

89. 17.05.2022
BD Ct.15

W.P.A. 24481 of 2015

Smt.Tripti Banerjee

-vs-

The State of West Bengal & Ors.

Mr. Amalesh Roy

Mrs. Moushumi Bhowal

... for the petitioner.

Mr. Tarak Karan

... for the State

The writ petition pertains to rectification of pension payment order vide Memo dated 25th May, 2015 issued by the Director of Mass Education Extension and Ex-officio Additional Secretary being the respondent no.2. By presenting the writ petition Memo dated 25th May, 2015 issued by the respondent no. 2 has been assailed. By the said Memo dated 25th May, 2015 the pension payment order initially issued under Memo dated 24th April, 2015 has been cancelled and subsequently another pension payment order has been issued under Memo dated 18th June, 2015.

It has been submitted on behalf of the petitioner by Mr. Amalesh Roy, learned advocate, that the impugned Memo dated 25th May, 2015 was issued chiefly on placing reliance on the Government Order dated 19th November, 2003

issued by the Mass Education Extension and Library Services Department without considering the subsequent Government Order dated 16th November, 2004 under Memo dated 645/ME/PH issued on behalf of Mass Education Extension Directorate. It is submitted on behalf of the petitioner that the position got changed after issuance of the Memo dated 16th November, 2004 which ought to have been considered by the respondent no. 2 before issuing impugned Memo dated 25th May, 2015.

It has further been submitted on behalf of the petitioner that she was appointed as a Craft Teacher of Ichapur Deaf and Dumb School (hereinafter referred to as "said school") with effect from 1st November, 1981 and at the relevant point of time the said school was in receipt of dearness allowance as it emanates from Memo dated 14th July, 1982 issued by the Director of Technical Education, West Bengal. Based on such sanction of dearness allowance vide Memo dated 14th July, 1982 it has been contended on behalf of the petitioner that unless the school was recognised question of sanction of dearness allowance in favour of the said school does not arise.

It has also been submitted on behalf of the

petitioner that impugned order whereby 1st pension payment order of the petitioner has been cancelled has been passed unilaterally by the respondent no. 2 without granting an opportunity of hearing to the petitioner. By issuance of rectified pension payment order retiral benefits including gratuity of the petitioner has been downgraded.

Mr. Tarak Karan, learned advocate, appears on behalf of the State respondents who has defended the order passed by the respondent no. 2 vide Memo dated 25th May, 2015. Upon placing reliance on relevant part of the affidavit in opposition used on behalf of the State respondents it has been submitted that prior to 1st November, 1992 the service of the petitioner was not approved therefore the service rendered by the petitioner prior to 1st November, 1992 should not be reckoned for sanction of retiral dues. It has further been submitted that petitioner was in receipt of consolidated pay and mere sanction of dearness allowance in favour of the said school does not establish that the service of the petitioner was approved prior to 1st November, 1992.

This Court has considered the rival submissions of the parties to this writ petition and perused the relevant documents available on

record.

It appears to this Court on consideration of the impugned Memo dated 25th May, 2015 that basically on placing reliance on Government Order No. 685/MEE/Sectt dated 19th November, 2003 decision was taken by the respondent no. 2 for rectification of the pension payment order of the petitioner. It appears that subsequently another Government Order has been issued on 16th November, 2004 by the Mass Education Extension Directorate on the issue of consideration of service rendered by the teachers working in the schools under the said directorate for the purpose of calculation and sanction of retiral dues. It appears that such Government Order dated 16th November, 2004 has not been considered by the respondent no.2 while issuing Memo dated 25th May, 2015 against the petitioner.

Since on rectification of pension payment order pursuant to the impugned Memo dated 25th May, 2015 the retiral dues including gratuity of the petitioner has been downgraded, it has civil and evil consequences therefore before passing such order against the petitioner being retired teacher the respondent no.2 ought to have granted an opportunity of hearing to the petitioner as well as

the said school, which has not been done in the present case.

In view of the above conspectus the Principal Secretary to the Government of West Bengal, Mass Education Extension Department is directed to consider the issue relating to entitlement of the petitioner to receive retiral dues considering date of her appointment on 1st November, 1981 within a period of eight weeks from the date of communication of this order after granting opportunity of hearing to the petitioner and the said school.

The Principal Secretary to the Government of West Bengal is directed to pass a reasoned order and the same shall be communicated to the petitioner within one week thereafter.

Till such decision to be taken by the Principal Secretary the impugned order dated 25th May, 2015 shall be kept in abeyance and shall abide by the result of the decision of the Principal Secretary.

With the above direction the writ petition stands disposed of. However, there shall be no order as to costs.

Advocate on record of the petitioner is granted leave to amend the cause title and add

Principal Secretary to the Government of West Bengal, Mass Education Extension Department as additional respondent.

Affidavit in opposition filed on behalf of the State respondents and affidavit in reply filed on behalf of the petitioner today are taken on record.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)