

Item No.3.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 05.04.2022.

DELIVERED ON:05.04.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

**WPA 7174 of 2020
With
I.A. No.CAN 1 of 2020**

**Md. Ali Ahammad.
VERSUS
The State of West Bengal & Ors.**

Appearance:-

**Mr. Sarwar Jahan,
Mr. Ashraful Huq,
Md. Maidul Islam Kayal**

.....for the Petitioner

**Mr. Tapan Kr. Mukherjee, Ld. A.G.P.,
Ms. Tuli Sinha**

.. for the respondents/State.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The petitioner filed this writ petition praying for issuance of a writ in the nature of mandamus commanding the respondents to quash the memo no.78/01(06)/LS/RO/IC/261/LS/2019

dated 19th August, 2020 issued by the Commissioner of School Education, West Bengal and for a further direction commanding the respondents to sanction pension and other retiral benefits calculating the length of service on and from 1st May, 2000. The appointment of the petitioner was approved vide memo no.167/LS dated 29th December, 2010 with effect from 1st May, 2000. The petitioner retired from service on superannuation on 31st March, 2018. Pursuant to a direction passed in W.P. No.12210(W) of 2019 filed by the petitioner, the Commissioner of School Education passed an order on 19th August, 2020. By the said order, the memo dated 29th December, 2010 approving the appointment of your petitioner with effect from 1st May, 2000 was withdrawn and the District Inspector of Schools (SE), Birbhum was directed to issue a rectified approval memo in favour of the petitioner with effect from 19th November, 2010 i.e. the date of the order passed in WP No.18827(W) of 2008. The petitioner being aggrieved by the said order passed by the Commissioner of School Education challenged the same by filing the instant writ petition.

2. The learned Advocate appearing for the petitioner submits that the Commissioner of School Education directed issuance of

rectified approval memo by treating the date of approval of the petitioner in service with effect from 19th November, 2010. He contends that the respondent authority could not have issued such order thereby modifying the date of approval after the retirement of the petitioner from service. He, thus, submits that by virtue of the said order, the right of the petitioner to get pension has been taken away.

3. Mr. Mukherjee, learned Additional Government Pleader, submits that the Commissioner of School Education after taking into consideration the existing rule and Government order as well as the observation order passed by the Hon'ble Supreme Court of India and taking into consideration the facts and circumstances of the case held that the memo dated 29th December, 2010 is withdrawn and directed issuance of rectified approval memo in favour of the petitioner with effect from 19th November, 2010. He further submits that since the petitioner cannot be said to be appointed to the post of Assistant Teacher with effect from any date prior to 19th November, 2010, any period prior to 19th November, 2010 cannot be taken into consideration for the purpose of computing the qualifying length of service for grant of pension. He thus submits that the petitioner is

not entitled to get any pension as the service rendered by him falls short of the qualifying length of service for being entitled to pension.

4. Today, when the matter is taken up for hearing, the petitioner files a supplementary affidavit upon serving a copy of the same to the learned Advocate for the respondent. In paragraph 7 of the said supplementary affidavit, the petitioner undertook not to claim any other financial benefit in respect of the period from 1st May, 2000 to 18th November, 2010 in case the aforesaid period is taken into consideration for the purpose of calculating qualifying service for grant of pension under the West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981.

5. I have heard the learned Advocates for the parties and perused the materials on record. It appears that the petitioner served the institution at least from 1st May, 2000. It is not in dispute that the service of the petitioner was also approved with effect from 1st May, 2000 by the District Inspector of Schools vide memo no. 167/LS dated 29th December, 2010. It appears from the said memo that there was vacancy within the

sanctioned strength due to recognition of the school as Four Class Junior High School with effect from 1st May, 2000 by the West Bengal Board of Secondary Education. The petitioner performed his duties as an Assistant Teacher till his superannuation on 31st March, 2018. After the retirement of the petitioner, the claim for payment of pension was disposed of by the Commissioner of School Education by passing order dated 19th August, 2020 pursuant to a direction passed in a writ petition thereby withdrawing the memo dated 29th December, 2010 with a direction that the service of the petitioner shall be approved with effect from 19th November, 2010 i.e. the date of passing the order in W.P. No.18827(W) of 2008.

6. Upon going through the materials on record this Court finds that the Memo dated 19th August, 2020 was issued pursuant to the order dated 3rd February, 2020 passed by a coordinate bench in W.P. 12210(W) of 2019 whereby the Commissioner, Director of School Education was requested to consider the grievance of the petitioner regarding pension in the light of the memorandum dated 29th December, 2010. A question may arise whether the respondent was justified in withdrawing the said Memo thereby altering the date of approval of the petitioner in service in

view of the observation of the coordinate bench. However, in the light of the undertaking given by the petitioner that he will not claim any financial benefit for the period 1st May, 2000 to 18th November, 2010, this Court is not inclined to interfere with the Memo dated 19th August, 2020 insofar as the date of approval of service of the petitioner is concerned.

7. Though Mr. Mukherjee may be justified in arguing that since the petitioner could not be said to have been appointed to the said post from any date prior to 19th November, 2010 in view of memo dated 19th August, 2020 but such submission is to be considered by taking into account the special facts of this case. Initially the approval to the service of the petitioner was given by the District Inspector of Schools with effect from 1st May, 2000 as far back as in the year 2010. The said approval was given in terms of the order dated 19th November, 2010 passed in W.P. No.18827(W) of 2008. Such approval was withdrawn in the year 2020 i.e. after the retirement of the petitioner. An undertaking has been given by the petitioner herein that he will not claim any financial benefit if the period from 1st May, 2000 to 18th November, 2010 is added along with the period of service as per the order dated 19th August, 2020 passed by the

Commissioner of School Education. Thus in view of such special facts, this Court is of the considered view that the authorities should be directed to take into consideration the period from 1st May, 2000 to 18th November, 2010 for calculating the qualifying length of service for pension as the petitioner was not responsible for the delay in disposal of the writ petition being no.18827(W) of 2008 which was disposed of on 19th November, 2010 and cannot be made to suffer therefor.

8. This Court, therefore, directs the District Inspect of Schools (SE), Birbhum being the respondent no.4 herein to process the pension case of the petitioner by taking into consideration the service rendered by the petitioner with effect from 1st May, 2000 till 18th November, 2010 together with the subsequent period till his retirement while calculating the qualifying length of service for the purpose of pension and thereafter forward the necessary papers to the Director of Pension, Provident Fund & Group Insurance being the respondent no.3 herein, who shall take necessary steps for releasing the pension in favour of the petitioner and communicate to the petitioner. The entire exercise shall be completed by the

District Inspector of Schools within eight weeks from the date of communication of this order.

9. The Director of Pension, Provident Fund & Group Insurance shall complete the entire exercise for releasing the pension within a period of six weeks from the date of receipt of the papers from the District Inspector of Schools (SE), Birbhum.

10. Since this order was passed in view of the special facts of this case as indicated hereinbefore, it is made clear that this order should not be treated as a precedent.

11. With the above directions, W.P.A. No.7174 of 2020 and I.A. No. CAN 1 of 2020 are disposed of.

12. No costs.

13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

NAREN, AR (Ct.)