

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

MAT 2091 of 2016

With

IA No. CAN 1 of 2016

(Old No. CAN 12154 of 2016)

Bishnu Hari Jana

-Vs.

State of West Bengal & Ors.

For the Appellants : Mr. Piyus Chaturvedi,
Mr. Manoranjan Jana

For the State : Mr. Jahar Lal De,
Mr. Tarak Karan

For the Respondent No.6 : Mr. Saibal Acharya,
Mr. Dwarika Nath Mukherjee,
Mr. Mainak Lal De

Heard On : 19.04.2023

Judgement Delivered On : 03.07.2023

Supratim Bhattacharya, J.:-

1. The instant appeal has been preferred by Bishnuhari Jana who was an approved Headmaster of Balpai Prafulla Chandra Sen Vidyamandir within the district of Hooghly, against the impugned order passed on 21.11.2016 in the writ petition being WP 24786(W) of 2016.
2. This is the fourth round of litigation initiated by the appellant writ petitioner. Each round of litigation dealt with the purported resignation of the appellant/writ petitioner from his service in the said school. In each round of litigation the writ petition has been contested by the school authority and the State respondents stating that the resignation of the appellant writ petitioner has been accepted.

The issue of resignation of the appellant writ petitioner from his service has attained finality with the order of the Hon'ble Single Bench in CO 8053 (W) of 1993.

Hon'ble Single Bench of this Court in WP No. 14351 (W) of 2011 dated 17.11.2011 directing the concerned authority to pay all outstanding dues which are admissible to him.

Subsequently by an order dated 20.4.2016 in another writ petitioner being WP 2207 (W) of 2016 Hon'ble Single Bench of this Court directed the Director of Pension, Provident Fund and Group Insurance,

Government of West Bengal (for short DPP&G) to take steps with regard to the representation of the writ petition.

The DPP&G, *inter alia*, found that under the West Bengal Recognized non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Rules 1981 (for short the 1981 Rules) the resignation tendered by the appellant entails forfeiture of the past service.

3. The appellant herein was the writ petitioner before the Hon'ble Single Bench and the respondents were the opposite parties/respondents in the writ petition.
4. Being aggrieved by and dissatisfied with the order dated 21.11.2016 passed by an Hon'ble Single Bench in WP 24786(W) of 2016 the instant appeal has been preferred.
5. Through the impugned order the Hon'ble Single Bench has come to the conclusion that as the petitioner has not approached the Court in clean hand and has not disclosed the fact that his resignation has already been accepted by the authority and has also filed the instant writ petition under Article 226 of the Constitution of India the Hon'ble Single Bench has not been inclined to interfere in any manner whatsoever and has been pleased to dismiss the writ petition with cost of Rs. 10,000/-.
6. The fact of the instant lis is that the appellant /writ petitioner tendered his resignation on 03.12.1979.

His resignation was accepted by the concerned authority.

Subsequently the appellant/ writ petitioner wanted to withdraw his resignation but he was not permitted to be reinstated.

Ultimately the said issue regarding the petitioner's right to withdraw his resignation came up before the Court and an Hon'ble Single Bench while deciding the said issue in the writ petition being C.O. No. 8053 (W) of 1993 held that the petitioner having been unwell and having tendered his resignation cannot have the legal right to claim reinstatement. As such the relief which was claimed by the petitioner in the writ petition was refused. While dismissing the said writ petition direction was given for payment of all outstanding dues of the petitioner expeditiously.

Despite communication of the said order nothing was paid to the petitioner though the time limit has expired long ago.

Being compelled the petitioner had once again preferred a writ petition being WP No. 14351(W) of 2011 seeking issuance of direction upon the concerned authorities for immediate payment of the admissible dues. The Hon'ble Single Bench while disposing the said writ petition directed the concerned authority to pay all outstanding dues admissible to the petitioner.

Thereafter the writ petitioner filed another writ petition being WP No. 2207 (W) of 2016 and the petitioner complained of inaction on the part of the concerned school authority to release the admissible pensionary benefits in his favour in spite of the directions of the two Hon'ble Single Benches of this Court. The District Inspector of Schools

(S.E.) (in short DI), Hooghly wrote to the Headmaster of the school-in-issue to forward the necessary papers for payment of the admissible retirement benefits in favour of the petitioner. Pursuant to above noted direction the petitioner had supplied the relevant documents to the Headmaster of the school in issue and after receiving the same the school authority wrote to the petitioner to submit his claim supported by documentary evidence. The Hon'ble Single Bench passed a direction upon the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal to take steps with regard to the representation of the writ petitioner.

Thereafter the writ petition being WP 24786 (W) of 2016 wherein the impugned order has been passed was filed.

7. The Learned Counsel appearing on behalf the appellant during his exhaustive argument has submitted that the appellant/writ petitioner was appointed as the Headmaster of the Balpai Prafulla Chandra Sen Vidyamandir on 21.05.1966. He has further submitted that in the year 1979 the appellant felt ill and was advised to take absolute bed rest for a long term and school authority approved the same for two long span of six months each. The said leave was treated as leave without pay. As the appellant could not recover from his illness he sought further extension of the period of leave, however the same was declined by the school authority and had advised the appellant to tender his resignation.

The Learned Counsel further submitted that the appellant came to know that the school authorities have utilized the draft resignation letter purportedly dated 15.12.1979.

Under such circumstances the appellant though not fit to resume his duty was compelled to approach the school authority to permit him to resume his duty in the school. He has further submitted that by a letter dated 18.01.1980 the Secretary of the Managing Committee of the said school assured the appellant that a resolution has been adopted by the Managing Committee that in the event the appellant regains medical fitness and approaches the school authority they would permit the appellant to resume duties within three months thereof. It has further been submitted that by subsequent letters dated 02.04.1981 and 01.05.1981 by the Secretary, such assurance was reaffirmed by the school authority. Ld. Counsel has further submitted that in the view of the school authority the appellant remained unfit to discharge his duties and therefore was not permitted to rejoin. Ld. Counsel has further submitted that the assurance given by the school authority was never met by the school authority as the said authority had the opinion that the appellant never regained medical fitness ever thereafter. He has further submitted that neither the petitioner could continue rendering service on and from 01.04.1980 despite the assurance given by the school authority nor the appellant is being treated to have retired on medical ground despite unequivocal inference to be drawn from the

conduct of the school authorities. The Ld. Counsel has further submitted that the appellant has thus been deprived of his livelihood as well as denied of his retiral benefits. Ld. Counsel has also submitted that the appellant is entitled to the retiral benefits which has been withheld. The Ld. Counsel has further submitted that the entitlement of the appellant writ petitioner as regards to all his dues is to be governed either by the West Bengal Recognized non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Rules or by the recognised non-government Secondary Institutions Pension Rules 1968 (for short the 1968 Rules). As such prays for allowing the same by setting aside the impugned order and Judgement of the Hon'ble Single Bench.

8. Learned Counsel appearing on behalf of the respondents while submitting his arguments has categorically stated that the total period of rendering service by the appellant is much below the required minimum period of service to be served for entitlement of pension. The Learned Counsel has also submitted that the appellant/ writ petitioner had tendered his resignation and his submission as to denial of forwarding an application for resignation is absolutely incorrect. He has further submitted that a formal application for pension has been filed by the said appellant/writ petitioner. In the said application for sanction of pension it has been categorically mentioned that the said appellant writ petitioner has resigned from service with effect from 03.12.1979. The Ld. Counsel has further submitted that the said application for sanction

of pension bears the signature of the appellant. The Ld. Counsel appearing on behalf of the respondent has submitted as regards to eligibility of pension. He has submitted that subject to satisfactory service, an employee shall be eligible for pension.

- i) On attaining the age of superannuation, or thereafter on the expiry of the period of approved extension, provided he has completed at least 10 years of qualifying service, or
- ii) On voluntary retirement after completing 25 years of qualifying service, or
- iii) On Medical Certificate of permanent incapacity for further service from Government District Medical Officer on completion of a minimum of ten years qualifying service.
- iv) The Learned Counsel has submitted that the appellant/ writ petitioner has not complied any of the provisions laid down for eligibility for pension.

Banking upon the aforesaid facts and circumstances, the Ld. Counsel submitted that the appellant/writ petitioner is not entitled to any retiral benefit.

9. The moot point for consideration is as to whether the appellant writ petitioner is entitled to any salary and/or any retiral benefit.

10. From the facts and circumstances of the instant case it reveals that the appellant/ writ petitioner was an approved teacher with effect

from 21.05.1966 and he tendered his resignation from the post of Headmaster of the aforesaid school by an application dated 31.12.1979 because of ill health. It also reveals that the said resignation had been accepted. It is also apparent that since the period of suffering that is much prior to the submission of the resignation the appellant /writ petitioner had not attended the said school.

A letter written by the appellant writ petitioner addressed to the Secretary Balpai P.C. Sen Vidyamandir dated 15.12.1979 sent under certificate of posting having mentioned 'conditional resignation from the post of the Headmastership with effect from 1.1.1980' as subject of the said letter reflects that the said appellant has stated that as he has not fully cured and his physician has advised him to take complete rest for the next one year so he had continuous medical leave during the period 5.1.1979 to 31.12.1979 and further reflects that the said appellant had further applied for sanctioning an additional term of medical leave for one year from 1.1.1980 to 31.12.1980 but it being not sanctioned the appellant has stated in the said letter the following:

"Needless to say, I am now fully devoid of mental balance and struggling with death for every moment.

Under Such circumstances, I do resign from the Headmastership of the Institution with effect from 1.1.1980 only for the interest of the school and purely relying on your kind proposal mentioned in the letter of 3.12.1979"

From a letter issued by the Secretary Balpai P.C. Sen Vidyamandir dated 18.1.1980 issued in favour of the appellant reflects that the said

Secretary has stated that because of the resignation of the appellant the managing Committee of the school on 15.1.1980 has adopted a resolution that a Headmaster is to be appointed and it has also been stated that after recovery if an application is made by the appellant along with medical certificate the Managing Committee will give effect to the same within 3 months from the receipt. Since then the appellant writ petitioner had applied several times for his reappointment but that has not ended in a positive scenario.

Ultimately the controversy as regards to resignation has been brought to rest by the order of the Hon'ble Single Bench passed in CO 8053 (W) of 1993.

Thus, from the facts aforementioned it reveals that the appellant/writ petitioner resigned on 31.12.1979. So the cause of action arises on and from that day that is 31.12.1979.

The authority concerned that is the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal is directed to take into consideration the entire aspect of service of the appellant/writ petitioner afresh in accordance with the Recognized Non-Government Secondary Institution Pension Rules, 1968 prevalent at the time of resignation that is 31.12.1979 and to decide as to the aspect of any dues receivable by the appellant/writ petitioner and while considering the same the appellant/writ petitioner is to be heard, either personally or through representation.

The appellant writ petitioner is however exempted from paying cost of Rs. 10,000/- which has been imposed through the impugned order.

MAT 2091 of 2016 with IA No. CAN 1 of 2016 (Old No. CAN 12154 of 2016) stands accordingly **allowed**.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(Subrata Talukdar, J.)

(Supratim Bhattacharya, J.)