

03. 24.01.2023
Ct. No.6
Tanmoy

MAT 1944 of 2022

**The Mission Director, Paschim Banga Rajya Shishu
Shiksha Mission (PBRSSM)**

**-Versus-
Abha Saha & Ors.**

**With
IA No: CAN/1/2022**

Mr. Md. Sarwar Jahan, Adv.,
Ms. Mousumi Mitra, Adv.,
Mr. Maidul Islam Kayal, Adv.

...for the appellant.

Affidavit of service filed in Court today, be kept with
the records.

None of the respondents are represented in spite of
service.

With consent of learned Advocates appearing on
behalf of the appellant, the appeal and the connected
application are taken up together for hearing.

The respondent no.1/writ petitioner apparently
works as *Sahayika*. It appears that she had opted to
continue working till 65 years of age. Subsequently, she
opted to retire upon the completion of 60 years of age.
She wanted to withdraw from this option and again
wanted to work till 65 years of age. The reason appears
to be that the appellant could not provide the writ
petitioner with all the benefits that she was entitled to if
she retired at the age of 60 years.

With the prayer that she should be allowed to withdraw from the option of retiring at the age of 60 years and should be allowed to continue in work till 65 years of age, she approached the learned Single Judge.

The learned Judge noted the submission made on behalf of the appellant herein that although Option Forms were invited from *Sahayikas*, notifying as to whether they wanted to continue to work up to the age of 65 years or retire at 60 years of age with the consequential benefits, the said Policy could not be implemented. The issue is now pending before the Finance Department, Government of West Bengal, for necessary Administrative approval.

The learned Judge disposed of the writ petition with the following observations:-

“Thus, it appears that the petitioner still has an opportunity to withdraw from the option of retiring at the age of 60 years by filing an appropriate application before the Mission Director, Paschim Banga Rajya Sishu Shiksha Mission(PBRSSM) through the District Nodal Officer. Her prayer for withdrawal from her option and her willingness to retire at the age of 65 years as per earlier rules, shall be allowed. Necessary orders will be passed.

For the interim period when the petitioner has not worked, the petitioner shall not be entitled to any remuneration. However, there will be no break in the continuity of the service of the petitioners, as a Sahayika.

Immediate steps shall be taken with regard to the issue, preferably within a period of 4 weeks from the date of receipt of the petitioner’s application.”

Appearing for the appellant, Mr. Jahan, learned Advocate, says that there was non-disclosure of a very

material fact before the learned Single Judge. The writ petitioner has already received the admissible benefits that a *Sahayika* is entitled to if she retires at the age of 60 years. Having done so, she cannot claim that she should be allowed to work till 65 years of age. However, the appellant is not averse to allowing her to work till 65 years of age. But in that event, the appellant should be permitted to recover the benefits that the writ petitioner has received which are applicable for retirement at 60 years of age.

We see the logic in the submission made by Mr. Jahan. The writ petitioner cannot have the best of both. If she chooses to work till 65 years of age, she must return the benefits that she has received which are admissible for retirement at 60 years of age.

Accordingly, the order under appeal is modified to the extent that the respondent no.1/writ petitioner may be permitted to work till 65 years of age subject to her returning all benefits that she received which are applicable for retirement at the age of 60 years.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 1944 of 2022 and the connected application being IA No: CAN/1/2022 are accordingly disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all necessary formalities.

(Subhendu Samanta, J.)

(Arijit Banerjee, J.)