

Ct. 05
Item No.09
09.03.2022
(suvendu)

WPA 19998 of 2019

[Via Video Conference]

Biman Mishra
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. Siddhartha Sankar Mandal
Sk. Imtiazuddin
.....for the petitioner

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

The petitioner claims to have been working as a Librarian in the concerned School from 1995 and prays for notional benefit of service by which the petitioner would be entitled to claim pension from 1995 till 20th September, 2020 which is the date of petitioner's retirement.

Learned counsel appearing for the petitioner submits that the petitioner approached this Court in 2008 and has since been praying for retirement benefits. It is submitted that if the petitioner's date of appointment of 2015 is taken into account then the petitioner would be entitled to pension.

Learned counsel appearing for the State opposes the prayer on the ground that a Division Bench order dated 9th June, 2014, in review of an earlier Division Bench order of 15th September, 2010, contains certain findings against the petitioner. It is also submitted that the petitioner accepted the said Division Bench order of 9th June, 2014 and did not challenge the said order till date.

Upon hearing learned counsel, it appears that although the petitioner worked as a Librarian in the concerned School from 1995, the petitioner was given an appointment to the said post only in 2015. This fact would be evident from the order of the Division Bench of 9th June, 2014 which reviewed an earlier Division Bench order dated 15th September, 2010 and held that the post of Librarian in the concerned School was not a sanctioned post in 1995 when the petitioner was appointed to the said post. The Division Bench also found that the appointment to the post in 1995 was an illegal appointment. The finding of the Division Bench was that the Recruitment Rule prevailing at the time of sanctioning of the said post in 2007 should have been followed at the material point of time. By reason of the findings of the Division Bench, the recruitment of the petitioner to the post in 1995

cannot give weightage to the petitioner since the appointment was found to be an illegal one.

It is also evident that the petitioner accepted the said order of the Division Bench and did not challenge the same before a higher forum.

The petitioner was thereafter given appointment in 2015 to the post of Librarian in the said School. The petitioner did not question such appointment or claim any benefit thereafter in relation to the 2007 Rules. The present writ petition was filed in 2019 for claiming notional benefit for the purposes of pension and other retirement benefits. Now, the only question which remains to be decided is whether the petitioner's appointment can be notionally deemed to have an effect from 2007 when the prevalent Rules came into operation. It is not disputed that the petitioner was working as a Librarian in the concerned School in 2007 and continued to do so till 20th September, 2020 when the petitioner retired from the said post.

Although this Court is not inclined to give any relief to the petitioner in terms of holding that the petitioner's duration of service should be taken from 1995 onwards, the Secretary, School Education Department of the State shall consider the case of the petitioner taking into account the fact that the petitioner has worked uninterruptedly in the post

from 1995 and even after the relevant Rules came into play in 2007. The Secretary shall take all relevant facts into account and hear the parties including the petitioner and pass a reasoned decision thereon within a period of four weeks from the date of communication of this order. A copy of such reasoned decision shall be made available to the petitioner within a week from the date on which such reasoned order is passed.

WPA 19998 of 2019 is disposed of in terms of the above.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Moushumi Bhattacharya, J.)