

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 27800 of 2017
IA NO. CAN 1 of 2019
(Old No. 1079 of 2019)
(CAN not in file)

Samar Nath Pal & Ors.
Vs
The State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Sardar Amjad Ali, Sr. Adv. Mr. Golam Mustafa, Adv.
For the State	:-	Ms. Chaitali Bhattacharya, Adv. Mr. Kartick Chandra Kapas, Adv.
For the DPSC South 24 Pgs.	:-	Mr. Gourav Das, Adv.
Heard on	:-	09.02.2022
Judgment on	:-	11.02.2022

Amrita Sinha, J.:-

The petitioners are retired primary school teachers. They are aggrieved by and dissatisfied with the order passed by the Secretary, School Education Department on 3rd August, 2017 rejecting their prayer for grant of pension in on the ground that they did not complete the qualifying service period of ten years and the relaxation clause cannot be made applicable in their case.

It has been submitted that the petitioners joined their service immediately upon receiving their letters of appointment. Due to the delay on the part of the respondents in issuing their appointment letters, the petitioners lost valuable years in their service career and as such there has been a shortfall in the qualifying service period.

Death cum Retirement Benefit Scheme, 1981 lays down the conditions upon compliance of which a retired teacher becomes entitled to receive pension. The Scheme mentions that subject to satisfactory service an employee

shall be entitled to pension provided the employee concerned had completed at least ten years of service on attaining the age of superannuation.

In the present case none of the eight petitioners completed ten years of qualifying service.

The petitioner no. 1 has served for five years and six months, petitioner no. 2 served for seven years, petitioner no. 3 served for eight years and ten months, petitioner no. 4 served for eight years, petitioner no. 5 served for nine years and two months, petitioner no. 6 served for nine years, petitioner no. 7 served for five years and six months and petitioner no. 8 served for eight years.

The Government, by a Memo dated 2nd February, 2009, modified the Scheme of 1981 and laid down that fraction of a year equal to three months and above shall be treated as completed six monthly period of service and reckoned as qualifying service for determining retirement benefit and the period of service below three months will be ignored. The aforesaid implies that, if at all, a shortfall of maximum six months in service may be condoned by the Government.

The petitioners rely upon a judgment delivered by the Hon'ble Supreme Court in the matter of ***State of Uttar Pradesh & Ors. -vs- Ali Hussain Ansari & Anr.*** reported in ***(2020) 3 SCC 99*** wherein the Court directed payment of lump sum compensation to the employee even though there was a shortfall in his qualifying service period.

The petitioners herein pray for similar relief.

It has been submitted that as the petitioners were not responsible for the delay in issuance of appointment letters and the process of appointment got delayed due to several litigations, accordingly, they should be given notional benefit for the period they could not work on account of non-issuance of the letter of appointment.

It appears from the documents annexed to the writ petition that the selection process for appointment of primary teachers commenced in the year

2000. The process of selection could not be concluded in view of pending litigations. Appointment letters were ultimately issued in favour of the petitioners in the years 2010/2011. The petitioners accepted their letters of appointment without raising any objection. The age of superannuation being known to the petitioners they were well aware that they would not attain the qualifying service period for receiving pension. The date of superannuation being pre-fixed, the petitioners knew that they would not be entitled to pension in terms of the Scheme of 1981. It is not the case of the petitioners that they were discriminated or the letters of appointment were deliberately issued at a delayed date. On the contrary, it is the stand of the petitioners that the selection process could not be concluded in view of pending litigations.

It is common knowledge that whenever a recruitment process is initiated, due to some reason or the other, the process takes considerable period of time to reach a conclusion. Vacancies being limited the intending participants, mostly the educated unemployed youth, throng to get selected. Demand being more and supply less, the process invariably gets entangled in series of Court cases, at times, reaching up to the Hon'ble Supreme Court, thereby causing delay in conclusion of the selection process. The same cannot be a ground for condoning the qualifying service period of an employee making him eligible to receive pension even though he fails to attain the minimum qualifying service period. The petitioners may not be directly responsible for the delay, but fact remains, that none have completed the minimum qualifying period for being eligible to receive pension.

The Hon'ble Supreme Court in *Ali Hussain Ansari* (supra) did not lay down any law relating to grant of compensation in the form of post-retirement benefit. No issue has either been decided in the said case. The Supreme Court passed the order on the peculiar facts and circumstances of that particular case. No ratio being laid down by the Court, the petitioners cannot get the benefit of the said judgment under Article 141 of the Constitution of India. It

can be concluded, that the said order was necessary for doing complete justice to the parties in the facts and circumstances of the said case.

Writ Court being a Court of equity is required to apply the law uniformly in respect of all similarly situated candidates. The selection process included thousands of candidates who may be similarly placed as the petitioners. It cannot be vouched that the respondents were directly responsible for the delay in issuing the letters of appointment in favour of the successful candidates. Passing any order directing the respondents to pay pension in favour of the employees who did not qualify the stipulations laid down in the Scheme, would be grossly improper and unjust.

The right to receive pension flows from the Scheme. The amount that is paid as pension to retired employee includes a fixed sum of money to be deposited both by the employer and the employee during the service tenure. It is only upon accumulation of the money deposited both by the employer and the employee during the service period that pension is calculated and paid to the retired employee. As the petitioners did not complete the qualifying service period accordingly money has not been accumulated either from the employer's or from the employee's contribution from which pension can be paid to them. Directing payment of pension in such a case will render certain provisions of the Scheme otiose. As long as the said provision of the Scheme remains in the rule book, the parties are bound to abide the same.

According to the petitioners a lump sum amount may be paid to them as in Ali Hussain Ansari (*supra*) as compensation pension. As per the Scheme, if an employee is discharged on abolition of the permanent post held by him, he shall, unless he is appointed to any other comparable post, have the option of taking any compensation pension to which he may be entitled for service he has rendered. Such is not the case at hand. Apart from the above, there is no other provision in the Scheme for grant of compensation pension. As such, the petitioners will not be entitled to claim the same.

On a similar issue, this Court, by judgment dated 23.12.2021 passed in **WPA No. 2310 of 2020, Dinesh Mondal Vs. The State of West Bengal & Ors.** was pleased not to condone the shortfall of more than six months. It was held that it is for the employer to decide whether to condone the shortfall or not. It is not open for the Court to rewrite the service condition of an employee.

In view of the discussions made herein above, no relief can be granted to the petitioners in the facts and circumstances of the instant case. The writ petition fails and is hereby dismissed. The connected application stands disposed of.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(**Amrita Sinha, J.**)