

16.08.2023
SL No.218
Court No.8
(gc)

FMA 440 of 2021

**Mrs. Subrata Mukherjee
Vs.
The State of West Bengal & Ors.**

Mr. Tarapada Das,
Mr. Chandan Dutta,
Mr. Goutam Malik,
Ms. Jonaki Khan,
...for the Appellant.
Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee,
...for the State.
Mr. Bhaskar Prasad Vaisya, A.G.P.
Mr. Ranjan Saha,
...for the Respondent No.4.

1. We have heard the learned Counsel for the parties.
2. The writ petitioner had retired from service on 31st May, 2003. She was initially working as a primary teacher under a school managed and controlled by the Asansol Municipal Corporation (in short "Corporation"). The Municipality had transferred the said school in which the writ petitioner was employed to DPSC, Burdwan with all assets and teachers. Pursuant to such transfer, the writ petitioner became a teacher in the primary school in which she worked till her superannuation on 31st May, 2003. The service conditions of the appellant needless to mention shall be

governed by the Memoranda dated 21st November, 2003.

3. In view of the fact that the original writ petitioner died and the substituted appellant is the married daughter of the deceased, the question of payment of pension to the present appellant does not arise. However, all retiral benefits consequent upon the revision of ROPA, 1998 on recalculation, if not paid, shall be paid to Mrs. Subrata Mukherjee, the present substituted appellant within six weeks from date.
4. We are in agreement with the observation made by the learned Single Judge that there has been inordinate delay in filing writ petition as it appears that the writ petitioner had approached the Court twice earlier and in the previous writ petition, Justice Basak considered the said objection with regard to the delay and had condoned the delay. The said order is not under challenge. In view thereof, it was not open for the Coordinate Bench in a subsequent writ proceeding to deny the benefit on the ground of inordinate delay. Moreover, we find that the writ petitioner was entitled to the said notification and writ petitioner cannot be

denied all her legitimate claims as observed earlier by Justice Basak in the order dated 12th August, 2015 in WP 9741(W) of 2015.

5. Accordingly, the order of the learned Single Judge is set aside.
6. The appeal succeeds.
7. Accordingly, the appeal being FMA 440 of 2021 stands disposed of.
8. However, there shall be no order as to costs.
9. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)