

12.09.2023
SL No.1
Court No.8
(gc)

**MAT 1029 of 2022
CAN 1 of 2022**

**Sk. Haider Ali
Vs.
The State of West Bengal & Ors.**

Mr. K.M. Hossain,
Sk. Jayed Hossain,
Mr. R. Mondal,
...for the Appellant.
Ms. Jhuma Chakraborty,
Ms. Munmun Tewari,
...for the State.

1. The appellant/writ petitioner is aggrieved by the impugned judgment as it impliedly refused to grant any interest in respect of the retiral dues.
2. The writ petitioner was a Headmaster of a Government aided Secondary School and retired on 31st March, 2013. The school authority where the petitioner was serving as a Headmaster of the school after processing the pension papers of the writ petitioner, forwarded the same to the concerned State respondents for finalization of the same. During finalization, the Assistant Director, Pension, Provident Fund and Group Insurance, West Bengal vide memo dated 22nd January, 2013 raised objection with regard to the grant of initial approval in favour of the petitioner in reference to the Government

Order No.439-Edn(S) dated 3rd August, 1982. Subsequently, the District Inspector of Schools (S.E.), Howrah, being the respondent No.3, reiterated the same point relating to obtaining Post Graduate qualification by the petitioner in 1975. They were of the view that D.I. concerned at the material point of time could not have granted approval in favour of the petitioner as an Assistant Teacher and referred the entire issue relating to release of retiral dues in favour of the petitioner to the Director of School Education for necessary permission and approval thereof. By reason of issuance of the aforesaid two memoranda dated 22nd January, 2013 and 12th December, 2013 the process of releasing pension was withheld. The D.I. of Schools (S.E.), Howrah on 3rd February, 2015 stated that the petitioner followed the relevant procedure relating to undergoing Post Graduate Course in Dacca University and also took 'No Objection' from the High Commission of India vide letter dated 21st April, 1975 and eventually passed M.Sc Examination in 1975.

3. In the background of the aforesaid facts, the learned Single Judge was of the view that the petitioner was approved as an Assistant Teacher with effect from 1st September, 1980

after completion of two years though the same approval was granted vide memo dated 17th October, 2006 but the initial approval was granted in favour of the petitioner as an Assistant Teacher vide memo dated 2nd November, 1979 being no.1181/G (S). It, thus, shows that the first grant of approval in favour of the writ petitioner took place in the year 1979 and the Government Order which has been referred to while raising objection by the respondent authorities is dated 3rd August, 1982 since modified subsequently on 21st January, 1988, therefore, on analysis of chronological facts makes it clear that the reliance on 3rd August, 1982 suffered from total non-application of mind and the said memo was not existing at the relevant point of time. This was the first grant of approval of the writ petitioner in the year 1979. Moreover, the said notice was issued prospectively. The petitioner pursued M.Sc. in Dacca University with N.O.C from High Commission of India vide no. DA-C/Edu/20/1/75 dated 21st April 1975 and passed M.Sc. examination in 1975. Subsequently, in view of the objection raised by the respondent authorities in processing the pension case of the petitioner, the petitioner submitted the copy of the Post

Graduate certificate verified by the Deputy Controller of Examination, University of Dacca on 3rd April, 2012 which was duly attested by the Consular, High Commission of India, Dacca and also Administrative Officer, Ministry of External Affairs, Branch Secretariat, Kolkata. The respondent no.3 appears to have contended before the learned Single Judge that the entire process was strictly completed in accordance with the relevant G.O. No.82-Edn (S) dated 21st January, 1988. The respondent no.3 has correctly found that there was nothing against the petitioner which impedes him from receiving retiral dues upon completing the necessary formalities.

4. The learned Single Judge, accordingly, directed release of retiral dues in favour of the petitioner and further directed to pay interest on the delayed payment of gratuity @ 8% p.a. with effect from 1st April, 2013 till the date of releasing the pension.
5. The learned Counsel for the State has produced a report from the District Inspector of Schools (S.E.), Howrah. The report says that the Deputy Director of School Education (GA) vide Memo No.1256-GA dated 4th October, 2016 instructed District Inspector of

Schools (S.E.), Howrah to verify the Passport and Visa of Sk. Haider Ali at the material point of time, that is, when he was a student of M.Sc. in Dacca University and the petitioner was unable to submit the Passport and Visa of that time and, accordingly, the pension could not be released which, however, in terms of the order of the High Court on 3rd March, 2022 has been released in favour of the petitioner.

6. The State is not the appellant. This point was never urged before the learned Single Judge. In any event, the ground on which the authorities refused to release the pension for the last several years, is clearly unsustainable in view of the fact that the service was approved in the year 1979 and the report of the District Inspector of Schools (S.E.), Howrah in its communication dated 3rd February, 2015 has addressed all the relevant issues. There was no requirement for the petitioner to produce the Passport and Visa at the material point of time as all other documents clearly establish that he had passed the M.Sc. examination in 1975 from the Dacca University.
7. The learned Single Judge in deciding the matter in favour of the petitioner has relied upon a judgment of the Coordinate Bench in

State of West Bengal & Ors. Vs. Basab Kumar Chatterjee & Anr.) decided on **14th July, 2015** in **MAT 760 of 2014** where it has been categorically stated that after utilizing the service of the petitioner without raising any demur for a long period of time upon appointing him consciously at the time of releasing retiral dues, such issue of granting approval cannot be raised. In any event, the grant of approval was not illegal or contrary to the law existing at the relevant point of time.

8. On the same parity of reasons on which the interest of gratuity is allowed, we are of the view that the petitioner is also entitled to interest on the pensionary benefits @ 8% p.a. from 1st April, 2013 till May, 2022 when the P.P.O. was issued, that is, on 25th May, 2022.
9. The entire amount shall be released within a period of four weeks from date.
10. With the aforesaid observation, the appeal and the application stand disposed of.
11. However, there shall be no order as to costs.
12. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Siddhartha Roy Chowdhury, J.) (Soumen Sen, J.)