

201. 21.11.2022
BD Ct.15

W.P.A. 29935 of 2016

Manik Chandra Das

-vs-

The State of West Bengal & Ors.

Mr. Ekramul Bari
Ms. Tanuja Basak
... for the petitioner.

Ms. Chaitali Bhattacharya
Mr. Kartick Chandra Kapas
... for the State

Matter relates to grant of pension in favour of the petitioner whose qualifying service fell short of ten years as a result whereof the Secretary, School Education Department, Government of West Bengal, vide order dated 13th October, 2011 refused to grant pensionary benefits in terms of Death-cum-Retirement Benefits Scheme of 1981 (hereinafter referred to as “DCRB Scheme of 1981”) including provisions as contained in Clause 7(e)(iv) of the said scheme of 1981. Petitioner was an organising teacher of the school in question from 1971 and based on District level Inspection Team Report the school was recognised with effect from 1st May, 2000 and with the grant of recognition of the school where the petitioner was serving as organising teacher, the service of the petitioner was approved with effect from 1st May, 2000. Ultimately, petitioner

retired on superannuation on 31st October, 2009 upon discharging approved service for a period of 9 years 6 months. Since qualifying service of the petitioner fell short of 10 years the authority did not sanction pensionary benefits which triggered the first writ petition being WPA 6653 of 2011 and same was disposed of by coordinate Bench vide order dated 6th May, 2011. The coordinate Bench directed the Principal Secretary, Department of Education, Government of West Bengal, to take decision on the right of the petitioner to receive pensionary benefits in terms of Rule 7(e)(iv) of DCRB Scheme of 1981. Subsequently, Secretary, being the respondent no. 1, passed order refusing prayer of the petitioner to grant pensionary benefits upon referring to the provisions as contained in Clause 7(e)(iv) and the note appended to the said clause. Such order of the respondent no. 1 dated 13th October, 2011 is questioned in the present writ petition.

Mr. Bari, learned advocate, representing the petitioner submits that the petitioner was bonafide organising assistant teacher with effect from 1971 and based on DLIT inspection for recognising the said school held on 29th September, 1992 belatedly the school was recognised with effect from 1st May, 2000. According to the petitioner if the school would have been recognised contemporaneous to the date of DLIT inspection then question of short fall in qualifying service of the petitioner would not have arisen. In this regard reliance has been placed to the judgment of the Hon'ble Division Bench dated 18th February, 2020 passed on an intra Court appeal being FMA 677 of 2015 (State of West Bengal & Ors. -vs- Kartick Chandra Das & Ors.). It has

further been submitted that the Hon'ble Division Bench passed order on 18th February, 2020 in connection with sanctioning of pensionary benefits in favour of teaching and non-teaching staff of the same school where petitioner functioned as assistant teacher and it has further been added since the petitioner could not join along with other staff of the said school in the writ petition the case of the petitioner was left out and pensionary benefits was not sanctioned in his favour.

In addition thereto reliance has also been placed on the judgment of the Hon'ble Division Bench delivered on an intra Court appeal being **MAT 1917 of 2019 (State of West Bengal -vs- Rabindra Nath Ghosh)** and another judgement dated 5th July, 2022 passed by this Court on a writ petition being **WPA 11764 of 2018 (Asit Kumar Ghosh -vs- The State of West Bengal & Ors.)**. It has been submitted at the end on behalf of the petitioner that question of granting pensionary benefits on applying Clause 7(e)(iv) on condoning deficiency in length of service to the extent of six months has been decided in favour of the petitioner in the judgement of the Hon'ble Division Bench dated 28th May, 2021 and another judgment of this Court dated 5th July, 2022. Therefore, according to the petitioner the issue is no more res-integra and the present case needs to be decided based on the aforesaid decision.

Ms. Bhattacharya, learned senior Government advocate representing the State respondents has defended the decision of the respondent no. 1 dated

13th October, 2011 and has submitted that the note appended to Clause 7(e)(iv) of DCRB Scheme of 1981 puts an embargo in sanctioning pension in favour of the petitioner since pension of the petitioner does not belong to the category of invalid or compensatory pension and the last pay of the petitioner was higher than the amount i.e., Rs. 7100/- (ROPA 2009) corresponding to pay of Rs. 425/-. Therefore, it has been submitted that respondent no. 1 has rightly rejected the claim of the petitioner to sanction pensionary benefits on placing reliance on the note appended to Clause 7(e)(iv).

In addition thereto it has also been submitted by Ms. Bhattacharya, that the decision rendered by the Hon'ble Division Bench in the case of **Kartick Chandra Das** (supra) was assailed before the Hon'ble Supreme Court and vide order dated 4th February, 2021 the Hon'ble Supreme Court though dismissed the Special Leave Petition however kept the point of law open. According to Ms. Bhattacharya though the issue of condoning the deficiency in service to the extent of six months is covered by the judgment of the Hon'ble Division Bench delivered in **Rabindra Nath Ghosh** (supra) as well as the judgement dated 5th July, 2022 delivered by this Court in **Asit Kumar Ghosh** (supra) but the condonation of deficiency in service period of more than six months needs to be considered in the light of the order of the Hon'ble Supreme Court dated 4th February, 2021 wherein the point of law was kept open and there are some other judgments delivered by different Benches of this Court.

Having considered the rival contentions of the parties this Court on perusal of the impugned decision of the respondent no. 1 dated 13th October, 2011 finds that in the present case since length of qualifying service of the petitioner was nine years six months it can be perceived that petitioner fell short of qualifying service of six months on the date of his superannuation. It has been decided by this Court in **Asit Kumar Ghosh**(supra) upon placing reliance on the judgment of the Hon'ble Division Bench delivered in **Rabindra Nath Ghosh**(supra) that in the event the teacher is found to have discharged qualifying service of nine years six months or more in that event in consideration of Clause 7(e)(iv) of the DCRB Scheme of 1981 such short fall in qualifying service can be condoned by the concerned authority.

In view of the law laid down in the aforesaid two judgments, the decision of the respondent no. 1 as contained in order dated 13th October, 2011 stands set aside thereby directing the concerned respondent authorities to grant pensionary benefits to the petitioner within a period of eight weeks from the date of communication of this order upon condoning short fall of six months in the qualifying service. All necessary formalities are to be made complete for sanction of pension in favour of the petitioner within the aforesaid period.

Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)