

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

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA 27838 of 2017
Chinmoy Kumar Mondal
-Vs-
State of West Bengal & Ors.

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Mr. Arunava Banerjee, Adv.
Ms. Mamata Dutta, Adv.
Ms. Sudipa Mandi, Adv.
Mr. Sk. Qareeb, Adv.

..... for the Petitioner

Mr. Bhaskar Prasad Vaisya, Adv.
Mr. Sagnik Chatterjee, Adv.

..... for the State Respondents

Heard On : 17.03.2023

Judgment on : 18.04.2023

Rabindranath Samanta, J:-

1. By preferring this writ petition the petitioner seeks pensionary benefits counting his service from 8th May, 1991 instead of 1st January, 2014.
2. The background facts which led to the filing of the writ petition may briefly be stated as follows:-
3. The petitioner was appointed as an organizing teacher of Dari Keoradangi Ananda Prasad Junior High School at village Dari Keoradangi, South 24 Parganas on 8th May, 1991.
4. The school was recognised as 2 Class i.e. Class V and Class VI Junior High School. Thereafter, the Secretary of the School made several representations to the concerned authority for granting further recognition for

upgradation of the said school. On 25th May, 2010 the West Bengal Board of Secondary Education granted recognition for upgradation of the said school as 4 Class Junior High School and the school had been upgraded accordingly with effect from 1st March, 2010.

5. On 19th March, 2010 the District Inspector of Schools (Secondary Education), South 24 Parganas sent a memo dated 19th March, 2010 to the Deputy Secretary, Government of West Bengal, School Education Department for granting financial assistance to the school.

6. The petitioner was working as an organising teacher much prior to the upgradation of the school since his appointment in the year 1991. He rendered service for the benefit of the students of the school to the satisfaction of the school authority. He was working in the regular available vacancy according to the staff pattern of the school.

7. The petitioner made several representations to the concerned authority seeking approval of his appointment as an Assistant Teacher of the School. But, when the approval was not given in his favour he along with other teaching and non-teaching staff of the school preferred a writ petition being W.P No. 14073(W) of 2010 praying for direction upon the District Inspector of Schools (SE), South 24 Parganas to approve his appointment as well as the appointment of other writ petitioners. By order dated 24.12.2010 the writ petition was disposed of by a learned Single Judge directing the District Inspector of Schools (SE), South 24 Parganas to approve the appointment of the petitioner within a specified time. Since the solemn order of the learned Single Bench was not complied with, the petitioner filed an application for contempt being CPAN 930 of 2011. Subsequently, the appointment of the petitioner was approved by the District Inspector of Schools vide Memo dated 6th February, 2017 with effect from 1st January, 2014 instead of 8th May, 1991.

8. Owing to the aforesaid order of approval financial benefit including salary of the petitioner were granted to him on and from 01.01.2014 ignoring the finding of the Hon'ble Court that the service of the petitioner should have been counted from 8th May, 1991 for the purpose of pensionary and retiral benefits. Because of this the petitioner may be deprived of getting pensionary and other retiral benefits. The petitioner submits that had the District Inspector of Schools approved his appointment with effect from the year 1991, he would

been entitled to get pensionary and other service benefits since the date of his joining the school. The petitioner should have been given the financial benefits from the month of June, 2010 when the school was upgraded.

9. The petitioner avers in the writ petition filed on 10th November, 2017 that he will retire from service on superannuation on 31.12.2017. Though he served the Educational Institution for twenty seven years, he will be deprived of getting pensionary benefits. His legal right to livelihood during the retiring period till death has been taken away arbitrarily and in gross violation of Article 21 of the Constitution. Under such circumstances, the petitioner seeks direction upon the respondent authorities to modify the order of approval dated 06.02.2017 counting his qualifying service with effect from 8th May, 1991 instead of 1st January, 2014 for his pensionary and other retiral benefits and to give salary and other financial benefits to him from the date of filing of the earlier writ petition being W.P No. 14073(W) of 2010.

10. In his affidavit-in-opposition the respondent no. 4, the District Inspector of Schools (Secondary Education), South 24 Parganas states that the petitioner was appointed by the concerned school authority namely Dari Keoradangi Ananda Prasad Junior High School in the year 1991 without having any sanctioned post of Assistant Teacher. The school was upgraded to high school with effect from January 1, 2014 vide Memo dated 13.03.2014 issued by the West Bengal Board of Secondary Education and since January 1, 2014 the school was entitled to get 12 teaching posts, out of which, 4 posts were reserved for language group in terms of G.O No.670-AC(S) dated September 4, 1998. The petitioner was accommodated in language group in the said school in the sanctioned post and had been working since 2014 till his superannuation. Though the petitioner was engaged as an organizing teacher by the school authority in the year 1991, but at the relevant point of time there was no provision for appointment of any organizing teacher and/or formation of any organizing managing committee. No authority was conferred upon any organizing managing committee, even if formed, to appoint any teacher or employee before the recognition of the concerned school. When the petitioner was appointed as an organizing teacher in the concerned school, then recruitment of teachers in a school was guided by the relevant Memorandum

issued by the Director of School Education. As per the Memorandum the guidelines which were invoked for direct recruitment are as follows:

- I) Obtaining prior permission of the concerned District Inspector of Schools to fill up the posts;
- II) There must be sanctioned posts in the school against which prior permission was sought for by the school
- III) Calling of names from Employment exchanges and in case of non-availability of suitable candidates there was provision for open advertisement
- IV) Formation of selection committee in the school
- V) Candidate must have age and qualification for recruitment and process of evaluation of candidature
- VI) Preparation of panel of selected candidates
- VII) Approval of Panel by the District Inspector of Schools

11. But, there is nothing on record to show that the petitioner was appointed by following the aforesaid procedure for recruitment. Since the petitioner retired from service on superannuation in the year 2017 without rendering atleast 10 years of service, he is not entitled to get pensionary benefits. It may be noted that while the school authority submitted prayer for upgradation of the school the Secretary of the Managing Committee of the school in an affidavit stated that the school had no teaching and non-teaching staff for an upgraded school. On such grounds and denying and disputing the averments as made in the writ petition this answering respondent seeks dismissal of the writ petition.

12. However, in his affidavit-in-reply the petitioner denies the averments as made in the affidavit-in-opposition.

13. By a supplementary affidavit the petitioner has annexed some documents namely viz, resolution dated 09.12.1990 adopted by the Managing Committee of the school, staff pattern of teaching and non-teaching staff of the school, photocopy of order dated 17th May, 1991 passed in writ petition being CR No. 14396(W) of 1991 preferred by the Managing Committee of the school, photocopy of order dated 24.12.2010 passed in W.P No. 14073(W) of 2010, copy of approval letter dated 19.05.1992 issued by the District Inspector of Schools according approval to the appointment of some teachers etc. The petitioner

states that though the staff pattern of the school prepared by the Managing Committee of the School mentions the name of the petitioner, but the then Secretary while made representation for upgradation of the school in an affidavit stated that no teaching and non-teaching staff was recruited for the school to be upgraded. The petitioner states that such statement in affidavit is untrue.

14. It may be noted that during the pendency of the writ petition the petitioner retired from service on 31st December, 2017.

15. Learned Counsel appearing for the petitioner submits that the prayer of the petitioner now be restricted to granting pensionary and other retiral benefits to him counting his service from his initial appointment on 8th May, 1991 instead of 1st January, 2014 as mentioned in the approval of appointment dated 6th February, 2017. Learned Counsel by referring to the order dated 24.12.2010 passed by a learned Single Bench in W.P No. 14073(W) of 2010 submits that the learned Single Bench observed that the petitioner had been discharging his duties as a teacher of the school since 1991. In such context, learned counsel submits that while the petitioner giving his heyday to the school authority served the educational institution since 1991 should not be deprived of the retiral benefits for his survival in the rest of his life.

16. Learned Counsel appearing for the State respondents submits that the school namely Dari Keoradangi Ananda Prasad Junior High School was upgraded to High School with effect from January 1, 2014 and the appointment of the petitioner was approved with effect from January 1, 2014. His rendering service since 1991 was not warranted by law and as such his qualifying service would be counted from 1st January, 2014 till his retirement on 31st December, 2017. As the petitioner lacked the qualifying ten years' service, he is not entitled to get any pensionary or retiral benefits. Learned counsel argues that the appointment of organizing teachers is illegal and they are not entitled to any benefits. In support of his contention learned lawyer places reliance on a decision rendered by Division Bench of this Court on 14th September, 2017 in MAT 582 of 2017 (***The State of West Bengal and Others-Vs-Tapan Kumar Das and Others***).

17. Undisputedly, the Managing Committee of the school by filing a writ petition being C.R No. 14396 (W) of 1991 sought for direction upon the State

respondents to extend recognition of the school and approval of the appointment of the staff made by the school authority. By order dated 17.05.1991 the writ petition was disposed of directing the State respondents to extend the recognition of the school with effect from 1st April, 1991 and approve the staff pattern of the school for smooth functioning of the school.

18. In compliance of the aforesaid order the District Inspector of Schools (SE), South 24 Parganas by a memo dated 19th May, 1992 approved the appointment of three Assistant Teachers of Dari Keoradangi Ananda Prasad Junior High School namely Shyamal Das, Shakila Khatun and Soumen Mondal with effect from 01.04.1991, 01.04.1991 and 02.01.1992 respectively. It is the contention of the petitioner that though he was appointed as an Assistant Teacher in language group, his name was not included in the Memo of Approval dated 19.05.1992.

19. Feeling aggrieved by the non-inclusion of his name in the approval of appointment the petitioner Chinmoy Kumar Mondal and two others namely Uttam Kumar Ghosh and Shyamal Kumar Mondal filed a writ petition being WPA No. 14073(W) of 2010 seeking approval of their appointment as teaching and non-teaching staff since 1991 onwards. Admittedly, by order dated 24.12.2010 the writ petition was disposed of by a learned Single Bench with the following observation and direction:

“Since it appears that the petitioners have been serving the institution in question since 1991, 1996 etc. as Assistant Teacher and non-teaching staffs the appointments of the petitioners should permanently be recognized by the concerned District Inspector of Schools simply by virtue of their long length of service. The school authority concerned who has received the services of the petitioners for all these years does not oppose the writ petition on merits.

In view of the above, I am of the opinion that the District Inspector of Schools concerned should immediately approve the appointments of the petitioners made by the Managing Committee of the school way back in the year 1991 on words being to the petition appearing at page 89 thereof. The District Inspector of Schools concerned is, therefore, directed to approve the appointments of the petitioners within a period of four weeks from the date of communication of this order and once the appointments are approved, the petitioner will be entitled to

receive salary and other benefits month by month without any interruption.

The writ petition is disposed of without any order as to costs.

In passing the above order the decision of the Supreme Court cited in support of the case of the writ petitioner, namely U.P. State Electricity Board -Vs- Purna Chandra Pandey & Ors., reported in 2008, 1, C.L.J. (S.C.) is taken into account together with the earlier decisions of this Court.

For the sake of convenience, urgency and communication, let a Xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) or the Assistant Court officer be given to the learned advocates for the petitioners on usual undertakings.”

20. A reading of the order as quoted above shows that the learned Single Bench by recording observation that the petitioners were appointed as teaching and non-teaching staff in the year 1991 and onwards directed the District Inspector of Schools to approve the appointments of them within four weeks from the date of communication of the order. It was also directed therein that once the appointments were approved the petitioners would be entitled to receive salary and other benefits month by month without any interpretation. Since the authority concerned did not comply with the direction of the learned Single Bench within the stipulated period the petitioners preferred a contempt application against the authority concerned. However, ultimately, by a Memo dated 6th February, 2017 the District Inspector of Schools (SE), South 24 Parganas approved the appointment of the petitioner Chinmoy Kumar Mondal as Assistant Teacher with effect from 01.01.2014, appointment of Uttam Kumar Ghosh as a Clerk with effect from 01.01.2014 and appointment of Shymal Kumar Mondal as a Group D also with effect from 01.01.2014.

21. While, the state authority approved the appointment of teaching staff of the school before its up-gradation in terms of order dated 17.05.1991 passed in the writ petition being C.R No. 14396(W) of 1991 and subsequently approved the appointment of the petitioner Chinmoy Kumar Mondal and two others as organizing teaching and non teaching staff, the argument advanced on behalf of the State authority that their appointment was made without following the recruitment rules is not acceptable.

22. The staff patterns as prepared by the Managing Committee and which are annexed to the writ application show in unequivocal terms that since his appointment on 8th May, 1991 the petitioner had been working as an Assistant Teacher in language group of the school. A resolution dated 09.12.1990 adopted by the then Managing Committee of the School evinces that the petitioner was appointed as an Assistant Teacher to run the school properly since Class VII and Class VIII were introduced in the school. The managing Committee of the school is one of the respondents to the writ petition. But, no pleading has been used by the Managing Committee of the school denying the staff pattern showing the name of the petitioner as an Assistant Teacher as annexed to the writ application.

23. It appears that the state authority by filing an application in a contempt proceeding being WP CRC 76 (w) of 2014 sought for recalling the order dated 24.12.2010 passed in WP no. 14073(W) of 2010. By order dated 24th July, 2015 a learned Single Bench rejected the application on the reason that inherent power cannot be exercised to recall the same order and reopen the writ petition which was heard in presence of the parties and disposed of on merits. Challenging the order dated 24th July, 2015 the State authority preferred an appeal being MAT 1308 of 2015. By an order dated 3rd December, 2015 a Division Bench of this Court dismissed the mandamus appeal preferred by the State. Therefore, it stands that the order dated 24th December, 2010 passed by the learned Single Bench in WP no. 14073(W) of 2010 has attained finality.

24. The learned Single Judge in the order dated 24th December, 2010 passed in the aforesaid writ petition observed that the petitioner was appointed as an Assistant Teacher in the year 1991 and the school authority who received the services of the petitioner for all those years did not oppose the writ petition on merits. On such observation the learned Single Judge directed the District Inspector of Schools to approve the appointment of the petitioner obviously with the desire that his appointment would be since 1991. However, as stated above, the District Inspector of Schools contrary to order of this Court approved the appointment of the petitioner Chinmoy Kumar Mondal as an Assistant Teacher with effect from 01.01.2014. The petitioner retired from service on superannuation on 31st December, 2017.

25. It is submitted on behalf of the petitioner that presently the petitioner does not pray for financial benefits with effect from 2010, but he restricts his prayer to count his service with effect from 8th May, 1991 for the purpose of pensionary and retiral benefits.

26. While the learned Single Bench in the order dated 24th December, 2010 upheld by the Hon'ble Appeal Court, has observed that the writ petitioner had been serving the educational institution since 1991, the question which now begs consideration is whether the long service rendered by the petitioner would be thrown to winds.

27. While the school authority as well as the concerned State authority utilised the service of the petitioner as an Assistant Teacher of the school to its fullest extent, I do not find any justification as to why he should be denied to get the pensionary and retiral benefits on counting his qualifying service since 8th May, 1991. An employee who gives all his youthness and heyday to his employer legitimately expects that his employer will secure the rest of his life after retirement.

28. Having heard learned counsels appearing for the parties and considering all aspects of the matter I feel that in order to do the complete justice this Court in exercise of its extraordinary or plenary power should grant appropriate relief to the petitioner so that he may get the pensionary or retiral benefits.

29. Accordingly, in exercise of its plenary power the writ petition may be disposed of by passing the following order.

30. The concerned respondents are directed to grant pensionary and other retiral benefits to the petitioner based on the last pay which he drew at the time of retirement on superannuation by issuing Pension Payment order in his favour with effect from 1st January, 2018 within eight weeks from the date of communication of this judgement and order.

31. However, it is made clear that the petitioner shall not be allowed to claim any other financial benefits of his service prior to 01.01.2014.

32. This judgment and order shall not be cited as a precedent.

33. With the aforesaid directions the writ petition stands disposed of.

34. No order as to costs.

35. Parties may act on the Server copy of this judgement and order duly downloaded from the Official Website of this Court.

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

(Rabindranath Samanta,J.)