

38 25.01.2023
Sc Ct. no.22

WPA 28286 OF 2022

Madhusree Sarkar Dhara

Vs.

The State of West Bengal & Ors.

Mr. Saktipada Jana
Mr. Subhajyoti Das.

....For the Petitioner

Ms. Paromita Paul

....For the State

Mr. Sambhu Nath Sardar

....For the Respondent
No.7

Affidavit-of-service, filed in Court today, is taken on record.

The petitioner is a retired assistant teacher. She retired from **Sir Nripendra Nath Institution (H.S.), Kolkata** on **July 31, 2022**.

Mr. Saktipada Jana, learned advocate for the petitioner drew attention of this Court to a particular clause of a prescribed format required to be submitted on electronic mode which mentioned that “**Whether any court case regarding pay and services is pending/disposed of with the Hon’ble High Court or any other authority**”. Mr. Jana submitted that a money suit was filed by the petitioner bearing **Money Suit No. 555 of 2008 before the civil Judge, Senior Division at Alipore** against the then secretary of the school, Head Master of the school and one assistant teacher.

Mr. Jana further submitted that the nature of money suit being pending has got no relation or nexus with the employment career or the employment of the petitioner with the school or its State employer. The said money suit cannot stand in the way in receiving the retiral benefits by the petitioner.

However, the plaint and the nature of the money suit are not disclosed in this writ petition. The contention of the petitioner would be evident from paragraph 15 of the writ petition.

Mr. Sambhu Nath Sardar, learned advocate appearing for the respondent no.7 submitted that since in the electronic mode application the petitioner did not disclose pendency of the said civil suit it amounted to be suppression of fact.

Ms. Paromita Paul, learned State advocate appeared for the respondent nos. 1 to 4.

Considering the rival contentions of the parties and considering the materials on record it appears to this Court that the relevant State authority first decide on the factual matrix as to whether the nature and character of the money suit, filed by the petitioner, shall stand in the way of the petitioner in receiving her retiral benefits who had otherwise an unblemished career record. The petitioner had served the State employer through out her service life so eventually the petitioner must receive her retiral benefits.

In view of the above, a **comprehensive representation of the petitioner dated August 4, 2022, Annexure P-8 at page 45 to the writ petition** submitted before the respondent no.3 has to be decided by the respondent no.3 with a reasoned order.

The respondent no.3 is directed to consider the said representation of the petitioner dated **August 4, 2022, Annexure P-8 at page 45 to the writ petition** upon at least a seven days' prior hearing notice to the petitioner and the respondent no.7 and after giving them an opportunity of hearing shall decide the issue by passing a reasoned order.

The entire exercise shall be carried out by the respondent no.3 positively within a period of six weeks from the date of communication of this order strictly in accordance with law and the respondent no.3 shall communicate its reasoned order to the petitioner and the respondent no.7 within a further period of two weeks from the date of the said reasoned order to be passed.

While deciding the issue, the respondent no.3 first decide as to whether pendency of the said civil suit, filed by the petitioner, will have any bearing or nexus with the receipt of the petitioner's retiral benefits when the petitioner had successfully completed her service tenure with an unblemished career record strictly in accordance with law and the retiral benefit is the property of the petitioner.

It is made clear that this Court has not gone into the merits of the claim of the petitioner and the petitioner shall be at liberty to urge whatever points she wishes to urge relying upon whatever documents she wishes to rely upon.

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

In the event the decision goes in favour of the petitioner, the appropriate authority/authorities shall forthwith arrange for the necessary payment for the retiral benefits to the petitioner and shall disburse the same without any further delay and positively within a period of four weeks after the reasoned order being communicated to them.

On the above terms, this writ petition, **WPA 28286 of 2022** stands disposed of, without any order as to costs.

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

(Aniruddha Roy, J.)