

Court No. 22
12.10.2023
Item No. 30
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 2296 of 2020

Arpita Barua
- *Versus* -
The State of West Bengal & Ors.

Mr. Himadri Barua
... for the petitioner
Mr. Pinaki Dhole
Mr. Parikshit Goswami
.... For the State

Mr. Himadri Barua, learned counsel appears
for the petitioner.

Mr. Pinaki Dhole, learned State counsel
appears for respondent Nos. 1 to 4.

The rest of the respondents chose not to be
represented.

The facts relevant for adjudication of this writ
petition are only narrated.

The petitioner was appointed as an **Assistant Teacher** at **Ganipur High School (H.S.), District – South 24 Parganas (for short, the School)** on **October 3, 1997**. The respondent No. 4 then approved the employment of the petitioner on **December 19, 1997** with effect from **November 4, 1997**. The petitioner thereafter alleged to have claimed maternity leave which was not granted by the school. The petitioner applied before this Court in its writ jurisdiction, when a co-ordinate bench by its

order dated **April 28, 2000** directed the Managing Committee of the school to grant the maternity leave. The petitioner then joined the school on **September 12, 2000** and discharged her duty. The petitioner alleged to have opted for family pension. The petitioner claimed that, on **August 12, 2009** when petitioner went to school, the school did not allow the petitioner to sign the attendance register and from then the petitioner was not allowed to perform duties as Assistant Teacher of the school. The petitioner claimed that, when the petitioner was prevented from attending the school she made a representation before the respondent No. 4 and the local police authority. The school has not initiated any disciplinary proceeding against the petitioner. All these facts would appear from a detailed representation made by the petitioner dated **February 19, 2018** before the Head Master of the school, **Annexure P-9** at **page 35** to the writ petition. The averments made in the writ petition also corroborate the same.

In the second round of writ litigation being **W.P. No. 8751 of 2018** filed by the petitioner, the writ petition was disposed of by a co-ordinate bench by its order dated **April 11, 2019, Annexure P-10** at **page 39** to the writ petition with the following observations:

“This writ petition is disposed of with a direction upon the respondent Nos. 5 and 6 to consider and dispose of the representation of the petitioner dated February 19, 2018 seeking voluntary retirement. The decision shall be taken by the authority in accordance with law. Such decision will be taken within a period of four weeks from the date of communication of this order. The decision with reasons should be communicated to the petitioner within a week thereafter.

The decision so taken by the school authorities will also be sent to the District Inspector of Schools (SE), 24-Parganas (South). If the prayer of the petitioner for voluntary retirement is denied by the school authorities then the reasons should be assigned for the same.

This writ petition stands disposed of accordingly.”

Pursuant to the said direction dated **April 11, 2019** the school authority passed a reasoned order dated **December 9, 2019, Annexure P-11** at **page 41** to the writ petition. Under the said reasoned order the claim of the petitioner for voluntary retirement was rejected by the school authority. The relevant observations are quoted below:

“The brief history of the matter is as follows:-

Arpita Barua, Assistant Teacher in History under Social Science Group was appointed in Gonipur High School Village – Gonipur, Via – Moheshtola, District – 24-Parganas (South) and she joined in the said post on 04.11.1997. Her appointment was approved by the District

Inspector of Schools (S.E.) South 24-Parganas on 29.11.1997.

On and from 19.08.2009 Smt. Arpita Barua stopped attending the school. She also did not communicate with the school authority disclosing them the reasons for her absence. Since then she did not join the said school. The school authority was suffering for her absence and the function of imparting education in the school was hampered due to the unauthorized absence of Smt. Arpita Barua, Assistant Teacher in History of Gonipur High School.

After the completion of five years of her unauthorized absence the school authorities sent registered letter to her recorded address on 31.10.2014, stating inter alia that she was absenting the school without intimating to the school authority for more than five years and as such the school authority is facing problem in maintaining academic activities. Request was made to meet the Head Master or the Secretary of the School clarifying the long absence within fifteen days from the date of issue of the letter. The said letter returned un-served without any noting as to the reason of non-service of the same.

The school authority again on 24.11.2014 and 5.12.2014 sent similar letters to her recorded address but the same also returned un-served.

Thereafter the school authority intimated the District Inspector of Schools (S.E.) 24-Parganas (South) on 20.03.2015 about the long absence of Smt. Barua, Assistant Teacher of the school.

The Headmaster on behalf of the school authority also submitted an intimation on

20.05.2015 before the West Bengal Board of Secondary Education intimating about the absence of above five years of Smt. Arpita Barua, Assistant Teacher of Gonipur High School.

That in the year 2018 the school authorities received the application of Smt. Arpita Barua, Assistant Teacher of Gonipur High School praying for Voluntary Retirement claiming that she has completed 20 years of service. Subsequently a writ petition was served upon the school authority on June 2018 alleging the non-consideration of her prayer for Voluntary Retirement.

On receipt of the said writ petition the Headmaster of the said school intimated the District Inspector of Schools (S.E.) 24-Parganas (South). The District Inspector of Schools (S.E.) 24-Parganas (South) by a letter dated 30.01.2019 asked for a report of pending Court case in a format.

That pursuant to the said letter the Headmaster of Gonipur High School (H.S.) intimated on 14.02.2019 about the case filed by Smt. Arpita Barua, Assistant Teacher of Gonipur High School for Voluntary Retirement along with the said letter the back ground of the case was also intimated.

That on receipt of the order passed by Hon'ble High Court the school authority searched for the documents about the service of the petitioner namely Smt. Arpita Barua, Assistant Teacher of Gonipur High School. The papers are not readily available as the teacher is not attending the school for more 10 years. After finding out sufficient amount of papers and on consideration of the relevant laws it is found that

the petitioner was appointed as Assistant Teacher and she join the School on 04.11.1997. As per school records since 19.08.2009 she was not attending the school. So her period of service is from 04.11.1997 to 18.08.2009. The School Authority could not take the instant decision in the peculiar facts and circumstances of the case as the petitioner did not attend the school for more than 10 years. On consultation with the departmental authorities it is stated:-

According to the West Bengal Recognized Non-Government Education Institution Employees' (Death Cum-Retirement Benefits) Scheme 1981, about Voluntary Retirement it states as

Chapter -IV

Eligibility for Pension

Para - 8 Subject to satisfactory service an employee shall be entitled to pension provided that 8(ii) on Voluntary Retirement after completion of 20 years of qualifying service,

It was further stated in paragraph 7(f) of the said Scheme that all periods of authorized leave other than extra ordinary leave shall be counted as qualifying service.

In this circumstances it is stated that Smt. Arpita Barua, Assistant Teacher of Gonipur High School was on unauthorized absent since 19.08.2009 and as such she has not completed the required period of 20 years of service so entitled to consideration of voluntary retirement or to any pension as she has not served the school for 20 years satisfactory.

The representation for Voluntary retirement and pensionary benefits of the Smt. Arpita Barua, Assistant Teacher of Gonipur High School is considered and rejected.”

The petitioner through the instant writ petition has challenged the said impugned order of the school authority dated **December 9, 2019** and prayed for withdrawal and/or cancellation of the same as would be evident from the reliefs in the writ petition and for other consequential reliefs.

Mr. Barua, learned counsel for the petitioner submits that, the petitioner has uninterruptedly rendered her service as an Assistant Teacher at the School since her appointment and her joining on or about **November 4, 1997 till at least August 19, 2009** and the said period being more than 10 years, the petitioner is entitled to receive pension. In as much as, while passing the reasoned order the school authority did not consider the fact that, the petitioner was prevented by the school authority for the period since 2009 and even till today to take classes. The school authority ought not to have taken the plea of unauthorized absence on the part of the petitioner, as the petitioner was prevented by the school authority. In this regard, petitioner contemporaneously lodged complaint before the respondent No. 4 as also before the local police authority. He submits that, had this period been taken into account, then the employment of the petitioner as on date would become more than 20 years and she becomes eligible to receive her pension. On all these grounds the impugned order

dated **December 9, 2019** cannot sustain in law as contended by the petitioner and should be set aside.

He further referring to the previous order of the co-ordinate bench passed in the second writ petition dated **April 11, 2019** submits that, the said impugned order though passed in 2019 but till date this impugned reasoned order has not been forwarded to the respondent No. 4.

Mr. Pinaki Dhole, learned State counsel refers to the impugned order and the discussions therein and then submits that, all the relevant facts and figures were taken note of by the school authority while passing the reasoned order. The fact of joining and the fact of absence of the petitioner have been discussed in the said impugned order, which are also corroborated from the facts stated by the petitioner in its said representation dated **February 19, 2018, Annexure P-9 at page 35** to the writ petition and also in the averments made in the writ petition. He submits that, there was unauthorized absence on the part of the petitioner for which neither the petitioner obtained any permission from the school authority nor she was entitled to continue with such absence in law. In this regard several letters dated **October 31, 2014, November 24, 2014 and December 5, 2014** were communicated to the petitioner at **her recorded address** with the school, though the impugned order

shows that, those letters were returned as un-served. The school authority then informed the respondent No. 4 on **March 20, 2015** about the prolonged absence of the petitioner in the school. An intimation dated **May 20, 2015** was also made by the school in this regard before the West Bengal Board of Secondary Education. After causing the unauthorized absence the petitioner suddenly in the year **2018** made a representation before the school authority claiming that, she has completed 20 years of uninterrupted service.

Learned State counsel further submits that, from a plain reading of the reasoned order passed by the school it would appear that, all the facts were duly discussed and noted and only thereupon the reasoned order was passed, rightly rejecting the claim of the petitioner for voluntary retirement.

The respondent Nos. 5 and 6, the school authority is not represented.

After considering the rival contentions of the parties and upon perusal of the materials on record, this Court at the outset proceeds to consider the relevant provisions regarding ***Eligibility for Pensions*** as provided under the ***West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 (for short, the said 1981 scheme)***. The relevant

provisions from the said 1981 scheme is quoted below:

“Eligibility for Pensions:

8. Subject to satisfactory service, an employee shall be entitled to pension provided that in case of (i), (iii) and (iv) below, the employee concerned has completed at least ten years of qualifying services:

(i) on attaining the age of superannuation, or thereafter on the expiry of the period of approved extension, or,

(ii) on voluntary retirement after completing 20 years of qualifying services, or,

(iii) on being declared permanently incapacitated for further service by the Chief Medical Officer of the State Government in the district concerned or any Medical Officer of equivalent status authorized by the pension sanctioning authority, or,

(iv) on termination of service due to abolition of the post, or closure of the Institution concerned due to withdrawal of recognition or other valid reasons.”

Clause 8 of the said **1981 scheme** provides that, subject to **Satisfactory Service**, an employee shall be entitled to pension provided that, in case of on a voluntary retirement after completing 20 years of qualifying services. The other provisions laid down under **Sub Clause (i), (iii) and (iv) to Clause 8** of the said **1981 Scheme** are not relevant and applicable in the facts of the instant case, as the petitioner claims pension on **Voluntary Retirement**.

In so far as, the contention of the petitioner that, the petitioner was prevented by the school authority from joining her duty, these events were much prior to the order passed by the co-ordinate bench in the second writ petition dated ***April 11, 2019***. There was no challenge to the said order. On the contrary, the petitioner accepted the said order and the reasoned order was passed by the school authority. The facts prior to the said order dated ***April 11, 2019*** were considered and/or deemed to have been considered by the co-ordinate bench and then only the order was passed. This Court cannot go into all those facts once again by reopening the issue which stands concluded after the said order dated ***April 11, 2019*** has attained its finality. The order being binding on the parties has already been acted upon.

The law is well settled that, a constitution Court in exercise of its writ jurisdiction under judicial review has a limited jurisdiction to assess the impugned order passed by the authority. The Court shall only interfere if there is a glaring perversity or illegality on the face of it and if there is any infirmity in the decision making process and not beyond that.

In the light of the above settled principle of law, upon scrutiny of the said impugned order dated ***December 9, 2019*** it appears to this Court that, the

relevant facts were duly considered and taken note of by the school authority while passing the said impugned order and upon application of all those facts the decision is well founded with elaborate reasons. The petitioner has not disclosed any material to rebutt those factual findings in the impugned order. Since the petitioner did not complete 20 years of **qualifying service** in view of the unauthorized absence of the petitioner, the school authority has reached rightly to its conclusion that **Satisfactory Service** of the petitioner was not there in accordance with **Clause 8** of the said **1981 Scheme** on the basis of the available materials before it. Hence, the petitioner is not eligible for pension under **Sub-Clause (ii) to Clause 8** of the said **1981 Scheme**.

In view of the foregoing discussions and reasons and in view of the application of the provisions of the said **1981 Scheme** in its true purport and effect, this Court is of the firm view that, there is no infirmity or illegality in the reasoned order dated **December 9, 2019, Annexure P-11** at **page 41** to the writ petition. The same is not interfered with.

The reasoned order dated **December 9, 2019** stands **affirmed**.

The writ petition is devoid of any merit.

However, the school authority, respondent Nos. 5 and 6 shall forward a copy of the said reasoned order dated **December 9, 2019** to the respondent No. 4, if not forwarded already, within **two weeks** from the date of communication of this order.

Learned counsel for the petitioner further contends that, the Provident Fund amount has not been released to the petitioner. Provident Fund amount is the property of the petitioner to the extent she is entitled to in law.

Mr. Pinaki Dhole, learned State counsel appearing in this matter shall communicate a copy of this order to the President of the West Bengal Board of Secondary Education to enable the Board to take a decision in consultation with the respondent No. 4 with regard to the date of the end point of the employment of the petitioner in the light of the said reasoned order dated **December 9, 2019** and thereafter shall take steps for disbursement of the Provident Fund amount to the petitioner.

The entire exercise as directed herein shall be carried out and completed by the West Bengal Board of Secondary Education through its appropriate authority and the respondent No. 4 with the co-operation of the respondent Nos. 5 and 6, if any, required positively within a period of **eight weeks** from the date of communication of this order to the

President of the West Bengal Board of Secondary Education.

However, the petitioner shall also be free to communicate a copy of this order to the Board and the respondent Nos. 4, 5 and 6.

With the above observations and directions this writ petition being **W.P.A. 2296 of 2020** stands dismissed.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)