

FMA 687 of 2022

with

I.A No. CAN 1 of 2022**Basudeb Purkait****Vs.****The State of West Bengal & Ors.**

Mr. Satyajit Mondal
Mr. Amar Nath Sen
Mr. Malay Dhar
Mr. Shouvik Naskar
Mr. Amt Bikram Mahata
... For the Appellant

Mr. Sanjib Das
Mr. Madhusudan Mukhopadhyay
... For the State Respondents

Mr. Bhaskar Prasad Vaisya
Mr. Gourav Das
... For the Respondent no. 3/
DPSC, South 24 Parganas

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

2. The affidavits filed on behalf of the Commissioner of School Education and the report in the form an affidavit filed by the Chairman, District Primary School Council, South 24 Parganas, are taken on record.

3. The revised affidavits have been filed in terms of the order dated 2nd August, 2023. In the said affidavits the deponents have disclosed the delay in processing the application of the petitioner.

4. The writ petitioner is aggrieved by the

order passed by the Commissioner of School Education, Government of West Bengal on 5th February, 2021 rejecting the prayer of the petitioner for full pensionary benefits on the ground of non-completion of 10 years continuous service. He filed a writ petition. The writ petition was dismissed. Hence this appeal.

5. During the course of hearing of the appeal, we directed the respondents to file affidavit disclosing the reason for delay in processing the application of the petitioner. The initial affidavit was found to be unsatisfactory. Thereafter two affidavits mentioned above have been filed. The two affidavits are on identical terms. From the said affidavits, it appears that the appellant/petitioner participated in the recruitment process initiated by the District Primary School Council, South 24 Parganas in the year 2006 under EC category. He was empanelled as a successful candidate under the said category. The written examination of the said recruitment process was held on 20.12.2009. After preparation of the panel following the West Bengal Primary School Teachers Recruitment Rules, 2001 published vide Notification No. 57-Se(Pry) dated 15th January, 2002, the Chairman, DPSC, South 24

Parganas had forward the panel to the Directorate vide memo no. 4703 dated 15th February, 2010.

6. On verification of the relevant documents as submitted by the DPSC, South 24 Parganas and after checking the panel, the said panel was approved and sent to the District Primary School Council, South 24 Parganas by the Director of School Education, West Bengal vide memo no. 2060-SC/P dated 16th February, 2010.

7. Thereafter the Chairman, DPSC, South 24 Parganas had taken steps for verification of the EC Certificate of the appellant from the competent authority. In response to such query the B.D.O, Kakdwip informed the Chairman, DPSC, South 24 Parganas on 5th April, 2010 that no record was readily available at the office of the B.D.O, Kakdwip. Upon receiving the said communication the then Chairman, DPSC, South 24 Parganas requested the District Magistrate, South 24 Parganas for verification of Census Certificate produced by the appellant on 28th April, 2010. It is stated that the appellant had also requested the B.D.O, Kakdwip for rectification the name of his father in the Census Certificate.

8. The District Census Officer & Additional

District Magistrate (Development), South 24 Parganas issued a satisfactory report on 10th February, 2011 clearly stating that Hriday Krishna Purkait and Hriday Kumar Purkait was the same person, but due to election embargo the said certificate could not be given effect to and the issuance of appointment letter could not be issued immediately. Ultimately, on 18th May, 2011 the letter of appointment was issued and the appellant joined service on 6th June, 2011. By reason of this delay there was a shortfall of 1 year 5 months and 4 days for completion of 10 years of qualifying service for the grant of pension under D.C.R.B Scheme 1981.

9. Learned counsel for the appellant has submitted that the admit card and all relevant documents having the signature of B.D.O were produced for verification at the time of processing his application and in all those documents the name of the father of the appellant was mentioned as Hriday Krishna Purkait. Attention of the court is drawn to such certificate appearing at pages 79, 80 and 81 of the said petition.

10. It appears that the mistake was done on behalf of the B.D.O and the B.D.O admittedly

could not furnish any detail as it is stated in the report that he could not readily found out the record which, however, was retrieved later and cross verified. It cannot be doubted that if the appellant were given the appointment letter soon after 16th February, 2010, when the panel was approved in which his name appeared, there would not have been shortfall of 2 months of qualifying service. Which is condonable under Rule 7(e)(iv) of the D.C.R.B Scheme 1981. The said Rule is reproduced below:-

“7(e)(iv): Upon any condition which it may think fit to impose, Government may condone a deficiency of six months in the qualifying service of the employees of non Government/ Sponsored/ Aided Educational Institutions/ Organisations. Note: The deficiency should not be condoned with a view to make up the minimum prescribed qualifying service for the purpose of death gratuity or family pension. In other cases power should be restricted to the employees drawing pay not exceeding Rs.425.00 per month at the time of retirement on invalid or compensation pension.”

11. The said rule came up for consideration before the coordinate bench presided over by one

of us (Soumen Sen,J.) in MAT 1917 of 2019 with CAN 279 of 2020 (The State of West Bengal Vs. Rabindra Nath Ghosh) decided on 28th May, 2021, in which the coordinate bench observed that: *“The teacher has worked for almost 10 years and was found to be eligible for being appointed as a teacher would be denied pensionary benefits on such flimsy ground. The avowed object of the 1981 scheme which is undoubtedly a beneficial piece of legislation enacted for the purpose of teachers and other employees covered by the said scheme to not be deprived of their past service is now being attempted to be rendered nugatory by taking recourse to harsh and irrational views in denying such legitimate claim. In our view, it does not augur well with the appellants. The object and of the said scheme is defeated and rendered otiose if the interpretation given by the appellants are accepted to deny the benefits to the teachers.”*

12. It is clear from the affidavit filed on behalf of the respondents that there has been no willful delay or neglect on the part of the writ petitioner/appellant. The delay was attributable to the respondents. The appellant/petitioner cannot be made to suffer for the delay caused in processing his application for appointment. He was a successful empanelled candidate as on

16th February, 2010. From March 2010 till the issuance of the appointment letter i.e. 18th May, 2011, the files were moved from one department to other for verification of the name, notwithstanding the fact that all documents disclosed by the appellant at the time of processing his application were mostly issued by competent authorities of the Government and there was no reason for the State respondents to doubt the veracity of the said documents.

13. Under such circumstances, the order dated 5th February, 2021 issued by the Commissioner of School Education is set aside. In our view there will be a shortfall of approximately 2 months which requires approval from the Government.

14. We direct the Secretary, Education Department (Primary) to consider the prayer for condonation of approximately 2 months of qualifying service of the appellant within three weeks from date taking into consideration the observation made in this order and the judgment of the coordinate bench passed in MAT 1917 of 2019 with CAN 279 of 2020 (The State of West Bengal Vs. Rabindra Nath Ghosh) mentioned above and shall dispose of the matter by passing a reasoned order to be communicated to the

appellant within one week thereafter.

15. On such consideration, the appeal being FMA 687 of 2022 is allowed and stands disposed of. The order of the learned Single Judge is set aside. However, there shall be no order as to costs.

16. In view of the disposal of the appeal nothing remains to be decided in the application for stay being CAN 1 of 2022 and the same is accordingly disposed of.

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

(Uday Kumar, J.)

(Soumen Sen, J.)

