

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present :- Hon'ble Mr. Justice I. P. Mukerji
Hon'ble Mr. Justice Biswaroop Chowdhury

F.M.A. 1313 of 2021

State of West Bengal
Vs.
Suphal Chandra Pramanik and Ors.

For the appellant :- Mr. Pinaki Dhole,
Mr. Abhishek Prasad, Advs.

For the respondents :- Mr. Kamalesh Bhattacharya,
Ms. Papiya Chattopadhyay, Advs.

Judgment on :- 06.07.2023

I. P. Mukerji, J.:-

What is the interpretation to be given to the memorandum of the Education Department (Budget branch), Government of West Bengal dated 20th May, 1988? It is in the following terms:-

“GOVERNMENT OF WEST BENGAL
Education Department (Budget Branch)
MEMORANDUM

Memo No. 180-Edn.(B)
IM-83/88

Dated : Calcutta, the 20th May, 1988.

Sub : Counting of service spent in unaided Institution(s) by teaching and non-teaching staff of Educational Institution(s) towards pensionary benefits.

In supersession of G.O. No. 31.EDn.(B) dt. 1.2.88 the undersigned is directed by order of the Governor to say that the Governor has been pleased to direct that service rendered by a teaching or non-teaching employee in unaided Institution or Institutions shall be counted towards pensionable service provided at the time of retirement/death/superannuation of the employee concerned the Institution or Institutions in which the incumbent

served received aid from the Government or any other body authorised by the Government for the purpose.

2. While forwarding the pension case to the Directorate of Pension, Provident Fund and Group Insurance, West Bengal, the Pension Sanctioning Authority will have to certify accordingly in the service book of the incumbent concerned that the employee concerned served in a recognised institution and retired from an aided institution (other than only D.A. getting school).

3. This Memo, takes effect from 01.04.1981.

4. The aforesaid provision will not apply to educational institution which receive only Dearness Allowance.

5. This has the concurrence of Finance Department, Group-J vide their U/O No. 1473-Gr. J date 20.5.88.

Sd/- S. S. Chattopadhyay, (Secretary)."

The respondent writ petitioner had a long career as a teacher in different schools in West Bengal from 1974. He retired in the year 2008 from Sahapur Mathuranath Vidyapith, an aided institution. During his career, he also worked in Batanagar High School which was a D.A. getting school, from 1979 till 1982. Batanagar continues to be a D.A. getting unaided institution.

The question is whether on the strength of the above memorandum of the government the service of the respondent writ petitioner in the unaided institution Batanagar would be counted towards pensionable service?

According to the government, the interpretation to the notification would be that at the time of retirement, all the institutions where the respondent taught would have to be an aided institution.

Learned counsel for the appellant has relied upon a memorandum dated 19th April, 2006 of the government to the effect that if the service of a teaching or non-teaching staff was in more than one institution out of which one or more than one was a D.A getting institution, then the service in the D.A getting institution would constitute a break in service and not be taken into account in calculating pensionable service. If the service in the

aided school was prior to that in a D.A getting school, that service would not be counted.

In WP No. 20990 (W) of 1998 (Amulya Ratan Chakraborty vs. State of West Bengal & Ors.) on 7th July, 2000 the Hon'ble Mr. Justice M.H.S. Ansari sitting singly, dealing with the self same issue ruled that the institution from which the employee retired would have to be an aided institution. The court held that the service of the writ petitioner in Batanagar High School, an unaided but dearness institution had to be counted towards his pensionable service since he had retired from an aided institution. Following that interpretation, the learned single judge on 20th August, 2018 allowed the instant writ application setting aside the departmental order dated 28th January, 2014 and directed the appellant authorities to calculate the pensionary benefits of the respondent writ petitioner by taking into account the entire service period starting from 1974 including his service in Batanagar High School.

We are fully in agreement with the reasons given by his lordship in Amulya Ratan Chakraborty vs. State of West Bengal & Ors. and followed by Mr. Justice Saraf in the impugned judgment and order.

We also have our own reasons for not accepting the interpretations to the memorandum dated 20th May, 1988 made by the government. Suppose, an employee had worked in institutions 'A', 'B', 'C' and 'D' during his tenure as a teacher. Let us assume that 'A', 'B' and 'D' were aided institutions and 'C' was not. Suppose while the employee was rendering service in the last institution 'D', which was an aided institution, the government stopped aiding 'A' and it ceased to be an aided institution. Having retired from 'D', an aided institution and having worked in 'A', which was an aided institution throughout the period the employee worked there, would he lose the benefit of his service in 'A' because at the time he was teaching in 'D', 'A' ceased to be an aided institution? That would make a most illogical interpretation of the memorandum. The right interpretation is that which

has been made by Mr. Justice Ansari and Mr. Justice Saraf that what would be counted was the petitioner's service in an aided institution at the time of retirement and if that were so, his service in the unaided institution prior to that would also be counted towards pensionable service.

This memorandum of 19th April, 2006 was not cited before the learned trial judge. The effect of this memorandum is to take away the benefit conferred by the memorandum dated 20th May, 1988. The benefit that was conferred on the respondent by the 1988 memorandum could not have been taken away by the 2006 memorandum just two years before his retirement. This latter memorandum could only be made effective against those employees who joined D.A getting schools during the course of their service after the date of notification and not to those who had served in aided and D.A getting schools and lastly in aided schools earning the right of pension under the 20th May, 1988 notification. Enforcing the memorandum of 2006 of the respondent who retired in 2008 would be inequitable and most unreasonable and unjust. For those reasons, the said memorandum of 2006 has no application to the case of the respondent.

We dismiss the appeal and affirm the impugned judgment and order dated 20th August, 2018. Compliance of the impugned judgment and order dated 20th August, 2018 read with this judgment and order is to be made within eight weeks from the date of communication of this order. The appeal (FMA 1313 of 2021) is accordingly disposed of.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

(BISWAROOP CHOWDHURY, J.)

(I. P. MUKERJI