

WPA 26716 of 2016
(Via Video Conference)

Sk. Haider Ali
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari
Ms. Tanuja Basak
Sk. Imtiaz Uddin

..for the petitioner

Ms. Chaitali Bhattacharya
Mr. Kartik Chandra Kapas

...for the State

The writ petition relates to release of retiral dues after superannuation of the petitioner who was Headmaster of a Government aided Secondary School and who retired on 31st March, 2013. The concerned school authority where petitioner was serving as Headmaster of the school after processing the pension papers of the petitioner, forwarded the same to the concerned State respondents for finalization of the same. While taking steps Assistant Director, Pension, Provident Fund and Group Insurance, West Bengal vide memo dated 22nd January, 2013 raised objection on grant of initial approval in favour of the petitioner in reference to the Government Order No. 439-Edn (S) dated 3rd August, 1982. Subsequently, the District Inspector of Schools

(S.E.), Howrah, being the respondent no. 3 reiterated the same point relating to obtaining Post Graduate qualification by the petitioner in 1975. Therefore, he was of the view that the concerned D.I. at the material point of time should not have granted approval in favour of the petitioner as an Assistant Teacher and referred the entire issue relating to release of retiral dues in favour of the petitioner to the Director of School Education for necessary permission and approval thereof. Such view of the D.I. is contained in memo dated 12th December, 2013 at page 28 of the writ petition.

Issuance of those two memoranda dated 22nd January, 2013 and 12th December, 2013 stalled the process of releasing pension in favour of the petitioner.

Thereafter, the respondent no. 3 issued memo dated 3rd February, 2015 whereby it was stated that the petitioner followed the relevant procedure relating to undergoing Post Graduate Course in Dacca University and also took 'No Objection' from the High Commission of India vide letter dated 21st April, 1975 and eventually passed M.Sc examination in 1975.

Mr. Ekramul Bari, learned advocate representing the petitioner in course of his submission heavily relied upon this memo dated 3rd February, 2015 issued by the respondent no. 3 whereby it was observed that the process as contemplated under the Government Order

being G.O. No. 82-Edn (S) dated 21st January, 1988 was duly complied with. But, in view of the observation made by the Assistant Director of Pension, Provident Fund and Group Insurance, matter was referred to the Deputy Director of School Education seeking his necessary instructions. The Deputy Director of School Education (G.A.), West Bengal in his turn vide memo dated 18th June, 2015 forwarded the issue to the Joint Secretary (S.E. Branch) for taking final decision.

According to the petitioner, after 18th June, 2015 when Deputy Director of School Education referred the issue to the Joint Secretary, no steps were taken by the concerned respondent authorities to resolve the issue in order to release the retiral dues in favour of the petitioner, which triggered the present writ petition claiming release of retiral dues upon setting aside the observations raised by the Assistant Director, Pension Provident Fund and Group Insurance and the respondent no. 3 in his memo dated 12th December, 2013.

Since two memoranda, one being 439-Edn(S) dated 3rd August, 1982 and another being No. 82-Edn (S) dated 21st January, 1988, were referred to by the respondent authorities while raising objection against releasing of retiral dues in favour of the petitioner, on behalf of the petitioner, those two memoranda have been

placed before this Court during the course of hearing. The contention of the petitioner which has been made in reference to these memoranda is that petitioner was initially appointed as an Assistant Teacher with effect from 1st September, 1978 and approval in support of such appointment was accorded by the respondent no. 3 vide memo dated 2nd November, 1979. Therefore, subsequent issuance of these two memoranda does not impact the issue relating to grant of approval in favour of the petitioner as an Assistant Teacher. It has further been emphatically submitted on behalf of the petitioner that subsequently petitioner was approved vide a memo dated 17th October, 2006 on substantive basis with effect from 1st September, 1980 and thereafter, as Headmaster with effect from 25th July, 2007 vide memo dated 13th January, 2010 wherein the respondent no. 3 did not raise any issue relating to grant of approval in favour of the petitioner with reference to those two memoranda dated 3rd August, 1982 and 21st January, 1988. Therefore, after superannuation of the petitioner on 31st March, 2013 at the time of releasing retiral dues, the respondent authorities are estopped from raising the issue of approval of appointment in favour of the petitioner for acquiring Post Graduate qualification from Dacca University in the year 1975 specially when the service of the petitioner first as an Assistant Teacher with

effect from 1978 and subsequently, as a Headmaster with effect from 25th July, 2007, has been continuously utilised by the school authority on the basis of the approval granted by the respondent no. 3.

In addition thereto, reliance has been placed on one unreported judgement of the Hon'ble Division Bench of this Court dated 14th July, 2015 in MAT 760 of 2014 (State of West Bengal & Ors. Vs. Basab Kumar Chatterje & Anr.). It has been submitted that in the said judgement the Hon'ble Division Bench has decided the issue that after utilising the service of the petitioner without making any demur at the relevant point of time against the approval of appointment for acquiring post graduate qualification from Foreign University at the time of processing and releasing retiral dues, objection cannot be raised on grant of such approval upon considering those two relevant memoranda dated 3rd August, 1982 as well as 21st January, 1988.

Per contra, Ms. Chaitali Bhattacharya, learned senior Government advocate representing the State respondents has defended the stand of the State-respondents which emanates from the observation memo dated 22nd January, 2013 and 12th December, 2013 and it has been submitted that in case of the petitioner those two memoranda dated 3rd August, 1982 and 21st January, 1988 are squarely applicable.

It has been argued on behalf of the respondents that those two memoranda are applicable in case of the petitioner since post facto approval was granted in favour of the petitioner vide memo dated 17th October, 2006 therefore the respondent no. 3 should have relied upon memorandum dated 3rd August, 1982. Subsequently, at the time of issuing approval in favour of the petitioner as Headmaster on 13th January, 2010, respondent no. 3 ought to have followed the relevant Government circular which has not been done in the present case. Therefore, it has been pointed out by the concerned respondent authorities that the matter relating to grant of approval of appointment in favour of the petitioner ought to have been referred to the Director of School Education by the District Inspector of Schools concerned.

This Court has heard the learned advocates representing the petitioner as well as State respondents and has also perused the relevant documents available on records wherefrom it appears that the petitioner was approved as an Assistant Teacher with effect from 1st September, 1980 after completion of two years though the same approval was granted vide memo dated 17th October, 2006 but the initial approval was granted in favour of the petitioner as an Assistant Teacher vide memo dated 2nd November, 1979 being no. 1181/G (S). Therefore, first grant of approval in favour of the

petitioner took place in the year 1979 and the Government Order which has been referred to while raising objection by the respondent authorities is dated 3rd August, 1982 and which was subsequently modified vide memo dated 21st January, 1988 therefore on analysis of chronological facts it is clear as crystal that at the time of grant of initial approval in favour of the petitioner the memo which has been referred to by the respondent authorities dated 3rd August, 1982 was not in existence. In addition thereto on perusal of the said memo dated 3rd August, 1982 it is pellucid that the conditions contained in the said memo was issued prospectively. Therefore, in the matter of granting approval in favour of the petitioner with effect from 1st September, 1978 while issuing the approval of memo dated 2nd November, 1979, the respondent no. 3 did not commit any mistake and it appears that he rightly granted approval in absence of any Government Order in this regard which imposes restrictions relating to grant of approval in favour of the teachers who obtained qualification from Foreign University.

It also does not escape notice of this Court that even the said two memoranda dated 3rd August, 1982 and 21st January, 1988 would have been found to be applicable in case of granting approval in favour of the petitioner in that event also this Court found that there

is no difficulty in granting approval in favour of the petitioner in view of the contents of the memo dated 3rd February, 2015 issued by the respondent no. 3 which is at page 29 of the writ petition. This Court finds it apposite to quote such memo below:-

*“ Government of West Bengal
Office of the District Inspector of Schools(SE), Howrah
1, Nityadhan Mukherjee Road, Shiksha Bhawan,
(3rd Floor), Howrah-1.
Ph. No. – 2637-3594, E-Mail- di.se.howrah@gmail.com
Memo No. 40/Pen/SE/H Dated – 03.02.2015
From :- The District Inspector of Schools (S.E.) Howrah,
To :- The Deputy Director of School Education,
(G.A. Section), West Bengal
Bikash Bhaban (7th Floor),
Salt Lake City, Kolkata-91*

Sub:- Compliance with the objections regarding the pension case in respect of Sk. Haider Ali, Ex-Head Master of Jhorehat Fakir Chand High School (H.S.), Howrah.

*Ref:- 1) The DPPG, WB's File No. SEC/HWH/3/2013
2) Your office Memo no. 1444-GA dt-01.12.2014
4G-394/81*

Sir,

In inviting the reference captioned above I beg to submit here with specific observation regarding the case of Sk. Haider Ali, Ex-HM of Jhorehat F.C. High School, Howrah for your kind perusal and taking necessary action from your end.

Sk. Haider Ali studied M.Sc in Dacca University with N.O.C from High Commission of India vide no. DA-C/Edu/20/1/75 dated 21st April, 1975 passed M.Sc examination in 1975. Then he joined his service as an A.T. in P.G. Scale in Sankrail A.C. High School, Howrah on 01.09.1978 and after completion of continuous teaching service above 33 years he retired from his service with effect from 31.03.2003 (AN) as Headmaster of Jorehat F.C. High School. Both the posts have been approved by the then D.I./S (SE), Howrah but the DPPG, WB sent back the said pension case and asked to submit the permission of the approval from the DSE, W.B. in terms of G.O. No. 439-Edu (S) dated 03.08.82.

However, to comply with the objections as raised by the DPPG, W.B.. Mr. Ali has submitted the copy of the said

P.G. certificate verified by the Deputy Controller of Examination, University of Dacca on 3rd April, 2012 and duly attested by the Consular, High Commission of India, Dacca and also Administrative Officer, Ministry of External Affairs, Branch Secretariat, Kolkata. The entire process strictly reflects the G.O. No. 82-Edu (S) dt. 21/22.01.1988.

In my observation I find nothing against this case. The above matter is referred to you for favourable consideration or as you deem fit and proper.”

Thanking You,

Yours faithfully,

*District Inspector of Schools,
Secondary Education, Howrah.*

It appears that the petitioner studied M.Sc in Dacca University with N.O.C from High Commission of India vide no. DA-C/Edu/20/1/75 dated 21st April, 1975 and passed M.Sc examination in 1975. Subsequently, in view of the objection raised by the respondent authorities in processing the pension case of the petitioner the petitioner submitted the copy of the Post Graduate certificate verified by the Deputy Controller of Examination University of Dacca on 3rd April, 2012 which was duly attested by the Consular, High Commission of India, Dacca and also Administrative Officer, Ministry of External Affairs, Branch Secretariat, Kolkata. According to the respondent no. 3 entire process was strictly completed in accordance with the relevant G.O. No. 82-Edn (S) dated 21st January, 1988. Therefore, it was rightly found by the respondent no. 3 that there was nothing against the petitioner which

impedes him from receiving retiral dues upon completing the necessary formalities.

Ms. Bhattacharya, learned advocate during course of hearing on previous occasion sought for time to obtain instruction whether the duration of the course which was undergone by the petitioner in Dacca University was relevant consideration while raising objections by the respondent authorities at the time of processing pension case of the petitioner. This Court granted her time to obtain instructions and accordingly the matter is fixed today for final consideration.

Today, Ms. Bhattacharya has submitted that there is no instruction forthcoming from the respondent authorities with regard to the issue of duration of course and on perusal of relevant observation memo it does not appear that this was under consideration by the respondents at the time of raising such objections save and except obtaining Post Graduate qualification from Dacca University in the year 1975 which according to the respondents is covered by the circular dated 3rd August, 1982.

This Court has also perused the judgement delivered in the case of Basab Kumar Chatterjee (supra) wherein the Hon'ble Division Bench made observations that after utilising the service of the petitioner without raising any demur for a long period of time upon

appointing him consciously at the time of releasing retiral dues such issue of granting approval cannot be raised.

In view of the above discussion this Court finds merit in the present writ petition and accordingly the objections raised by the Assistant Director, Pension, Provident Fund and Group Insurance, West Bengal as contained in memo dated 22nd January, 2013 and subsequently by the respondent no. 3 in memo dated 12th December, 2013 are set aside and the concerned respondent authorities are directed to expeditiously process the pension case of the petitioner and release the same upon issuing pension payment order within a period of 8 (eight) weeks from the date of communication of this order.

At the time of releasing the retiral dues in favour of the writ petitioner the respondent authorities are further directed to pay interest on delayed payment of gratuity @ 8% p.a. with effect from 1st April, 2013 till the date of releasing the pension.

With the above direction, the 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 on compliance of requisite formalities.

(Saugata Bhattacharyya, J.)