

126-129 16-01-2023
AKG
Ct. 238

WPA 19744 of 2017

Dr. Narayan Chandra Datta
Vs.
The State of West Bengal & Ors.

And

WPA 19748 of 2017

Chandranath Bandyopadhyay (Banerjee)
Vs.
State of West Bengal & Ors.

And

WPA 19755 of 2017

Dipendu Bandyopadhyay
Vs.
The State of West Bengal & Ors.

And

WPA 19759 of 2017

Swadesh Kumar Majumder
Vs.
The State of West Bengal & Ors.

Mr. Amlan Joyti Sengupta
...for the petitioners

Mr. Vivekananda Bose,
Mr. Ratikanta Pal
...for the respondent no.3 (item no.126)

Mr. Tapan Kr. Mukherjee, Sr. Adv.,
Mr. Pranab Halder
...for the State (item no.128)

Mr. Tapan Kr. Mukherjee, Sr. Adv.,
Mr. Hare Krishna Haldar
...for the State (item no.129)

Let the affidavit in opposition filed by the State
be kept with the records.

Petitioners seek the benefit of a Government Order dated January 27, 2017, whereby the retirement age of the regular Teachers and the Principals was enhanced from 60 years to 62 years.

All the petitioners, in these cases, were born on January 1, 1957.

It has been submitted on behalf of the petitioners that since the petitioners were born on January 1, 1957, the petitioners' date of retirement from service was January 1, 2017. They completed the age of 60 years on January 1, 2017. Therefore, the petitioners are entitled to get the benefit of enhancement of their retirement age.

It has been submitted by the learned advocate appearing for the College in WPA 19744 of 2017 that since the petitioners were born on January 1, 1957, all of them have retired on December 31, 2016. The said order does not apply to the petitioners. He has relied upon a judgment reported at **(2005) 10 SCC 77 (Salag Ram Sharma v. State of Rajasthan)**. The relevant part of the said judgment is quoted below:

“11. In the decision in *Prabhu Dayal Sesma* the rule in question prescribed that the candidate should have attained the age of 21 years but not 28 years on the 1st day of January next following. The last date for receipt of the application was 1-1-1984. The question was whether a person born on 2-1-1956 would attain 28 years on 2-1-1984 or on 1-1-1984. This Court held: (SCC pp. 63-64, para 9)

“In calculating a person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding the anniversary of his birthday. We have to apply well-accepted rules for computation of time. One such

rule is that fractions of a day will be omitted in computing a period of time in years or months in the sense that a fraction of a day will be treated as a full day. A legal day commences at 12 o'clock midnight and continues until the same hour the following night. There is a popular misconception that a person does (sic not) attain a particular age unless and until he has completed a given number of years. In the absence of any express provision, it is well settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday.” ”

In view of the aforesaid judgment of the Supreme Court, there cannot be any doubt that all the petitioners rightly retired from their service on December 31, 2016, since they attained the age of superannuation on that date upon completion of 60 years of age. I also find substance in the submission advanced on behalf of the College that to come within the scope of the said order dated January 27, 2017, two conditions have to be satisfied: (a) the petitioner should be on service on January 1, 2017, and (b) his date of retirement should be on or after January 31, 2017. Even, I accept the stand of the petitioners that their retirement was due on January 1, 2017, they could not satisfy the second condition as indicated above. I do not find any merit in these writ petitions.

Accordingly, **WPA 19744 of 2017, WPA 19748 of 2017, WPA 19755 of 2017, and WPA 19759 of 2017** are dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if

applied for, be made available to the petitioner upon compliance with all requisite formalities.

(Kausik Chanda, J.)