

Court No.
01.02.2023

(Item No. 96)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 28538 of 2022

Bishalaksha Sen
VS
The State of West Bengal & Ors.

Mr. Anjan Bhattacharya
Ms. Anita Shaw
.... For the petitioner
Mr. Sudipto Panda
Mr. Subrata Ghosh
.... For the State

Two affidavits of service filed in Court today,
are taken on record.

The petitioner claims to be the **Headmaster** at
Kalna Ambika Maheshmardini High School,
District - Burdwan. He retired on December 31,
2022. The petitioner joined in the school on March
23, 2015. The total span of employment in the school
spent by the petitioner was around 7 years 9 months
as pleaded in **paragraph 4** to the writ petition.

Mr. Anjan Bhattacharya, learned counsel
appearing for the writ petitioner submitted that, the
petitioner claimed full pension as its eligibility before
the relevant school authority and the relevant school
authority by its letters dated **July 8, 2020** at **page 24**
and **December 6, 2022** at **page 26** to the writ
petition, submitted the case of the petitioner before
the respondent No. 2 through the respondent No. 3.

Mr. Bhattacharya further submitted that, the said two representations had not yet received any attention of the appropriate State authority.

Mr. Sudipto Panda, learned counsel appeared for respondent Nos. 1 to 3.

Mr. Bhattacharya, learned counsel for the petitioner at the out set relied upon the conditions for appointment for the post of Headmaster wherefrom the petitioner had retired, **Annexure P-1** at **page 14** to the writ petition and submitted that, **clause (ii) to clause 11** of the said terms and conditions, inter alia, specified that ***ten years' continuous teaching experience on the date of advertisement in approved service in a Higher Secondary School/Higher School/Jr. High School recognized by the West Bengal Council of Higher Secondary Education/West Bengal Board of Secondary Education or equivalent*** would be considered as a qualification for appointment for the post of Headmaster. He then relied upon the various documents to support his contention that, the petitioner had the work experience of continuous 10 years in the manner and mode it was required under the terms and conditions for appointment. He then relied upon the documents **at pages 18 and 19** to the writ petition to substantiate the validity and lawful appointment of the petitioner for the post of Headmaster at the relevant school.

Mr. Bhattacharya then relied upon the provisions for eligibility for pensions as laid down in the **West Bengal Recognized Non-Government Educational Institutions Employees' (Death-cum-Retirement Benefit) Scheme, 1981 (for short, the 1981 Scheme)**. Placing reliance upon the said provisions learned counsel submitted that, an employee to achieve the eligibility for pension under the said scheme, as the petitioner, must complete at 10 years of qualifying service in the manner and mode as laid down under the said Rule. However, the State employer had a discretion for dispensation of six months from the service tenure to make such an employee eligible for pension.

Mr. Bhattacharya then submitted that, at the entry point if the experience of a candidate for 10 years is to be taken and considered in terms of the said appointment condition, then at the exit point also at the time of retirement of the same employee, as the petitioner in the instance case, should be the same qualification for 10 years prior to joining of the service concerning the post of Headmaster as the instant case to be considered, to make such an employee to become eligible to receive pension in terms of **clause 8** of the said **1981 Scheme**.

He accordingly submitted that, the petitioner is eligible to receive pension and the appropriate State authority should be directed to issue the necessary

pension payment order in favour of the petitioner after taking into consideration the past ten years **equivalent** experience mentioned in the appointment condition, as the qualified condition for receiving pension.

Mr. Sudipto Panda, learned State counsel submitted that, it is an admitted case that the petitioner did not render his service for 10 continuous years of service. Hence, the petitioner is not even eligible to receive pension.

He submitted that, his past service record of 10 years as laid down under the condition of appointment in the previous service would not be counted for making the petitioner to eligible to receive pension.

After considering the rival contention of the parties and upon perusal of the materials on record and the relevant provisions placed by the learned counsel for the parties, this Court is of the firm view that, the condition for appointment as mentioned in **clause 2(ii) at page 14** to the writ petition and the condition for eligibility for pension mentioned under **clause 8** of the said **1981 Scheme** are totally independent to each other. They do not depend in any manner on each other nor can be co-related with each other. Moreover, the appointment condition no way had whispered about anything as to payment of pension. So the condition for payment of pension was

no way saved or touched in the appointment conditions.

At the time of entry point for the post of Headmaster the appointment condition should be fulfilled in terms of **clause 2(ii)** of the said terms and conditions at **page 14** to the writ petition and at the time of assessing the eligibility for pension of a retired Headmaster the provisions under **clause 8** to the **1981 Scheme** shall govern. Admittedly, the petitioner had rendered his service little more than seven years and far less than 10 years or even 9 years 6 months. Hence, the petitioner had no stretch of imagination could pass the test of eligibility for pension as laid down under **clause 8** of the said **1981 Scheme**. The Rule at the entry point and the Rule at the exit point cannot be equated together in the facts of this case for the petitioner.

In view of the above discussions and reasons, this Court is of the firm view that, the petitioner had not fulfilled the eligibility criteria for receiving the pension under **clause 8** in the said **1981 Scheme** which is a statutory provision and as such the petitioner cannot claim any pensionary benefit.

Resultantly, this writ petition being **WPA 28538 of 2022** is devoid of any merit and stands dismissed.

There shall, however, be no order as to costs.

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

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.)