

Ct.
No.
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07.06
2023

W.P.A. 5696 of 2010
Ganesh Chandra Tikadar
-Versus-
The State of West Bengal & Ors.

Mr. Sundarananda Pal
Mr. Lakshmi Kanta Pal
Mr. Bandhu Brata Bhula ...For the Petitioner

There is no representation on behalf of the State respondents.

As reported by the department, no affidavit-in-opposition has been filed by the State respondents in terms of the order dated December 09, 2019 passed by a co-ordinate Bench.

It appears that on some previous occasions when the matter was called on, there was no representation on behalf of the State respondents.

Accordingly, the writ petition is taken up for final hearing in absence of the respondents.

The petitioner was appointed as a 'Group - D' staff in Narayanpur Mohim Chandra Junior High School on 10th November, 1976 by virtue of a resolution adopted by the Managing Committee of the School. Since then the petitioner discharged his duties as a 'Group - D' staff in the school. He was appointed in accordance with the rules as then prevailed. On 19th June, 1979, the school got recognition from the West Bengal Board of Secondary Education as junior high school. After the recognition was granted to the school, the petitioner made several representations to the concerned authority seeking approval of his appointment as 'Group D' staff, but to no effect.

Being aggrieved by the inaction on the part of the

authority concerned to approve his appointment, the petitioner approached this Court by filing a writ petition being C.O. 6665 (W) of 1987. By an order dated 29th May, 1991 the writ petition was disposed of by a co-ordinate single Bench directing the Director of School Education to consider the claim of the petitioner relating to approval of his appointment. But, the Director of School Education turned down the claim made by him.

Challenging the order of rejection of his claim, the petitioner again approached this Court by filing a writ petition being C.O. 18542 (W) of 1992. By judgment and order dated 8th October, 2002 the writ petition was disposed of by a learned Single Judge directing the Director of School Education to reconsider the case of the petitioner sympathetically as a very special case and he might consider as to whether the petitioner could be approved at least from the date of retirement of the erstwhile 'Group D' staff namely Chinabala Halder.

In compliance of the said judgment and order passed by the learned Single Judge, the Director of School Education by order dated 16th June, 2003 disposed of the representation of the petitioner directing that the appointment of the petitioner be approved with effect from 1st February, 1992, but he would be allowed notional pay fixation with effect from 1st February, 1992. And the actual financial benefit would be allowed to him with effect from 1st May, 2003.

The petitioner states that since he has been working in the school since November, 1976 and since his appointment has been approved/regularised with effect from 1st February, 1992, he would be given financial benefit with

effect from 1st February, 1992 and not with effect from 1st May, 2003. Challenging this portion of the said order dated 16th June, 2003 passed by the Director of School Education, the petitioner seeks direction upon the concerned respondents to disburse arrear pay to him with effect from 1st February, 1992.

Learned Counsel appearing for the petitioner submits that his client was lawfully appointed in November, 1976. But, his appointment was not approved. In compliance with the order passed by the learned Single Judge in C.O. 18542 (W) of 1992 the Director of School Education regularised the service of his client with effect from 1st February, 1992. Learned Counsel submits that no reason has been assigned by the Director of School Education as to why financial benefits should be given to the petitioner with effect from 1st May, 2003 instead of 1st February, 1992. Learned Counsel further submits that since the service rendered by his client is continuing since November, 1976 and since his service has been regularised in respect of the sanctioned post, all the service benefits should be extended to his client with effect from 1st February, 1992.

As I find, the first round of litigation preferred by the petitioner by filing a writ petition, being C.O. 6665 (W) of 1987, which was disposed of by a learned Single Judge directing the Director of School Education to consider the claim of the petitioner relating to approval of his appointment. But, the claim made by him was turned down by the authority concerned. From the judgment and order dated 8th October, 2002 passed by a learned Single Bench in the second round of litigation that is the writ petition being

C.O. 18542 (W) of 1992 it appears that the writ petition was disposed of by passing the following order :

“I, therefore, dispose of this writ petition by directing the Director of School Education, West Bengal to re-consider the matter sympathetically, as a very special case, as to whether the service of the writ petitioner can be approved at least from the date of retirement of the erstwhile Group D staff of the school in view of the availability of the vacancy in the said school. The Director of School Education, West Bengal in the facts and in the peculiar circumstances of the case, will re-consider the matter within three months from the date of communication of this order to him after giving opportunities of hearing to the writ petitioner, the school management and the District Inspector of Schools concerned.”

In compliance of this judgment and order, the Director of School Education by order dated 16th June, 2003 disposed of the petitioner's representation/claim by making the following observations :

“In view of the fact that the petitioner was appointed by the school authority as far back as on November 10, 1976 and in view of the fact that the school has been paying the petitioner a fixed monthly remuneration with appropriate DA from the Government fund and also in view of the fact that the only post of Group D employee in the school fell vacant with effect from 01-2-1992 consequent upon the retirement of Sm. Chinabala Halder, in deference to the wishes of the Hon'ble Court, I direct that the service of the petitioner as a Group D employee against the existing vacant post be regularised and approved with effect from 1-2-1992, as a very special case and without creating a precedence, subject to the conditions that:

- a) the petitioner was eligible to be appointed as a Group D staff on 10-11-1976;*

b) such regularisation/approval of service will not create any precedence; and

c) Shri Tikadar will be allowed only notional benefit of pay fixation with effect from 01-2-1992, the actual financial benefit to be allowed with effect from 01-5-2003.”

From the observations as recorded by the director of School Education in the aforesaid order it is explicit that the petitioner was appointed as a ‘Group D’ staff on 10th November, 1976 lawfully. However, since there was no permanent vacant post since his joining and since the post fell vacant with effect from 1st February, 1992, his continued service was regularised with effect from 1st February, 1992. But the financial benefit was extended to him with effect from 1st May, 2003. While service of the petitioner appointed lawfully was regularised with effect from 1st February, 1992 question crops up as to why financial benefits would be extended from 1st May, 2003. No reason has been assigned by the Director of School Education in the order as above as to why financial benefit was extended to him with effect from 1st May, 2003, though his service was lawfully regularise with effect from 1st February, 1992.

What this Bench perceives, this portion of the order by which financial benefit was extended to the petitioner with effect from 1st May, 2003 is bad in law and it is liable to be rescinded. I opine that the financial benefits should be extended to the petitioner with effect from 1st February, 1992.

Having heard learned counsel appearing for the petitioner and in view of the observation as above, the writ petition may be disposed of by passing the following order.

The portion of the order dated 16.06.2003 of the Director of School Education by which financial benefits have been extended to the petitioner with effect from 01.05.2003 instead of 01.02.1992 is hereby set aside.

The concerned respondents are directed to pay the arrear pay to the petitioner with effect from 1st February, 1992 till 30th April, 2003 with interest thereon at the rate of 6% per annum till the final payment is made within a period of 8 (eight) weeks from the date of communication of this order.

With the aforesaid directions the writ petition is disposed of.

There will be no order as to costs.

All parties may act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat copy of the order, if applied for, be supplied to the petitioner on compliance of necessary formalities, on priority basis.

(*Rabindranath Samanta, J.*)