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Ct-08

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MAT 146 of 2011
with
I.A No. CAN 1 of 2011(Old CAN No. 964 of 2011)
CAN 2 of 2011(Old CAN No. 4815 of 2011)

Sribas Ranjan Patra
Vs.
The State of West Bengal & Ors.

Mr. Jayanta Das
Ms. Soumita Ghosh
... For the Appellant

Ms. Tapati Samanta
... For the State

Re: CAN 4815 of 2011
(Condonation of Delay)

1. There is a delay of 545 days in presenting the memorandum of appeal.
2. We are satisfied with the explanation offered for not being able to file the memorandum of appeal within the statutory period, we are inclined to condone the delay in presenting the memorandum of appeal.
3. The application for condonation of delay is, thus, allowed without any order as to costs.
4. CAN 4815 of 2011 is thus disposed of.

MAT 146 of 2011

1. We have heard the learned counsel appearing for the parties.

2. The appeal is arising out of an order dated 20.4.2009 passed in a writ petition in which the

petitioner prayed for pensionary benefits for his service in the upgraded segment (Secondary) of Dubai Rasiknagar Vivekananda Vidayatan in the district of Purba Medinipur.

3. The writ petition involves two issues: firstly, the audit observation with regard to the period between 1st May, 1997 and 28th February, 2002 denying pension due to shortfall in qualifying service and secondly, the arrear salary and other allowances for the aforesaid period consequent upon the approval of the said post by the D.I w.e.f 1st May, 1997 with notional pay fixation and financial benefit w.e.f 01.3.2002.

4. The writ petitioner was initially appointed without approval in the school. The school was, however, upgraded during his tenure of service and he had applied for absorption in the upgraded segment being the Secondary section. When his application was not accepted in normal course, the petitioner filed a writ petition and an order was passed on 3rd October, 2001 by directing the concerned District Inspector of Schools to send a District Level Inspection Team to the Institution within a period of two weeks from the date of communication of the order on a

working day and upon notice to all concerned in order to satisfy whether the petitioner was actually working in the said school, as claimed in the writ petition. In compliance of the said order, an inspection was held and the petitioner was found to be working at the relevant time.

5. The grievance of the petitioner was that his service for the period between 1st May, 1997 and 28th February, 2002 is not being counted as qualifying service for the purpose of computation of his pension by the District Inspector of Schools(S.E), Purba Medinipur. As a result thereof, he could not fulfill the 10 years of qualifying service which would have entitled him to receive in terms of West Bengal Recognised Non-Government Educational Institutions Employees (Death-cum-Retirement) Benefits Scheme, 1981 (1981 Scheme in short).

6. Learned Single Judge on consideration of the materials on record observed that *“the admitted position is that the school concerned was upgraded as a High School with effect from 1st May 1997. Thereafter in pursuance of the direction of this Court, the District Level Inspection Team had conducted the inspection and in their report filed on 31st December, 2001, the petitioner*

was found to be working in the said school as organizer teacher. Relying on this report, the authorities chose to regularize the service of the petitioner with effect from 1st May, 1997 in the vacancy created due to opening of Class X. The memorandum, which has been reproduced in the earlier part of this judgment, specifies that from 1st May, 1997 the regularization of the service of the petitioner was taking effect with notional fixation and financial benefits was to be given from 1st March, 2002. Clause 7 of the 1981 Rules deal with service qualifying for pension, and sub-clause (b) of the said clause provides:

“ Continuous service of a whole-time approved employee in any educational institution, shall count as qualifying service.”

Clause 8 of the said Rules prescribes that subject to satisfactory service, an employee shall be entitled to pension upon completion of ten years of qualifying service on attaining the age of superannuation, or thereafter on the expiry of the period of approved extension. Different criteria of qualifying service has been laid down in clause 8 in relation to voluntary retirement, but that again is not relevant for the purpose of determination of the subject dispute.

The specific objection of the audit department, as it appears from the memorandum issued by the District Inspector of Schools (Annexure “P5” to the writ petition) is:-

“Without pay period i.e. from 01.5.97 to 28.2.2002 will not be counted as qualifying service towards retirement benefit without specific order from competent authority.”

The audit authority has not rejected the claim of the petitioner for pension, and has observed that this approximately five year period can be counted as qualifying service only with a specific order of the competent authority, without specifying who would be such authority.”

“The question which falls for determination in this writ petition is as to whether the service rendered by the petitioner between 1st May, 1997 and 28th February, 2002 would constitute qualifying service or not. As per the memorandum issued by the District Inspector of Schools, the petitioner’s service was regularised with effect from 1st May, 1997 with notional fixation of pay. It is not the case of the respondents that the petitioner did not render service continuously from that date. The very use of the expression

“regularised” confers legitimacy on his service from 1st May, 1997.

In terms of Clause 7(b) of the 1981 scheme, what is required to count as qualifying service is “continuous service of a whole-time approved employee”. Since the petitioner’s service has been regularised since 1st May, 1997, he fits the description of a whole-time approved employee. The authorities, in my opinion, are laying undue emphasis on the period from which the petitioner’s fixation of pay was effected ignoring his regularization in service. Such fixation of pay was done from a date subsequent to the date on which the petitioner’s service was regularised under special circumstances of the petitioner’s case. That date cannot be taken as the relevant date for computing the petitioner’s qualifying service. Requirement of Clause 7(b) of the 1981 scheme is that there must be continuous service for the period of ten years by a whole-time approved employee in an educational institution. This clause does not stipulate that for this entire period, he must have received regular pay.

Of course, it would be a reasonable presumption that a whole-time approved employee should receive regular salary specified for the post

during the entire period of his service. But in my opinion, it does not lead to an automatic inference that the regular service of an employee would lose its legitimacy if because of special circumstances like the one involved in the present case, such employee does not receive the regular pay for his entire service period. Otherwise, the regularization of the petitioner's service with notional fixation would be rendered nugatory.

As the memorandum of the District Inspector of Schools dated 1st February, 2002 specifies that the petitioner's service was being regularized with notional fixation with effect from 1st May, 1997, in my opinion the observation by the audit department that the period between 1st May, 1997 and 28th February, 2002 would not constitute qualifying service is without any basis. There was no necessity to withhold the release of the petitioner's pension pending decision of unspecified "competent authority"(emphasis supplied).

7. The order of the learned Single Judge has been complied with, however, the learned Single Judge declined to pass any order with regard to arrear salary and other allowances for the said period between 1st May, 1997 and 28th February, 2002.

8. The appellant is aggrieved by the aforesaid refusal.

9. From the aforesaid narrative it is clear that the service of the petitioner was regularised by the District Inspector of Schools (SE) with effect from 1st May, 1997 in the vacancy created due to opening of Class X with notional pay fixation and financial benefit with effect from 1st March, 2002 vide Memo no. Law-53/1, dated 01.02.2002. This memorandum is not under challenge. The petitioner had received his remuneration on the basis of such approval.

10. The petitioner was principally aggrieved by the observation of the audit department, after he retired, denying his pensioner benefits. The order of approval of appointment of the petitioner on 1st February, 2002 was passed on the basis of the inspection report of the District Level Inspection Team, which found upgradation of the school. Thereafter, it was felt that service of the petitioner could be regularised with retrospective effect as he was found to be in the school working and it was accordingly approved. The petitioner claims to be the organizer teacher.

11. In view of the aforesaid order, the writ petitioner was denied arrear salary and other

allowances.

12. We do not find any reason to interfere with the order passed by the learned Single Judge. The approval of appointment of the petitioner is accepted by the authority.

13. In compliance of the order dated 20.4.2009 the pension file of the petitioner was processed immediately and P.P.O was given as per rule.

14. On such consideration, the appeal being MAT 146 of 2011 is dismissed.

15. In view of dismissal of the appeal nothing remains to be decided in the application for stay being CAN 964 of 2011 and the same is accordingly dismissed.

16. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

