

78 27.02.2023
Sc Ct. no.22

WPA 17807 OF 2022

Chandidas Chatterjee

Vs.

The State of West Bengal & Ors.

Mr. Anjan Bhattacharya
Ms. Anita Shaw.

...For the Petitioner

Mr. Swapan Banerjee
Mr. Khairul Alam.

....For the Respondent/
State

Affidavit-of-service, filed in Court today, is taken on record.

The petitioner claimed to have worked as **Para Teacher during the period July 24, 2006 till November 20, 2013**. The petitioner then on November 21, 2013 joined as an Assistant Teacher of a school in compliance of all the statutory formalities. The petitioner then retired as an Assistant Teacher on and with effect from August 31, 2021. The petitioner through this writ petition claimed the pensionary benefits by granting him the credit of his employment period as para teacher so that the petitioner can qualify the required period in terms of **Clauses 7(iv) and 8 at pages 26 and 27** to the writ petition of the **West Bengal Recognised Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981**. The relevant school had also made a representation before the **Principal Secretary, School Education Department, Annexure - P4 at page 49 to the writ petition**.

Mr. Anjan Bhattacharya, learned counsel appearing for the petitioner submitted that in view of the Government Memorandum **bearing Memo No. 180 – Edn. (B)/IM-83/88 dated May 20, 1988** read with the relevant clauses as referred to above, the petitioner was eligible to receive the pension.

Mr. Khairul Alam, learned counsel led by Mr. Swapan Banerjee, learned counsel appeared for the State respondents.

The State respondents submitted that the “***Para Teacher***” **cannot be included within the meaning of “a teaching employee” of a school.** The service of a Para Teacher is purely contractual. Hence, the benefit claimed by the petitioner could not be allowed.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that several factual matrix are required to be gone into along with the applicability of the said Government Memorandum dated May 20, 1988 and the 1981 Scheme in the light of the case of the petitioner.

In view of the above, to subserve justice, the petitioner is granted liberty to make a comprehensive representation containing his claim in the light of the claim made in the writ petition and not beyond that within a period of two weeks from date.

In the event such representation is received by the Principal Secretary, School Education Department, he

upon issuing at least a seven days' prior hearing notice to the petitioner and the respondent nos. 7 and 8 and/or the appropriate school authority and after granting them an opportunity of hearing, it shall decide the claim of the petitioner by passing a reasoned order in accordance with law.

The entire exercise, as directed above, shall be carried out and completed by the Principal Secretary positively within a period of six weeks from the date of communication of this order. He shall then communicate his reasoned order to the petitioner and the relevant school authority within a further period of two weeks from the date of the said reasoned order to be passed.

It is made clear that this Court has not gone into the merits of the claim of the petitioner in any manner and the petitioner and the school authority shall be at liberty to urge whatever points they wish to urge by relying upon whatever documents and records they wish to rely upon before the Principal Secretary and the Principal Secretary then in exercise of its independent mind shall decide the issue.

Since affidavits are not called for, the allegation made in this writ petition are deemed not to have been admitted by the respondents.

It is made clear that this order shall not create any equity or right in favour of the petitioner if the petitioner

is not eligible to receive his claim strictly in accordance with law.

On the above terms this writ petition, **WPA 17807 of 2022**, stands disposed of without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)