

Court No. 22
13.02.2023
(Item No. 34)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 28060 of 2022

Dipak Roy Choudhwry
VS
The State of West Bengal & Ors.

Mr. Sarajit Sen
Mr. Sasanka Kumar Mandal
..... for the petitioner
Mr. Susanta Pal
Ms. Ananya Neogi
.... For the State

The petitioner claimed to be a retired **Headmaster**, retired from **Banyeshwar Bishnu Chandra High School (H.S.), Murshidabad**. In paragraph 3 to the writ petition the petitioner pleaded the detail and particulars of the Schools with his respective service tenure thereof. The petitioner claimed that after retirement of the petitioner the appropriate State authority had issued the pension payment order dated **September 10, 2020, Annexure P-4** at **page 31** to the writ petition.

Mr. Sarajit Sen, learned counsel appearing for the petitioner submitted that on perusal of the said pension payment order it appeared that, the service tenure of the petitioner at **N.T.P.C. High School, Malda** where the petitioner had served slightly more than **17 years** had not been considered. Learned counsel referring to a Government order issued by the Education department dated **May 20, 1988** baring memo No. **180-Edn.(B)/IM-83/88, Annexure -5** at

page 33 to the writ petition submitted that, in view of the said Government Memorandum the petitioner is eligible to get the benefit of the said tenure of about **17 years** of his service when he served the said **N.T.P.C. High School, Malda** while calculating the qualifying service period for pension. Learned counsel for the petitioner then referred to the representation of the petitioner dated **October 6, 2022, Annexure P-7** at **page 35** to the writ petition and submitted that, the said representation made by the petitioner had not yet received any attention of the State executive.

Mr. Susanta Pal, learned State counsel appearing for respondent Nos. 1 to 5 submitted that, the said N.T.P.C. High School, Malda was an un-aided Government School and as such the service tenure of the petitioner at the said school was not considered and it was lawfully and rightly done so.

Considering the rival submissions made on behalf of the appearing parties and considering the materials on record to sub-serve justice, the respondent No. 3 is directed to consider the said representation of the petitioner dated **October 6, 2022, Annexure P-7** at **page 35** to the writ petition after giving at least seven days prior hearing notice to the petitioner and the respondent No. 6 and after giving them an opportunity of hearing, shall pass a reasoned order on the issue strictly in accordance with law.

While considering the issue the respondent No. 3 shall take into account the statements made by the writ petitioner at paragraph 3 of the writ petition. The respondent No. 3 shall also consider the said Government Memorandum dated **May 20, 1988, Annexure P-5** at **page 30** to the writ petition as mentioned above and its applicability in the fact situation of the case.

The entire exercise as directed above, shall be carried out and completed by the respondent No. 3 positively within a period of six weeks from the date of communication of this order. The respondent No. 3 shall then communicate its reasoned decision/order to the petitioner and the relevant School authority within a further period of two weeks from the date of the said reasoned order to be passed.

In the event, the decision goes in favour of the petitioner, the respondent No. 3 shall communicate the same to the respondent No. 5 and shall take all further and consequential steps in the matter to give effect to the said reasoned order positively within a further period of eight weeks from the date of the said reasoned order to be passed.

It is made clear that, this Court has not gone into the merit of the claim of the petitioner. The petitioner and the relevant school authority shall be at liberty to urge whatever points they wish to urge

relying upon whatever documents and records they rely upon before the respondent No. 3.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

It is made clear that, this order shall not create any equity or right in favour of the petitioner, in the event the petitioner is not eligible to receive his claim strictly in accordance with law.

On the above terms, this writ petition being ***W.P.A. 28060 of 2022*** stands disposed of.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)