

W.P.A. 11764 of 2018

Asit Kumar Ghosh
Vs.
The State of West Bengal & Ors.

Mr. Debabrata Karan
Ms. Sabita Khutia (Bunya)
Mr. Mr. Debapriyo Karan
...for the petitioner

Ms. Chaitali Bhattacharya
Mr. Mrinal Kanti Ghosh
...for the State

Matter pertains to grant of pension upon condonation of one month shortfall in completing 10 years of approved qualifying service which is required under the relevant provisions of the West Bengal Recognised non-Government Aided Educational Institution Employees (Death cum Retirement Benefits) Scheme, 1981 (for short DCRB 1981).

It has been submitted by the learned advocate representing the petitioner that he was a bona fide organising assistant teacher in a non-Government aided High School in upgraded section (Classes IX and X) when the said upgraded section was not recognised by the concerned authority.

It has further been submitted that the petitioner was appointed in the school in the month of August 1975 as organising teaching staff. Ultimately the school was recognised/upgraded vide Memo No. S/Recog/99/09

dated 12th February, 1999 and based on such recognition/upgradation service of the petitioner as an organising teaching staff was approved with effect from 1st May, 1999. Petitioner worked till the date of his superannuation on 31st March, 2009 and thereafter claimed benefits under Pension and Death cum Retirement Gratuity Scheme under the relevant provisions of DCRB Scheme 1981. Such claim of the petitioner was not entertained by the respondents since petitioner was found fell short of qualifying service by one month considering requirement of 10 years continuous approved service.

Such denial of sanction of pension triggered filing of writ petitions and ultimately a coordinate Bench on 21st December, 2015 while disposing of the writ petition being WPA 19822 of 2015 directed the Principal Secretary, Department of School Education, Government of West Bengal, to take decision to condone the delay in respect of the petitioner's length of Service after affording opportunity of hearing. Pursuant to such direction of the coordinate Bench the Secretary, School Education Department being the respondent no. 1 by issuing memo dated 25th October, 2016 spurned the claim of the petitioner for condoning said one month shortfall.

Such decision of the respondent no. 1 issued under memo dated 25th October, 2016 is subject matter of challenge in the present writ petition. It has been

submitted on behalf of the petitioner had the petitioner been approved in due time treating him as a bona fide organising teaching staff question of one month shortfall would not have arisen and petitioner would have been found to be eligible to receive pension.

In addition thereto reliance has been placed on Clause 7 (e) (iv) of Chapter III of the DCRB Scheme of 1981 whereby Government has been empowered to condone deficiency upto six months in qualifying service of the employees of non-Government aided educational institutions. It has further been submitted that the note appended to Clause 7 (e) (iv) is misplaced at the instance of the respondent no. 1 while taking decision against the petitioner and accordingly petitioner has prayed for quashing of this Memo dated 25th October, 2016.

Ms. Chaitali Bhattacharya, learned senior Government advocate appears on behalf of the State-respondents and has defended the decision of the respondent no. 1. It has been submitted that the note appended to Clause 7 (e) (iv) of DCRB Scheme 1981 puts an embargo in sanctioning pension in favour of the petitioner since the pension of the petitioner does not belong to the category of invalid or compensatory pension and the last pay of the petitioner was Rs. 13920/- which is higher amount than Rs. 7100/- (ROPA 2009) corresponding pay of Rs. 425/-. Therefore, it has been submitted on behalf of the State-respondents that rightly the claim of the petitioner for sanction of

pension has been rejected upon placing reliance on said note appended to Clause 7 (e) (iv).

In addition thereto reliance has been placed on behalf of the State-respondents on a judgement of the Apex Court delivered on Civil Appeal No. 1892 of 2015 (State of Madhya Pradesh & Ors. Vs. Hitkishore Goswami) on the proposition that right to receive pension has to be governed by the statute and in the present case the respondent no. 1 has rightly applied note appended to said Clause 7 (e) (iv) and as such, there is no anomaly in the decision of the respondent no. 1 as contained in Memo dated 25th October, 2016.

This Court has heard the learned advocates representing the parties and perused the relevant materials available on record including the decision of the respondent no. 1 issued vide Memo dated 25th October, 2016.

The petitioner on recognition/upgradation of the school being bona fide organising teaching staff was approved by the State-respondents with effect from 1st May, 1999 vide approval Memo dated 2nd June, 1999 and retired on superannuation of 31st March, 2009. The authorities found the petitioner not eligible to receive pension since he was short of one month in completing the approved 10 years service which is a condition precedent for receiving the benefit of pension under DCRB Scheme of 1981. While deciding the claim of the

petitioner for sanction of pension in terms of the previous order of the coordinate Bench dated 21st December, 2015 the respondent no. 1 on applying the note appended to Clause 7 (e) (iv) denied sanction of pension in favour of the petitioner.

For better understanding of the issue involved in this writ petition Clause 7 (e) (iv) including the note appended therein is quoted below:-

“7(e) (iv) Upon any condition which it may think fit to impose, Government may condone a deficiency of six months in the qualifying service of the employees of non Government/Sponsored/Aided Educational Institutions/ Organisation.

Note: The deficiency should not be condoned with the view to make up the minimum prescribed qualifying service for the purpose of death gratuity of family pension. In other cases power should be restricted to the employees drawing pay not exceeding Rs. 425.00 per month at the time of retirement on invalid or compensation pension.”

On reading of said Clause 7 (e) (iv) it appears authority has been conferred upon the Government to condone deficiency of six months in qualifying service of the employees of non-Government/Sponsored/Aided Educational Institutions/ Organisation. Question would arise whether such authority conferred upon the Government is circumscribed by the note appended to said Clause 7 (e) (iv). The issue has been elaborately dealt with by the Hon’ble Division Bench of this Court on an intra Court appeal being MAT 1917 of 2019 (The State of

West Bengal Vs. Rabindra Nath Ghosh) in the judgement dated 28th May, 2021. It appears from the said judgement the Hon'ble Division Bench has succinctly held which runs infra:-

“The said rule also makes it clear that in matters of condonation of deficiency of six months in the qualifying service the Government may impose any condition which it may think fit to impose. The explanatory note that the deficiency should not be condoned with a view to make up the minimum qualifying service for the purpose of death, gratuity or family pension makes the substantive provision otiose and it defeats the very object of the said Rules. The explanatory note cannot control the substantive provision. The note appended to rule 7(e)(iv) cannot be read in derogation to the substantive provision which precedes the said rules. The entitlement of the petitioner to get a pension as retirement benefit under the Scheme of 1981 cannot be denied. The shortfall in the qualifying service of 26 days is only for the purpose of considering his claim for pension and not for the purpose of death, gratuity or family pension.

Even if one accepts that the said explanatory note may control the substantive provision, we are in agreement with the learned Single Judge that in the impugned order dated 3rd April, 2018 at the time of rejection of the prayer of the writ petitioner, weightage to the note appended to the substantive clause of the Scheme of 1981 was completely misplaced as the authority has lost sight of the fact that it is a beneficial piece of legislation and the note appended to the substantive clause cannot dilute the power vested to the said authority if the shortfall in the qualifying service is not exceeded by six months.”

“Apart from the fact that we do not find any relevance of the said note to become an impediment or hindrance in extending the beneficial scheme to the petitioner, we also observe that the interpretation given by the authorities and advanced before us by the learned Government Pleader to restrict the power of the authorities concerned to condone

the deficiency of six months in the qualifying service only restricted to the employees drawing pay not exceeding Rs.425 per month would be contrary to the scheme and would entirely change the purpose of the enactment, and instead of suppressing the mischief and defending the object of the rule, it would be a hindrance. Accordingly, the said interpretation given by the authorities concerned as well as by the learned Government Pleader is not acceptable.”

On consideration of the view expressed by the Hon'ble Division Bench in **Rabindra Nath Ghosh (supra)** in the context of necessity to apply the note appended to said Clause 7 (e) (iv) of DCRB Scheme of 1981 while deciding the fate of a teacher to receive pensionary benefits who is found to have fallen short of one month in qualifying service, it appears the act of condoning deficiency to the extent of six months in the qualifying service is the rule and the denial of such benefit is an exception. In view of the decision of the Hon'ble Division Bench in **Rabindra Nath Ghosh (supra)** this Court is not required to dilate the issue any further.

In addition thereto it appears that petitioner was approved as a bona fide organising teaching staff of the school on grant of upgradation/recognition of the said school. After such upgradation/recognition of the said school the service of the petitioner was approved vide memo dated 2nd June, 1999 with effect from 1st May, 1999. It can be perceived that in terms of the relevant procedure required to be followed by the respondent authorities while approving the service of an organising

assistant teacher the name of such teacher must feature in District Level Inspection Team Report (DLIT). No case has been made out by the respondents that at any point of time after the said inspection was carried out for granting recognition/upgradation in favour of the school in question there was break in service of the petitioner. Since the DCRB Scheme of 1981 is a beneficial scheme for extending the benefit of pension to retired teaching and non-teaching staff of non-Government aided secondary school in aforesaid facts relating to continuation of service first as bona fide organising teacher and subsequently as an approved teacher ought to have been taken into consideration by the respondent authorities while taking decision on the claim of the petitioner to release pensionary benefits upon condonation of one month shortfall.

In view of the aforesaid discussion as well as the judgement delivered by the Hon'ble Division Bench in **Rabindra Nath Ghosh (supra)** the decision of the respondent no. 1 as contained in Memo dated 25th October, 2016 stands set aside. The concerned State-respondents are directed to sanction pension and other related benefits in view of superannuation of the petitioner on 31st March, 2009 within a period of 12 (twelve) weeks from the date of communication of this order after completing all formalities .

With the aforesaid direction, 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.)