

07.12.2023  
Court No.13  
Item No. 126  
pk

**WPA 7766 of 2023  
CAN 1 of 2023**

**Arup Kumar Mukherjee and others  
Vs.  
Union of India and others**

Mr. Indranath Mitra

... for the petitioners.

Mr. Anil Kumar Gupta,  
Mr. Yogesh Kumar Sharma

... for the P F Authorities.

Md. Sarwar Jahan,  
Mr. Sayantan Hazra

... for the respondent no. 10.

1. CAN 1 of 2023 is an application for addition of the applicants, who are 15 persons, as petitioners in the instant proceedings.

2. Counsel for the writ petitioners does not have any objection to the same, neither do the respondents. The applicants are similarly situated as the writ petitioners. The said applicants being Nos. 1 to 15 shall stand added as writ petitioner serially after no. 246 in the instant writ petition.

3. The learned advocate for the petitioners shall carry out the necessary amendment in the cause title in course of the day. Formal service of the amended writ petition may be effected on the State authorities.

4. The petitioners are all teachers and employees of the Madhyamik Siksha Kendras (MSKs) under the

Paschimbanga Rajya Shishu Shiksha Mission (PBRSSM). They receive funds from the Paschimbanga Samagra Shiksha Mission (PBSSM), formerly called the Paschimbanga Sarva Shiksha Mission. The said Sarva Shiksha Mission is implemented in all States in India with contribution at 60 and 40 per cent from the State and the Central Government.

5. The petitioners are categorized as Samprasarakhs and Samprasarikas teachers (in the secondary level up to Class VIII) and Sahayaks and Sahayikas teachers (in the primary school up to Class 4). The petitioners are under the direct control of Principal Secretary, Education Department. There is another category of teachers in the State other than regular Assistant Teachers (AT). They are called "Para Teachers", who function in formal schools in addition to the regular ATs.

6. Both the petitioners as well as the Para Teachers come under the PBSSM and are controlled directly by the Principal Secretary, Education Depttment. The other regular teachers like ATs in the State are under the control and management of the Commissioner of School Education.

7. The MSKs functions in areas where there are no formal school available. The para teachers are in addition to existing regular teachers in formal schools in the State.

8. It can therefore be safely concluded that the petitioners as well as the para teachers perform a vital role in dispensing education in the State.

9. Until the year 2015 para teachers were not receiving or entitled to provident fund. Pursuant to proceedings before this Court that eventually culminated before the Hon'ble Supreme Court, it was held that the para teachers are entitled to provident fund benefits.

10. Parallely the said para teachers approached the Authorities under the Employees Provident Fund and the Miscellaneous Provisions Act, 1952 under Section 7A.

11. By an order 20<sup>th</sup> May, 2014 the Assistant Provident Commissioner found that the employer, now known as PBSSM (Establishment) was covered under Section 7A.

12. The para teachers were found entitled to provident fund. The establishment was directed to deposit provident fund benefits of the employer and the employee from the September, 1997 till May, 2014. Interest and penalty under Section 7Q and PD was also directed to be paid. Pursuant thereto PBSSM issued a notice dated 23.12.2015 promulgating a scheme for provident fund of the said para teachers.

13. The petitioners, however, remained high and dry without any hope of any provident fund and consequently no retirement benefits. The petitioners approached the Principal Secretary, Education of the State of West Bengal

and Mission Director of the PBRSSM and their governing body, which receives funds from the PBSSM for extending provident fund benefit to them.

14. It may be relevant to mention that the petitioners were earlier governed under the Panchayat and Rural Development Department of the Government of West Bengal. By a notification dated 18.12.2019 the Control and Management of SSKs and MSKs came to be transferred to the School Education Department. Upon such transfer the Samprasarak & Samprasarika and Sahayak and Sahayika were asked to exercise options for service only up to 60 years as a precondition for consideration of their prayers for provident fund. Even as on date, however, the petitioners' prayers for provident fund and other retirement benefits remain a dream.

15. In the backdrop of the above, this Court is of the view that the petitioners should be granted the same benefits of PF and other retirement benefits available to para teachers, inter alia, under the notification dated 23.12.2015 issued by the PBRSSM being annexure P4 at page 110 of the writ petition.

16. The petitioners are admittedly an indispensable part of the implementation Right of Education which is now recognised as fundamental right under the Constitution of India. The duties of the petitioners are substantially similar, if not the same as that of para teachers and regular Assistant Teachers in the State.

17. To deprive the petitioners of retirement benefits and appropriate terminal benefits equivalent to para teachers at least if not with regular teachers of the State, would not only be denial of right to equality under Articles 14 and 16 of the Constitution of India but also eventually leading to denial of rights under Article 21 of the Constitution of India.

18. The petitioners have been serving diligently and continuously in the State for well over 30 years and their claim for terminal benefits, equivalent to at least para teachers, is found valid, lawful and sustainable in the eye of law.

19. Let the scheme dated 23<sup>rd</sup> December 2015 as modified from time to time, be applied with immediate effect to each of the petitioners as they have been applied to Para Teachers.

20. In the event, however, the School Education Department wishes to frame a separate scheme for the petitioners, they may do so. It is only upon coming into force of such new scheme for the petitioners that they may be shifted from the existing scheme applicable to para teachers to the new scheme. Such independent scheme for the petitioners shall not be any less beneficial than the scheme of 23.12.2015.

21. The Secretary, Finance Department, Government of West Bengal is added as party respondent to the instant

proceeding. Let amendment be carried out and service be effected.

22. The Principal Secretary, Finance Department, Government of West Bengal shall ensure necessary financial outlay and make provisions for the purpose of the financial out go to the School Education Department for the purpose of compliance of the aforesaid order.

23. The benefits of the aforesaid order shall be available only to those Samprasarak & Samprasarika and Sahayak & Sahayika, who have exercised the option to retire at the age of 60 and wish to continue with such option.

24. Learned counsel for the respondent no. 10, Mr. Sarwar Jahan, has fully endorsed and concurred with the aforesaid directions. The State has chosen not to be represented today. No accommodation is sought on its behalf.

25. The writ petition is disposed of.

26. In view of the above, CAN 1 of 2023 is also disposed of.

27. There will be no order as to costs.

28. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

**(Rajasekhar Mantha, J.)**

