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06.04.
2022
Ct. No.17

WPA 18864 of 2021

Biswanath Khan
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari
Ms. Tanuja Basak
Sk. Imtiaj Uddin
.....For the Petitioner
Ms. Chaitali Bhattacharya
Ms. Tapati Samanta
.....For the State

In this matter two questions have been raised:

(i) whether a person who has joined a post of teacher in a Government aided school from a Government service will get the benefit for his past service (in getting pension) in the said Government service before joining the school? (ii) Whether if the person fails to obtain the prior permission of his previous employer and obtains post facto permission, the person's past service can be denied on the basis of not having permission through proper channel?

Learned advocate for the State has submitted that it was not only a question of no application through proper channel but also a question where employment under death-cum-retirement benefit scheme for West Bengal Recognized Non-Government Educational Institution Employees framed in 1981. Learned advocate for the State has also submitted that in paragraph 7 the last part where the "service

rendered by an employee under Government” means that if some persons come from one Government school or Government Educational Institution to one recognized non-Government Educational Institution and not for all Government employees.

Learned advocate for the petitioner has submitted that the decision of the Assistant Secretary of the Government of West Bengal only speaks about post facto permission and proper-channel-application and it does not talk about past Government service and, therefore, on this ground the application of the petitioner for getting benefit for his past service under Government cannot be denied.

At this stage learned advocate for the State suggests, which has been accepted by the learned advocate for the petitioner also that let this controversy be considered by setting aside this observation of the Assistant Secretary contained in Memo No. 237-SE(S)/5P-99/16 dated 14.03.18 and to send the matter back for a fresh decision in respect of the claim of the petitioner for counting his past service in his pensionable qualifying service to the Principal Secretary of Education Department, Government of West Bengal.

Therefore, after considering the submissions of the learned advocate for the petitioner and considering the suggestions by the learned advocate

for the State, which is accepted by the learned advocate for the petitioner, I set aside the order dated 18.05.2018 which is at page 27 marked as Annexure 'P-6' of the writ application for a fresh decision in respect of the claim of the petitioner. However, I make it clear that though I have set aside the observation made in the Memo dated 14.03.2018 by the Assistant Secretary, I am not putting any bar to the Principal Secretary to take the point in the said memo while he would pass his order by way of fresh consideration. The same point as to application through proper channel and post facto permission and if he takes such point, he has to clarify, the object of application through proper channel and the reason for giving the objection to post facto permission and what real difference does it make.

I direct the Principal Secretary of Department Education to decide on this matter after giving an opportunity of hearing to the petitioner and to the school authority and to the concerned District Inspector of Schools within a period of 45 (forty-five) days from the date of communication of this order and to pass a reasoned order within a period of two weeks thereafter.

I make it clear that if the Principal Secretary finds that the petitioner is entitled to benefit of his past service in counting his qualifying service in

pension, he will have every liberty to take steps accordingly for directing appropriate officers for granting relief to the petitioner.

With this observation and direction this writ application is disposed of.

(Abhijit Gangopadhyay, J.)