution where he served. He submits that a statutory authority has to act within the four corners of the statutes, rules or the schemes which are in force and as such the service rendered by the petitioner prior to the date of his approval of the institution cannot be taken into consideration for extending the pensionary benefits. He further submits that the provisions of Paragraph 7 was not taken into consideration by the Co-ordinate Bench in *Kartick Chandra Das* (supra). He, therefore, submits that

the said decision cannot be said to be a binding precedent.

Heard learned Advocates for the parties and perused the materials placed.

Record reveals that the D.I. vide memo dated 09.05.2012 observed that the name of the petitioner as Organizing Teacher was included in the report of the DLIT dated 09.05.1988 and the same have been taken into consideration for according approval of their appointment issued by the school authority. Therefore, it is evident that the basis for grant of approval of service of the petitioner as Assistant Teacher was the DLIT report dated 09.05.1988. It further appears from the memo dated 07.02.2012 that the approval was granted pursuant to the order passed in CPAN 1507 of 2001 arising out of WP 16476 (W) of 2000.

It would be relevant to point out here that the Co-ordinate Bench by an order dated January 16, 2001 directed the concerned authority to take a decision with regard to the approval of the said school within a period of four months from the date of communication of the order. Since the said authorities did not act on the basis of the order passed by the petitioner and application for contempt date to be taken out and only thereafter the authorities granted approval to the said institution.

After going through the provisions of the DCRB Scheme particularly Paragraphs 7 and 8 thereof, this

Court is of the considered view that the procedural prescriptions in paragraph 7 are the handmaid and cannot be the jealous mistress in the administration of justice.

In the case on hand it is evident from the materials on record that the petitioner rendered his service at least from the date of DLIT and the delay in granting recognition is only due to the fault of the authorities.

As rightly contended by Mr. Mukherjee, the authorities cannot take advantage of the delay caused by them while granting recognition to the said institution, in order to deprive the petitioner of their valuable right of pension by taking shelter under the paragraph 7 of the DCRB Scheme.

A Division Bench of this Court in the case of Aparesh Chandra Datta (supra) held as follows:

*“19. The concerned authority now by taking advantage of their own wrong cannot penalise the petitioner by refusing to grant pension to the petitioner on the ground of deficiency of two months and one day service of the petitioner.*

*20. We, thus, hold that this is a fit case where the deficiency of two months and one day of service of the petitioner should have been condoned by the concerned authority.”*

In the said reported case, the Hon’ble Division Bench held that the deficiency of service should be condoned and the authorities cannot take advantage of their own wrong in order to penalize the petitioner.

The authorities ought to have taken a decision in terms of the order dated January 16, 2001 passed in WP 16476 (W) of 2000 within the time limit indicated in the said order. The delay for the period from May 12, 2001 till the date of grant of approval cannot attributed to the petitioner and the authorities are only to be blamed for such delay.

This Court is of the considered view that the procedural technicalities cannot be an obstacle in the path of the administration of justice of a Writ Court in the facts and circumstances of the instant case.

The Co-ordinate Bench in Kartick Chandra Das (supra) on more or less identical facts held that the period of service rendered by a teacher from the date of DLIT report till the grant of approval of the said school should not be altogether ignored and should be taken into consideration to make up the shortfall in computing the service for the purpose of granting benefit of usual pension and gratuity to the petitioner.

Since records reveal that the petitioner rendered his service at least from the date of DLIT report and in view thereof, this Court is of the considered view that the period of service rendered by the petitioner from the date of DLIT report till the date of grant of recognition of the said institution should be taken into consideration to make the shortfall in computing the qualifying service for

the purpose of granting benefit of usual pension and gratuity to the petitioner.

Accordingly, the writ petition stands disposed of by directing the respondent authorities to grant usual pension and gratuity to the petitioner by treating the petitioner to be in permanent service at least for a period of 10 years before the retirement on attaining the age of superannuation by granting notional approval.

The respondent authorities are directed to release the pensionary and other benefits to which the petitioner is entitled to in terms of this order within a period of 12 weeks from the date of communication of this order.

This Court makes it clear that the petitioner will not be entitled to any arrears of salary and the notional approval shall be only for the purpose of grant of pensionary benefits to the petitioner.

At this stage, Mr. Biswas, learned Advocate for the petitioner submits that the petitioner is entitled to interest for the delay in making payment of the pensionary benefit. Since the petitioner has not claimed any interest in this writ petition, the petitioner is left free to take this plea in future in accordance with law.

There shall, however, be no order as to costs.

Pending applications, if any, also stands disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Hiranmay Bhattacharyya, J.)**