

Item		MAT 2005 of 2022
-26.	14-12-2023	CAN 1 of 2022
		CAN 2 of 2022
sg	Ct. 8	State of West Bengal & Ors.
		Versus
		Sanatan De & Ors.

Mr. Arindam Chattopadhyay, Adv.
 Ms. Lipika Chatterjee, Adv.
 ...for the appellants
 Mr. Sujit Kr. Rath, Adv.
 Mr. Sukumar Sarkar, Adv.
 Mr. Anirban Saha, Adv.
 ...for the respondent/writ petitioner

1. We have heard the learned Counsel for the parties.
2. The matter relates to computation of service recorded in other States as qualifying service for pension. The prayer for pension of the petitioner was denied by the Deputy Directors, School Education (G.A.), West Bengal on 4th August, 2017 in terms of paragraph 7(e)(ii) of Chapter-III of G.O. No. 136-Edn.(B) dated 15th May, 1985, which clearly excludes service rendered in other States.
3. In view of the fact that the service rendered other States cannot be counted as qualifying service for pensionary benefit, the authority concerned declined to extend the prayer for pay fixation in favour of the petitioner. The writ petitioner has challenged this order. The writ petition was heard ex-parte. In spite of notice, the appellant was not represented.
4. In such a situation, the learned Single Judge was required to consider whether the order passed by the authority is in accordance with the relevant circular. In absence of any

challenge being thrown to the Rule as discriminatory, it was not open for the learned Single Judge to make out a case and decide the matter and strike out the relevant provisions as *ultra vires*.

5. We feel, in the absence of any prayer being made for declaring the said relevant paragraph as *ultra vires*, the said adjudication could not have been made. We find the observation made in the order passed by the learned Single Judge in allowing the writ petition, in effect, has nullified the scope of sub-para 7(e)(ii) of Chapter-III of G.O. No. 136-Edn.(B) dated 15th May, 1985.
6. On such consideration, we allow the appeal and set aside the impugned order.
7. We make it clear that it would be open for the writ petitioner to file a fresh writ application challenging the said paragraph in the DCRB Scheme, 1981 insofar as it affects its right to claim service rendered in other States as qualifying service for pension. The said issue has to be decided afresh.
8. However, we impose costs assessed at Rs.20,000/- to be paid by the appellant to the writ petitioner since in spite of notice, the appellant was not represented nor any affidavit was filed on behalf of the appellant. The said cost shall be paid within a period of two weeks from date.
9. In the event the cost is not paid, the impugned order shall revive. In the event the petitioner succeeds, the writ petitioner shall be entitled to interest on the arrear pension at the rate of 10% per annum.

10. With the aforesaid directions, the appeal and the connected applications are accordingly, disposed of.
11. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)