

W.P.A. 6756 of 2018

**Sri Bijoy Krishna Parya
Vs.
The State of West Bengal & Ors.**

**Mr. Kazi Sajjad Alam
Mr. Kazi M. Rahaman
...for the petitioner**

**Mr. Supriyo Chattopadhyay
Mr. Sabyasachi Mondal
...for the State**

**Mr. Uttam Kr. Bhattacharyya
Mr. Kaustav Misha
...for the respondent no. 7**

The headmaster of the school is before this Court with the present writ petition claiming benefit of Government Notification dated 13th June, 2014 in order to come under Pension-cum-Gratuity Scheme by switching over from Contributory Provident Fund-cum-Gratuity Scheme.

Learned advocate representing the petitioner submits that pursuant to the said notification dated 13th June, 2014 issued by the Secretary to the Government of West Bengal, School Education Department, petitioner exercised option to come under Pension-cum-Gratuity Scheme on 11th September, 2014 before the clerk of the school where the petitioner was working. Therefore, according to the petitioner, since the option form was submitted before the clerk the same needs to be accepted by the school authority as well as the concerned District

Inspector of Schools and the petitioner should have been permitted to switch over to Pension-cum-Gratuity Scheme by this time.

It has also been submitted that since situation in the school was not normal and petitioner was suspended by the secretary of the school with effect from 19th July, 2011 therefore he could not submit the option form before the Secretary of the School in question and the requirement of submitting option form before the secretary of the school in terms of Clause 3 (ii) of the notification dated 13th June, 2014 be dispensed with in view of the special circumstances which were prevailing relating to the service of the petitioner.

The contention of the petitioner praying for switching over to Pension-cum-Gratuity Scheme has been opposed by the learned advocates representing the school authority as well as State-respondents.

Mr. Supriyo Chattopadhyay, learned Additional Government Pleader representing the State-respondents has drawn attention of this Court to memo dated 22nd March, 2017 issued by the Additional District Inspector of Schools (SE), Kharagpur Sub-Division addressed to the concerned school authority wherein query was made whether the alleged exercise of option by the petitioner was duly accepted by the school authority or not within the time stipulated in the notification dated 13th June, 2014. Subsequently, the said school authority vide letter

dated 6th April, 2018 addressed to the District Inspector of Schools (SE), Paschim Medinipur informed that the petitioner forced the clerk to sign the option form for switching over to Pension-cum-Gratuity Scheme on the day (11th September, 2014) before the last date of submission of option as stipulated in the notification dated 13th June, 2014.

Said letter dated 6th April, 2018 of the teacher-in-charge of the school is placed before this Court which is taken on record.

This Court has heard the learned advocates representing the parties and also perused the relevant materials available on record wherefrom it appears that petitioner was headmaster of Sankoa G.C. High School (H.S.), District-Paschim Medinipur who was placed under suspension by the then secretary of the school since he was taken into custody based on an FIR lodged against him by the secretary of the school on the allegation of corrupt practices. However, subsequently the said suspension order was withdrawn by the school authority pursuant to an order passed in a writ petition being WPA 183 of 2012 and petitioner was allowed to resume his duty as headmaster on and from 30th August, 2014. Thereafter petitioner was again on leave from 30th April, 2015 to 15th May, 2015 and on and from 15th May, 2015 petitioner was placed under suspension by the school

authority till date of his retirement on 31st January, 2017.

From above chronology of facts it appears that petitioner was functioning as headmaster of said school on 11th September, 2014 when it has been alleged by the petitioner that he submitted option form before the clerk of the school. Said option form is annexed to the writ petition at page 69, from where it appears that option form of the petitioner was accepted by the clerk by putting signature on 11th September, 2014.

This Court is at a loss as to why petitioner being the headmaster of the school submitted option form before the clerk of the school who is a subordinate staff working under the headmaster. In this regard this Court finds it apt to consider Clause 3(ii) of the notification dated 13th June, 2014 which prescribes requirement of submission of option form by the headmaster of secondary school before the Secretary or Administrator or DDO of the school. Therefore, in consideration of Clause 3(ii) of the notification dated 13th June, 2014 it was open to the petitioner to submit option form before the Secretary of the said school which petitioner chose not to do.

However, it has been submitted on behalf of petitioner that there was acrimony in between the petitioner and secretary since petitioner was placed under suspension by the erstwhile secretary of the

Managing Committee which prevented the petitioner to submit option form before the secretary of the school. If this was the situation which was prevailing in that event petitioner ought to have brought it to the notice of the concerned District Inspector of Schools contemporaneously that he was not in a position to submit option form before the secretary of the school or the secretary of the school was not accepting the said option form.

No representation or complaint has been placed before this Court or annexed to this writ petition wherefrom it can be deciphered that petitioner contemporaneously took steps to submit option form before the secretary of the school and on being refused approached the Additional District Inspector of Schools (SE), Kharagpur or the District Inspector of Schools (SE), Paschim Medinipur. It is unbelievable that the headmaster of the school submitted option form in terms of the notification dated 13th June, 2014 before the clerk of the school.

However, it needs to be recorded that petitioner has received benefits under Contributory Provident Fund and Gratuity Scheme on his superannuation on 31st January, 2017.

In view of aforesaid scenario this Court is not inclined to pass order permitting the petitioner to switch over to Pension-cum-Gratuity Scheme based on an

option form which was submitted before the clerk of the said school which was impermissible in terms of Clause 3 (ii) of the notification dated 13th June, 2014.

Accordingly, the prayer of the petitioner to permit him to switch over to Pension-cum-Gratuity Scheme based on option form dated 11th September, 2014 is refused.

The writ petition stands partially allowed since benefits under Pension-cum-Gratuity has already been released by the concerned respondent authorities based on the prayer made in the writ petition [prayer (a)].

It has been submitted after dictating the order that portion of provident fund amount which was payable to the petitioner has not been released in his favour. If part of provident fund remains unpaid petitioner shall be at liberty to make representation to the concerned District Inspector of Schools (SE), Paschim Medinipur within fortnight from date and on receipt of the same the concerned District Inspector of Schools shall take decision in accordance with law after granting opportunity of hearing to the petitioner and the school authority within 8 (eight) weeks thereafter from the date of receipt of representation from the petitioner.

Written instructions of the District Inspector of Schools (SE), Paschim Medinipur dated 8th August, 2023 is taken on record.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)