

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA No. 22640 of 2017

Pratap Chandra Adak

....Petitioner

-Vs-

The State of West Bengal & Ors.

..... Respondents

- - - - -

Mr. Tarun Kumar Das, Adv.

..... for the Petitioner

Md. Sarwar Jahan, Adv.

Ms. Mousumi Mitra, Adv.

Mr. Asif Mehdi, Adv.

..... for the Respondent no. 2

Heard On : 02.02.2023

Judgment on : 16.02.2023

Rabindranath Samanta, J:-

1. The petitioner by preferring this writ petition challenges the order of rejection of his claim of terminal benefit on cessation of his engagement as a Samprasarak in a Madhyamik Shiksha Kendra.
2. Briefly stated the facts which led to the filing of the writ petition are as follows:

The petitioner passed B.A examination. Having requisite qualification to be engaged as a Samprasarak in a Madhyamik Shiksha Kendra the petitioner applied for the same to the Secretary of

Jnanpith Madhyamik Shiksha Kendra at Uttar Chandranagar, Kakdwip, South 24 Parganas. Ultimately, he was engaged as a Samprasarak in the Shiksha Kendra on 2nd May, 2006 in terms of the engagement letter dated 26.04.2006. As to the engagement of Samprasarak an agreement was entered into between the petitioner and the managing committee of the Shiksha Kendra on 1st May, 2006. Initially, his engagement as Samprasarak was for the period from 2nd May, 2006 to April 30, 2007. Subsequently, the agreement between them was renewed from time to time. In terms of a Memorandum dated 23.04.2010 issued by the Department of Panchayats and Rural Development, Government of West Bengal a Samprasarak is entitled to get a terminal benefit of Rs.1,00,000/- on cessation of his engagement at the age prevailing in his/her case. The petitioner states that the District Nodal Officer, South 24 Parganas vide his Memo dated 15.03.2012 requested the Block Development Officer and the Executive Officer of all Gram Panchayat Samitys to submit a report in the format for ascertaining the requirement of fund to pay ex gratia to the Sahayakas/Sahayikas and Samprasarakas/Samprasarikas who attained the age of 65 years or expired during the period from 23.04.2010 to 31.12.2011 by 22nd March, 2012. The petitioner attained the age of 65 years on 2nd January, 2011. Accordingly, on cessation of his engagement on completing the age of 65 years he is entitled to get the terminal benefit of Rs.1,00,000/-. The Secretary of the said Madhyamik Shiksha Kendra issued a certificate dated 12.04.2013 certifying therein that the petitioner served in the said Madhyamik Shiksha Kendra for about four years nine months during the period from 2nd May, 2006 to 2nd January, 2011. After the petitioner attained the age of 65 years and his engagement ceased, he made application to the respondent No.5, the Block Development Officer, Kakdwip Development Block on December 30, 2015 seeking payment of Rs.1,00,000/- as ex gratia payment in terms of the

Government Memo dated 23.04.2010. The Block Development Officer vide Memo dated March 6, 2014 forwarded his prayer to the respondent No.4, the Additional District Magistrate and the Additional Executive Officer, South 24 Parganas Zilla Parishad enclosing therein the information report on release of ex gratia payment to the petitioner, but to no effect.

3. In a writ petition being WP No. 5772(W) of 2015 brought by a Samprasarak on cessation of his engagement, this Court by order dated 03.12.2015 directed the concerned state respondents to take steps for disbursement of payment of Rs.1,00,000/- on the basis of the government policy dated 23.04.2010 to the writ petitioner. In compliance of this direction the Additional District Magistrate and the Additional Executive Officer, South 24 Parganas Zilla Parishad requested the Project Director, South 24 Parganas to release an amount of Rs.1,00,000/- to the writ petitioner.
4. Aggrieved by the inaction on the part of the authority concerned to release the terminal benefit of Rs. 1,00,000/- to him, the petitioner filed a writ petition being W.P No. 15118(W) of 2016 in this court. By an order dated 23.02.2017 a learned Single Bench disposed of the writ petition directing the Additional District Magistrate and the Additional Executive officer, South 24 Parganas to pass appropriate order in accordance with Government Circulars dated 16.03.2012 and 12.04.2016 expeditiously and if the orders were in the affirmative, then the amount of Rs.1,00,000/- as ex-gratia payment be released forthwith from the date of passing the orders by the higher authority. But, the Additional District Magistrate and the Additional Executive Officer, South 24 Parganas Zilla Parishad vide order dated 16.05.2017 rejected the claim of the petitioner on the reason that the petitioner ought to have served at least for 10 years continuously on the date of termination on attaining the age of 60 years.

5. The petitioner submits that as per the Memo dated 23.04.2010 issued by the Department of Panchayats and Rural Development, Government of West Bengal a Samprasarak on cessation of his engagement after completing the age of 65 years is entitled to get an amount of Rs.1,00,000/- as a terminal benefit. The writ petitioner of WP No. 5772(W) of 2015 who did not complete 10 years of service as a Samprasarak was extended the benefit of Rs.1,00,000/- as terminal benefit. But, the petitioner standing on the same footing has been denied the benefit. The petitioner contends that the Finance Department under Order No. Group P-2, 2015-2016/0667 UO dated 29.02.2015 as cited by the respondent No.4 in the impugned order dated 16.05.2017 cannot take away the entitlements of the petitioner in terms of the Memo dated 23.04.2010. Hence, the petitioner prays for setting aside the order dated 16.05.2017 made by the respondent No.4 and direction upon the concerned respondents to release the terminal benefit of Rs.1,00,000/- to him.

6. In his report by way of affidavit the respondent No.2, the Mission Director, Paschim Banga Rajya Shishu Shiksha Mission states that in terms of Government Order dated 23.04.2010 issued by the Department of Panchayats and Rural Development, Government of West Bengal a Samprasarak on his/her cessation of engagement on attaining the age of superannuation will get an amount of Rs. 1,00,000/-, the modality of which will be worked out soon. The modality as referred to in the G.O dated 23.04.2010 was introduced only on 29.02.2016 by an order issued by the Finance Department, Government of West Bengal wherein it was made clear that the scheme would be effective from the month of November, 2013 and the benefit would be available in favour of those who served for a period of 10 years or more on attaining the age of superannuation. The writ petitioner was engaged on 2nd May, 2006 and his engagement came to

an end on attaining the age of 65 years on 02.01.2011. Since the petitioner served for a period of four years and nine months, he is not entitled to get the terminal benefit in terms of G.O dated 23.04.2010. In such legal scenario, the concerned Additional District Magistrate rightly passed the order dated 16.05.2016 in compliance with the order dated 23.02.2017 passed by a learned Single Bench in WP No. 15118(W) of 2016. As to extending the terminal benefit to one Shyamasadhan Naskar, the answering respondent says that on enquiry he has come to learn that after making payment in favour of Shyamasadhan Naskar the concerned authority realised its mistake and arrived at a conclusion that the payment had been made by the District authority in favour of Shyamasadhan Naskar in derogation of the existing guideline. Accordingly, the Additional Chief Secretary to the Government of West Bengal, Panchayats and Rural Development Department vide his order dated 31.07.2017 directed the District Magistrate of South 24 Parganas to recover the said amount of Rs. 1,00,000/- which was wrongly paid to him. Under such circumstances, the respondent No.2 submits that the petitioner is not entitled to get any terminal benefit and the writ petition is liable to be dismissed. 7. Learned Counsel appearing for the petitioner by referring to the Government order dated 23.04.2010 submits that a Samprasarak on cessation of engagement at the age prevailing in his case will get an amount of Rs.1,00,000/-. Learned Counsel argues that getting terminal benefit of Rs.1,00,000/- on attaining the age of 65 years is the legally enforceable right of the petitioner and the concerned respondent authority cannot deny such right of his client.

8. Per Contra, learned counsel appearing for the respondent no.2 submits that terminal benefit of Rs.1,00,000/- will be extended to a Samprasarak on his/her cessation of engagement on attaining the age of 65 years conforming to the modalities which have been worked out

latter on after the Government Order dated 23.04.2010 came into force. Learned Counsel points out that as per the modalities worked out for the purpose, a Samprasarak will have to complete continuous 10 years of service. Learned Counsel argues that since the petitioner discharged his duties as a Samprasarak only for four years and nine months he is not entitled to get the terminal benefit.

9. Admittedly, the petitioner Pratap Chandra Adak was engaged as a Samprasarak in Jnanpith Madhyamik Shiksha Kendra on 02.05.2006. His engagement came to an end on attaining the age of 65 years in January, 2011. Undisputedly, the petitioner served as a Samprasarak in the said Shiksha Kendra for four years and nine months.

10. The petitioner by filing a writ petition being WP No. 15118(W) of 2016 sought direction upon the state authority so that ex-gratia payment of Rs.1,00,000/- was made to him on his attaining the age of 65 years as per the Government order dated 23.04.2010. A learned Single Bench by order dated 23.02.2017 disposed of the writ petition with the following observations:-

“ Accordingly, without going into the merits of the instant writ petition, this Court directs the respondent no. 4, the Additional District Magistrate and Additional Executive Officer, South 24-Parganas Zilla Parishad is directed to pass appropriate orders in accordance with the circular being nos. 3831(29)/1(1)/ZP/SSK-MSK/LXA/12 dated 16th March, 2012 and 993/PN/O/I/P-1/2016 dated April 12, 2016 expeditiously and if the orders in the affirmative, then the amount of Rs.1,00,000/- (Rupees one lakh only) as ex gratia payment shall be released forthwith from the date of passing of the orders by the higher authority for payment.

The entire exercise is to be completed within two months from the date of furnishing certified copy of this order after verification of the relevant documents, if he is entitled for the same and if there is no legal impediment.”

11. In compliance with the order passed in the aforesaid writ petition the Additional District Magistrate and Additional Executive Officer, South 24-Parganas Zilla Parishad by order dated 16.05.2017 passed the following order:

“ Considering the above, it is hereby ordered that,

a) as the Petitioner attained 65 years and retired from the Jnanpith Madhyamik Shiksha Kendra on 02/01/2011 (para no-8 of the Writ Petition, vide no of WP 15118(W) of 2016), and have served for four years and nine months, The claim of Sri Pratap Chandra Adak, Petitioner of the present Writ Petition cannot be considered in light of the Finance Department, Government of West Bengal UO no: Group P2, 2015-2016/0667 UO Date 29/02/2016, and therefore rejected.”

12. As stated above, this writ petition has been filed challenging the aforesaid order dated 16.05.2017 passed by the Additional District Magistrate and the Additional Executive Officer, South -24 Parganas Zilla Parishad.

13. It is not in dispute that the petitioner served as a Samprasarak in the aforesaid Shiksha Kendra for four years and nine months.

14. Now the question which falls for consideration is whether the petitioner is entitled to get ex gratia payment of Rs.1,00,000/- in terms of the Government order dated 23.04.2010?

15. After the Right of Children to Free and Compulsory Education Act, 2009 came into force, the department of Panchayats and Rural Development, Government of West Bengal issued the Government order dated 23.04.2010 in cancellation of the previous Government orders dated 20.04.2010 and 21.01.2008 and in modification of paragraphs 26 and 27 of “Shishu Shiksha Karmasuchi Guideline” and para 22 of “Revised Guideline of Madhyamik Shiksha Karmasuchi” relating to service conditions of Sahayikas/Sahayaks of Shishu Shiksha Kendras, Samprasarakas/Samprasarikas and Mukhya Samprasarakas/Samprasarikas of Madhyamik Shikshas Kendras.

16. Clause 2 of the Government order dated 23.04.2010 enjoins that after cessation of engagement of a Samprasarak at the age prevailing in his case will get an amount of Rs.1,00,000/- (One Lakh), the modality of which will be worked out soon. As to extending terminal benefit to Sahayakas/Sahayikas and Samprasarakas/Samprasarikas the Finance Department, Government of West Bengal issued modality/guideline in the month of February, 2016. This modality/guideline issued by the Finance Department is annexed to the report in the form of affidavit filed by the respondent No.2. I find that the modality/guideline as prepared by the Finance Department bears the signature of the Principal Secretary of the Finance Department as well as the Hon’ble Minister-in-Charge of the Department. The modality/guidelines reads as under:

“Now, considering the entire matter and taking in view the Finance Department No. 9008-F(P) dated 16.09.2011, scheme for terminal benefit for Sahayakas/Sahayikas of SSKs, Samprasarakas/ Samprasarikas and Mukhya Samprasarakas/ Samprasarikas of MSKs and academic supervisors may be as follows:

- i) Rs. 1,00,000/- will be paid as terminal benefit
- ii) Age of termination may be at the age of 60 years

iii) He/she should have served at least for 10 years continuously on the date of termination on attaining the age of 60 years

17. In such context it will be needless to say that presently the superannuation age of a Samprasarak is 65 years.

18. Relying on the aforesaid modality/guideline prepared by the Finance Department the Additional District Magistrate and Additional Executive Officer, South 24 Parganas Zilla Parishad by the impugned order dated 16.05.2017 rejected the claim of the petitioner on the reason that the petitioner served for four years and nine months only.

19. It is the case of the petitioner that one Shyamasadhan Naskar, ex Samprasarak of a Madhyamik Shiksha Kendra was given the ex gratia payment of Rs.1,00,000/- though he did not complete 10 years of service.

20. It appears from the case record that one Shyamasadhan Naskar, by filing a writ petition being WP 5772(W) of 2015 sought for direction upon the state authority for disbursement of terminal benefit to him on cessation of his engagement after attaining the age of 65 year. By order dated 03.12.2015 passed in the writ petition a learned Single Bench directed the concerned respondent authorities to take steps for disbursement of the terminal benefit of Rs.1,00,000/- on the basis of Government order dated 23.04.2010 to him as and when guideline would be framed by the Finance Department. In compliance with this order the Additional District Magistrate and the Additional Executive Officer, South 24 Parganas Zilla Parishad vide Memo dated 15.04.2016 requested the project Director, South 24 Parganas to release an amount of Rs.1,00,000/- as terminal benefit to the writ petitioner Shyamasadhan Naskar. It is not in dispute that the service rendered by Shyamasadhan Naskar was less than 10 years.

21. As stated above, the respondent No.2 in his report states that after the mistake was detected the Additional Chief Secretary to the Government of West Bengal, Panchayats and Rural Development Department directed the

District Magistrate, South 24 Parganas to recover Rs.1,00,000/- from Shyamasadhan Naskar, ex samprasarak of Kalinagar MSK immediately and the Additional District Magistrate and Additional Executive Officer of South 24 Parganas Zilla Parishad accordingly took steps to recover the amount of Rs.1,00,000/- wrongly paid to Shyamasadhan Naskar. I find that while the Additional Chief Secretary to the Government of West Bengal issued the letter he noted in the letter that as Shyamasadhan Naskar, ex samprasarak did not complete 10 years of service, terminal benefit could not be extended to him in terms of the Finance Department, Government of West Bengal UO No. Group P2/2015-2016/0667 dated 29.02.2016.

22. Learned Counsel for the petitioner argues that the aforesaid Finance Department's internal note dated 29.02.2016 having no statutory force cannot be termed as a legally prepared modality or guideline and the petitioner's claim cannot be denied based on such Finance Department's internal note.

23. On reading of the Finance Department's Modality/Guideline of February, 2016 and the Memo dated 31.07.2017 issued by the Additional Chief Secretary relating to recovery of Rs.1,00,000/- from Shyamasadhan Naskar I find that the Government of West Bengal has acted upon the aforesaid Finance Department's Modality/Guideline treating it as a Government Order having statutory flavour.

24. Since the terminal benefit wrongly released to Shyamasadhan Naskar, ex samprasarak has been directed to be recovered, the initial benefit given to him cannot be considered in case of the petitioner on the doctrine of equality.

25. As the Government Order dated 23.04.2010 exhibits, terminal benefit of Rs.1,00,000/- can only be given subject to fulfilment of the modality/guideline to be prepared for the purpose. Since the Finance Department's aforesaid Modality/Guideline has been prepared to enforce

the right of a Samprasarak to get terminal benefit on cessation of his/her engagement and since, in my view, it has gained statutory flavour, terminal benefit would be released to a Samprasarak on fulfilment of the modality/guideline.

26. In view of the above and since the petitioner did not complete continuous 10 years of service as a Samprasarak in the said Shiksha Kendra, I find that the Additional District Magistrate and Additional Executive Officer, South 24 Parganas Zilla Parishad rightly rejected the claim of the petitioner vide order dated 16.05.2017.

27. In the result, the writ petition merits dismissal and accordingly the writ petition is dismissed on contest.

28. No order as to costs.

29. Parties may act on the Server Copy of this judgment and order duly downloaded from the Official Website of this Court.

30. Urgent certified/Photostat copy of this judgment and order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)