

6 21.6.2023
Sc Ct. no.22

WPA 24103 OF 2018

Dinabandhu Purkait

Vs.

The State of West Bengal & Ors.

Mr. Pankaj Halder
Mr. Sanatan Panja
Mr. Samarjit Balial
Mr. Tapas Manna.

....For the Petitioner

Mr. Tapan Kumar Mukherjee
Mr. Ranjan Saha
Mr. Somnath Naskar.

....For the Respondent
Nos. 1 to 5

Ms. Koyeli Bhattacharyya

....For the WBBSE

This matter is taken up for hearing upon affidavits.

The petitioner was initially appointed as an **Organising Teacher at one Alipara Ambedkar Siksha Niketan Junior High School, District – South 24-Parganas** (for short ‘the **first school**’) in the year **1986**. The status of the petitioner was then upgraded and approved as permanent teacher with effect from **March 31, 2000, Annexure-P2 at page 31 to the writ petition.**

The Joint Secretary, Government of West Bengal by its decision dated **October 27, 2014, Annexure –P6 at page 50 to the writ petition derecognised/withdrew the approval of the said first school with effect from October 1, 2014** and shifted the petitioner to one

Chunfuli Doulatpur Junior High School, District – South 24-Parganas (for short the **second school**). The said communication/document also mentioned that, the salary of the teachers **including the petitioner remained withheld by an order of a coordinate Bench dated December 1, 2003 passed in W.P. No.17062 (W) of 2002, Annexure-R3 at page 23 to the affidavit-in-reply** filed by the petitioner affirmed on December 16, 2021.

The **salary of the petitioner for the period from November 1, 2003 till December 31, 2014** (for short ‘the said period’) was not paid by the State employer though the **first school** was derecognised with effect from **October 1, 2014** as contended on behalf of the petitioner.

Pursuant to the said decision dated **October 27, 2014** and the direction made therein by the Joint Secretary, Government of West Bengal, **the petitioner joined the said second school on January 14, 2015** and had rendered his service with an unblemished career till the date of his retirement. The **petitioner retired on September 30, 2015**.

The petitioner claimed that for the said period for which arrear salary was not paid and consequently on the basis of such dispute, the retiral benefits of the petitioner was not released.

The petitioner became aggrieved. In such a situation, the petitioner filed a writ petition being **W.P.**

23435 (W) of 2017. A coordinate Bench by its order dated **May 17, 2018** had disposed of the said writ petition directing the jurisdictional District Inspector of Schools (S.E.) to decide the issue by passing a **reasoned order, Annexure-P11 at page 80 to the writ petition.** From the said order it would appear that, the issue was restricted for the arrear salary of the petitioner for the period from **November 1, 2003 to December 31, 2014.**

The petitioner carried out an appeal being **MAT 555 of 2018.** The **Hon'ble Division Bench disposed of the said appeal by its order dated July 9, 2018, Annexure-P12 at page 86 to the writ petition directing the Commissioner of School Education to decide the issue finally.**

Pursuant to the said direction made by the Hon'ble Division Bench, the respondent no.2 had passed the impugned order dated **October 1, 2018, Annexure P-13 at page 89 to the writ petition** whereunder the claim of the petitioner was rejected. This decision of the respondent no.2 was impugned in the instant writ petition.

Mr. Pankaj Halder, learned counsel appearing for the petitioner referring to **Annexure-P7 at page 53 to the writ petition** which was a communication dated **May 3, 2016** submitted that, the Joint Secretary to the Government of West Bengal had already directed the respondent no.2 for release of the salary of the staff of the

said **first school**. However, the respondent no.2 failed to take any step thereunder. Referring to a portion from the order of the Hon'ble Division Bench dated **July 9, 2018**, learned counsel further submitted that, the learned Additional Government Pleader appearing for the State though contended that the appellant being the petitioner herein, had not discharged the duty of a teacher during the said period for which the petitioner claimed the arrear salary, was not entitled to be paid with any arrear salary but the Hon'ble Division Bench specifically made a finding that, the learned State counsel could not substantiate such contention by referring to any relevant record.

Learned counsel for the petitioner then referred to the order dated **December 1, 2003, Annexure-R3 at page 23 to the affidavit-in-reply** and submitted that, this was an interim order whereunder direction was made not to release the salary of the employees of the said **first school**. He then referred to the final order passed in the same writ petition being **W.P. No.23435 (W) of 2002, Annexure-P3 at page 32 to the writ petition** and submitted that, the said writ petition was disposed of without granting any relief to the petitioner and the coordinate Bench had not decided or made any comment as to the validity and correctness of the report as the coordinate Bench felt that, **the relief claimed in that writ petition could not be granted in view of the**

recognition not having been extended nor it is kept valid. The interim order under which the direction was made, not to make any payment to the employees of the first school thus, stood extinguished having been merged with the final order passed in the writ petition.

Referring to the ***impugned order passed by the respondent no.2 dated October 1, 2018*** learned counsel for the petitioner submitted that, though the respondent no.2 had noted the fact that, the ***first school was derecognised with effect from October 1, 2014*** but had failed to come to a finding as to why the arrear salary for the period from ***November 1, 2003 till December 31, 2014*** could not be paid to the petitioner when the school was still recognised in the eye of law till ***September 30, 2014***. He also submitted that the impugned order suffers from basic infirmities and the respondent no.2 acted mechanically without any application of mind while passing the said impugned order and as such, the same is illegal, wrongful and should be set aside.

Learned counsel for the petitioner claimed the ***arrear salary to be paid to the petitioner for the period from November 1, 2003 till December 31, 2014*** and ***consequently the retiral benefits should be released forthwith.***

Mr. Tapan Kumar Mukherjee, learned senior counsel and Additional Government Pleader appeared for the respondent nos. 1 to 5. Referring to his client's averments made in **paragraph 4 (viii) and (ix)** from the affidavit-in-opposition affirmed on December 13, 2021, he submitted that, in compliance with the solemn order passed on **February 27, 2014 in W.P. No. 4656 (W) of 2012** the District Inspector of Schools (SE), South 24-Parganas passed his reasoned order rejecting the claim of the petitioner for salary for the said period by a **Memo dated April 11, 2014**. The learned Additional Government Pleader then contended that, the petitioner did not work for the period for which the petitioner claimed the arrear salary since there was no existence of the said school at all. Without rendering any service, the petitioner cannot claim any salary.

Mr. Mukherjee further submitted that in the **DCRB Scheme, 1981** there was no provision to allow the period from **November 1, 2003 till December 31, 2014** as **qualifying service period** for the petitioner since the school was not in existence and the petitioner was not entitled to any salary for the said period. So the said period could not be accepted as qualifying service period of the petitioner for settlement of retiral benefits.

Referring to the said impugned order dated **October 1, 2018** learned Additional Government Pleader submitted that, after causing a detailed fact-finding

inquiry, the respondent no.2 had passed the order. ***Learned Additional Government Pleader gave much thrust and stress and placed reliance upon the interim order dated December 1, 2003, Annexure-R3 at page 23 to the affidavit-in-reply passed in W.P. No.17062 (W) of 2002*** and submitted that, in view of the said order being passed, the State employer was specifically directed not to pay any salary to any of the staff of the ***first school*** hence, the State authority was not empowered to release the arrear salary for the said period to the petitioner as directed by the coordinate Bench.

Mr. Mukherjee, also submitted that, the said order being in existence, the respondent no.2 had also rightly held that, the petitioner was not entitled to receive any arrear salary for the period he claimed.

Learned Additional Government Pleader further submitted that, this writ petition is devoid of any merit and the petitioner is not entitled to any claim as claimed in the writ petition.

After considering the rival contentions raised on behalf of the appearing parties and after considering the materials on record, at the out set, it appeared to this Court that, the decision for derecognising the school and withdrawal of its recognition had taken by the Joint Secretary to the Government of West Bengal dated ***October 27, 2014 Annexure-P6 at page 50 to the writ***

petition with effect from **October 1, 2014** for the reasons mentioned therein. Therefore, prior thereto, i.e. ***till September 30, 2014 the recognition of the first school was there and was not withdrawn. The first school with all its employees had enjoyed its recognition without any hindrance till the time before October 1, 2014.*** From the said communication it then appeared to this Court that, *inter alia*, the petitioner was directed to join and shifted to the ***second school***. The petitioner admittedly ***joined in the second school and rendered his service till September 30, 2015, the date of his retirement.***

In the eye of law, on the strength of the said document dated **October 27, 2014** the ***recognition of the school was withdrawn with effect from October 1, 2014*** and as such, ***the school stood recognised till September 30, 2014.*** The petitioner being an employee of the said school had rendered his service and thus, was entitled and eligible to receive his salary and all emoluments arising of his employment while he was in the ***first school*** till **September 30, 2014**. The petitioner then joined the ***second school*** pursuant to the decision of the State employer.

From a plain reading of the order, dated **December 1, 2003** passed by a coordinate Bench under which the direction was made not to release salary to the employees of the ***first school***, was an interim order. The writ

petition was disposed of by a final order dated **January 14, 2004** as narrated above and ultimately no relief was granted to the petitioner. ***The interim order by operation of law had merged with the final order and ultimately stood extinguished since no relief was granted in the final order while disposing of the writ petition finally.***

From a reading of the order dated **July 9, 2018** passed by the Hon'ble Division Bench in **MAT 555 of 2018** it appeared that, the Hon'ble Division Bench had held that, ***the contention raised on behalf of the State respondents that the petitioner did not discharge his duty as a teacher during the period for which the petitioner claimed arrear salary, could not be substantiated by reference to the relevant record.*** Thus, this issue cannot be raised once again after receiving a final finding from the Hon'ble Division Bench, in the instant writ petition, which is a subsequent proceeding.

In exercise of its power under judicial review under Article 226 of the Constitution of India this Court has a limited authority to assess the impugned order dated **October 1, 2018** only with regard to the decision making process of the respondent no.2 while passing the said impugned order in the light of the materials before it.

On a close scrutiny of the said impugned order dated **October 1, 2018**, it appeared to this Court that,

the respondent no.2 had taken note of the said decision of the Joint Secretary to the Government of West Bengal dated **October 27, 2014, Annexure-P6 at page 50 to the writ petition** which specifically mentioned that, the recognition of the **first school** was taken away and/or cancelled with effect from **October 1, 2014**. Even then, the respondent no.2 had failed to ascribe any reason in correct and proper appreciation of the purport and content of the said communication that, as to why the petitioner should not get his arrear salary during the time the school stood recognised. **One of the basis of the impugned order in rejecting the claim of the petitioner was the interim direction made by the coordinate Bench in the earlier writ petition but the respondent no.2 did not take note of the fact that, such interim order was merged with the final order of the writ petition when no relief was granted ultimately in the writ petition.**

In view of the foregoing discussions and reasons, this Court is of the firm view that, the impugned order dated **October 1, 2018** is not sustainable in law and, accordingly, stands **set aside and quashed**.

This Court is of the considered view that, the petitioner rendered his service without any interruption with an unblemished career in the **first school till September 30, 2014** immediately the date before when the recognition of the school was withdrawn with effect

from **October 1, 2014** and thereafter pursuant to the decision of the appropriate State authority the petitioner had joined the **second school** with an immediate effect. There was no charge against the petitioner for any unauthorised absence from his employment or discontinued service in any manner. Therefore, ***the claim of the petitioner succeeds in this writ petition.***

The jurisdictional District Inspector of Schools, i.e. the respondent no.5 is directed to release the arrear salary receivable by the petitioner in accordance with law for the period from **November 1, 2003 till December 31, 2014 together with an interest @ 10% per annum since November 1, 2003 till the date of actual payment to be made to the petitioner.**

The petitioner shall furnish his bank account details and particulars to the respondent no.5 within seven days from today and thereafter the respondent no.5 shall forthwith release the entire payment of arrear salary along with interest as directed herein to the petitioner positively within a period of three weeks from the date of receiving the bank account details and particulars from the petitioner upon being communicated with a copy of this order.

Since the petitioner had already retired from his service with effect from **September 30, 2015** about eight years ago and remained without receiving his retiral benefits, the entire retiral benefits along with all pension

and gratuity accrued in favour of the petitioner in accordance with law out of his employment shall be paid with interest @ 8% per annum since the date of his retirement till the date of actual payment to the petitioner to be made by the respondent no.5 and/or other appropriate authorities positively within a period of four weeks after expiry of the said three weeks period as directed above for disbursement of the arrear amount.

The petitioner shall communicate this order to the respondent no.5 and all other appropriate authorities as required in law to carry out the direction made in this order.

The State authority shall go on paying the pension to the petitioner without any hindrance, receivable by the petitioner regularly in accordance with law.

In view of the above, this writ petition WPA **24103 of 2018** stands allowed without any order as to costs.

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

(Aniruddha Roy, J.)

Later :

Learned counsel Mr. Ranjan Saha appearing for the State had prayed for stay of operation of this order.

The same had been considered and rejected.

(Aniruddha Roy, J.)