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Ct. 18
08.05.2023

W.P.A. 16987 of 2022

**Sri Hitlar Pal
Vs.
The State of West Bengal & Ors.**

Mr. Arup Krishna Das,
Mr. Sanjoy Ghosh ... For the petitioner.

Mr. Susanta Pal,
Ms. Ananya Neogi ... For the State.

Ms. Koyeli Bhattacharyya ... For the WBBSE.

Mr. Arnab Mandal ... For the respondent no. 4.

The petitioner was an Assistant Teacher of Korar R. K. High School, District – Purba Burdwan, he joined the said school in the year 1980. A criminal case was registered against him in 1992.

The petitioner is alleging that though after initiation of the said criminal case, he did not go to the school for some days but after grant of anticipatory bail in connection with the said criminal case, he wanted to join in the said school, but was not allowed by the school authority.

The petitioner, after his acquittal in the said criminal case, filed a writ petition being W.P. 4715 (W) of 2001 praying inter alia, that he may be permitted to resume his duty.

The said writ petition was disposed of on June 20, 2005 with the following observations:-

“The petitioner has been acquitted from the criminal case and there is no embargo for the

petitioner to get back the service now, even his said post has been held by some other person. I, therefore, hold that the petitioner is entitled to get back the service with back wages. But such back wages shall be 50% of his salary. The petitioner was never suspended, so, he cannot be held to be guilty for committing any misconduct nor there has been any order of dismissal.”

“.....The petitioner must be allowed to resume his duty. This exercise shall be completed by the D.I. within a period of four weeks from the date of communication of this order.”

Mr. Das, learned advocate for the petitioner submits that in spite of the aforesaid order, the petitioner was not allowed to join in the school and in the meantime on June 30, 2010 he retired from his service on superannuation.

The petitioner by the instant writ petition is praying that his retiral benefits be disbursed.

Mr. Pal, learned advocate for the State-respondents submits that long absence of the petitioner from his service shall entail his deemed resignation affecting his right to get pension and other retiral benefits.

Mr. Das strongly disputing the said submission of Mr. Pal, submits that the Board is the only competent authority to decide whether leave can be granted to the petitioner for the period of his absence or same shall be regarded as his deemed resignation but till date, the Board has not decided the said issues.

Ms. Bhattacharyya, learned counsel for the Board submits that in terms of the relevant Notification of the Education Department, Secondary Branch dated December 15, 1977, the Board on the reference of the

School under exceptional circumstances, can grant leave to an employee for more than five years or treat long absence of such employee as his deemed resignation.

Heard learned advocate for the parties, perused the materials-on-record.

The petitioner some time since 1992, was absent from his service till his retirement on superannuation. The parties are at variance on the cause of such absence of petitioner, I am not inclined to delve further into the said issue.

Paragraph 11 (i) of the Notification of the Education Department, Secondary Branch, bearing No. 1541-Edn (S)/21-2/77 dated December 15, 1977 is relevant to the present context, as such is quoted below:-

“11. (i) No permanent teaching or non-teaching employee shall be granted leave of any kind for a continuous period exceeding 5 years. Where such an employee does not resume his or her duty after remaining on leave for a continuous period of 5 years or where such an employee, after the expiry of his or her leave remains absent from duty, otherwise on ground of suspension for any period, which together with the period granted to him or her exceeds 5 years, he or she shall, unless this Board on reference from the school authorities and in view of exceptional circumstances of the case otherwise determines, be deemed to have resigned and shall accordingly cease to be in the employment of the school.”

In terms of the said paragraph of the said Notification, the Board is the competent authority to decide whether leave can be granted to the petitioner

for the period of his absence from service or such absence shall be treated as his deemed resignation.

The said issues are therefore referred to the Board for its decision.

Mr. Mandal, learned counsel for the school authority, the respondent no. 4 herein, submits that all relevant papers regarding the disbursement of the retiral benefits of the petitioner have already been sent to the respondent no. 3, who is directed to transmit the said papers to the Board within two weeks from date.

The Board, within eight weeks from the date of receipt of the said papers from the respondent no. 3, shall decide the referred issues in accordance with law after giving all concerned parties an opportunity of being heard and shall communicate its decision to the petitioner.

W.P.A. 16987 of 2022 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswajit Basu, J.)