

Item No. 17

17.05.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 12044 of 2021
Kartick Chandra Mondal
v.
The State of West Bengal & Ors.

Ms. Shraboni Sarkar
... for the petitioner.

Ms. Sutapa Sanyal
Ms. Susnita Saha
... for the State respondents.

The petitioner was appointed as an Assistant Teacher in a primary school on March 11, 1974 and his service was confirmed on March 1, 1987. He was promoted to the post of Head Teacher on September 1, 1998. When the petitioner was in service he was detected with cancer and he was unable to attend the school on and from February 15, 2006 till his normal date of superannuation i.e. on May 31, 2012.

According to the petitioner, he was under medical treatment for the aforesaid period and as such he was not in a position to intimate the school about his ill health.

Learned advocate for the petitioner submits in Court that a verbal intimation was given to the school

regarding his ailment and his treatment but there is no document in support of the aforesaid statement.

The petitioner has annexed the discharge summery from the Tata Memorial Hospital, Mumbai, which mentions that he was admitted in the said hospital on February 8, 2007 and was discharged therefrom on February 16, 2007.

The petitioner has annexed certain medical documents to show that he was suffering from colon cancer. The petitioner claims that he is still under medical treatment and he is in dire need of finances for supporting his treatment.

Sometime in the year 2021, the petitioner filed a representation before the respondent authorities praying for releasing his terminal dues. The said representation not being considered by the respondent authorities, the petitioner filed a writ petition before this Court being WPA 7972 of 2020 which stood disposed of by this Court on November 20, 2020 directing the Commissioner of School Education (Primary Unit) to call for the records and to decide the issue as to whether the petitioner will be entitled to pensionary benefits.

The representation of the petitioner was duly considered by the Commissioner of School Education and the prayer of the petitioner for grant of pensionary benefits was rejected and communicated to him by a

communicating memo dated February 12, 2021. The same is under challenge in the present writ petition.

The impugned order is a detailed and reasoned one. It mentions that the petitioner remained absent from his duties since February 15, 2006. He did not submit any information to the higher authority regarding his absence and continued to remain absent till his date of retirement on May 31, 2012.

The Chairman, District Primary School Council, Burdwan issued a show cause notice against him asking him as to why disciplinary proceeding will not be initiated on account of his unauthorized absence. There was no response from the petitioner. A notice of hearing was given to the petitioner but the same was also not responded by him.

The petitioner's application for pensionary benefits could not be finalized as the period of absence from February 15, 2006 till his date of retirement on May 31, 2012 was not regularized.

The petitioner thereafter made an application before the Chairman of the Council on July 18, 2017 praying for sanction of extraordinary leave without pay for the entire period from February 15, 2006 till May 31, 2012.

Learned advocate for the State respondents place reliance on Rule 4(g) of the West Bengal Primary

Education (Leave of Teachers of Primary Schools), Rules 1999 read with Rule 7 of the said Rules which mentions that the Council may sanction extraordinary leave without pay to a teacher under special circumstances when no other Rule is admissible under the said Rules for a period not exceeding twelve months. As the petitioner was unauthorizedly absent for more than six years, accordingly, his prayer for extraordinary leave, without pay, could not be allowed.

Thereafter, the prayer of the petitioner was forwarded to the School Education Department for consideration, but in the absence of appropriate medical certificate the prayer of the petitioner could not be considered.

Reliance has also been placed on the West Bengal Non-Government Educational Institution (Death-cum-Retirement Benefit) Scheme, 1981 wherein the various heads on which superannuation benefits may be given to an employee has been mentioned.

It has been held that the petitioner can neither be treated as a superannuated employee nor was he on voluntary retirement, or declared permanently incapacitated for further service or termination of service. Accordingly, his prayer for retirement benefits also stood rejected. The Commissioner was, however, of the opinion that the Chairman of the Council and the

District Inspector of Schools be requested to follow the observation and take further action regarding the prayer of the petitioner seeking sanction of extraordinary leave, without pay, for his absentee period and the petitioner was requested to render all cooperation in the matter.

It appears from the aforesaid that admittedly there is no written communication from the side of the petitioner regarding his ailment and his treatment for colon cancer. The petitioner is suffering from 2006 and he is still under medical treatment.

The petitioner remained in service for a period of nearly thirty-two years. After serving the institution for more than three decades, if the petitioner is not given any financial benefits after his superannuation, then it will be an injustice and sheer hardship on the part of the teacher to continue with his medical treatment. The petitioner claims that documents have been produced before the authority in support of his treatment.

According to the Death-cum-Retirement Benefit Scheme, 1981 an employee is entitled to pension upon completion of at least ten years of qualifying service.

As the petitioner has completed more than thirty-two years of qualifying service, the respondent authority ought to consider his case for grant of pensionary benefits sympathetically to ensure that the teacher receives some amount of financial aid to support his

medical treatment. If required, the last date on which the petitioner attended his duty may be treated as his date of superannuation and the retiral dues of the teacher be calculated taking into consideration the said date.

In view of the above, the instant writ petition is disposed of by directing the Commissioner of School Education to reconsider the prayer of the petitioner for grant of terminal benefits by treating February 14, 2006 as his last date of service and to calculate his terminal benefits on the basis of the said date.

The Commissioner of School Education is directed to grant a further opportunity of hearing to the petitioner or his authorized representative to produce the medical documents in support of his treatment and thereafter take necessary steps in the matter.

The Commissioner is also directed to dispose of the prayer of the petitioner at the earliest but positively within a period of five weeks from the date of communication of a copy of this order.

The Commissioner shall pass a reasoned order and communicate the same to the petitioner immediately thereafter.

Writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)