

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA 13838 of 2017

With

CAN 1 of 2020

Indrani Majumder

Vs.

The State of West Bengal and Ors.

With

WPA 13835 of 2017

CAN 1 of 2019 (Old CAN 3406 of 2019)

(This CAN not found in the file)

CAN 2 of 2020

Provati Mondal & Ors.

Vs.

State of West Bengal & Ors.

With

WPA 2424 of 2022

Nihar Kanti Paul & Anr.

Vs.

State of West Bengal & Ors.

With

WPA 8391 of 2020

Gourikant Pandey & Anr.

Vs.

State of West Bengal & Ors.

With

WPA 8645 of 2020

Smt. Ratri Chakraborti & Anr.

Vs.

State of West Bengal & Ors.

With

WPA 8646 of 2020

Smt. Bharati Nandi

Vs.

State of West Bengal & Ors.

With

WPA 8648 of 2020

Sabari Dasgupta & Anr.

Vs.
State of West Bengal & Ors.
With
WPA 9439 of 2020
Raj Kumari Srivastava & Ors.
Vs.
State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Subir Sanyal, Adv. Mr. Sakti Pada Jana, Adv. Mr. Subhajyoti Das, Adv.
For the State	:-	Mr. Tapan Kumar Mukherjee, Sr. Adv. ... in WPA 13838 of 2017, ... in WPA 13835 of 2017 & ... in WPA 2424 of 2022 Mr. Pinaki Dhole, Adv. Mr. Dipankar Das Gupta, Adv. ... in WPA 13838 of 2017 & ... in WPA 13835 of 2017 Mr. Somnath Naskar, Adv. ... in WPA 2424 of 2022 Mr. Bhaskar Prasad Vaisya, Adv. Mr. Soman Dey, Adv. ... in WPA 8391 of 2020 Mr. Supriyo Chattopadhyay, Adv. Mr. Suman Dey, Adv. Mr. Gourav Das, Adv. ... in WPA 8645 of 2020
For the respondent no. 4	:-	Mr. S. K. Bhattacharya, Adv.
Hearing concluded on	:-	25.11.2022
Judgment on	:-	17.02.2023

Amrita Sinha, J.:-

The issue to be decided in all the writ petitions is whether teachers of DA getting non-Government primary schools will be entitled to receive pension from the State Government after their retirement.

The issue of the writ petitions being the same, all the writ petitions are taken up analogously and are being disposed of by this common judgment.

The petitioners are retired teachers of non-Government primary schools recognized by the State Government. The salary of the teachers is paid from the school fund in accordance with the scale of pay fixed by the Government. Only the dearness allowance is paid by the State Government in ratio with the pay received by the teacher.

According to the petitioners, as the State Government is releasing pension in favour of the DA getting secondary schools, accordingly, the teachers of the DA getting primary schools should also be paid pension by the State Government.

The prayer of the petitioners for releasing pension in their favour was considered by the Commissioner of School Education and the same has been rejected on the basis of the observation of the finance department that teachers of non-Government DA getting primary schools are not covered under the notification no. 2299-Edn (P) dated 12th December, 1972.

The impugned order of the Commissioner, School Education Department is under challenge.

It has been argued that the aforesaid notification dated 12th December, 1972 cannot be made applicable in case of the petitioners. The said notification was issued in connection with the old Act being the Bengal (Rural) Primary Education Act, 1930. The aforesaid Act of 1930 stood repealed as soon as the West Bengal Primary Education Act, 1973 came into force. The Act of 1973 extends to the whole of West Bengal and according to Section 2 (xviii) of the Act of 1973, 'Primary School' means a school or a department of a school giving instruction in primary education recognized or deemed to be recognized as a primary school under the Act.

Reference has been made to Sections 64, 65 & 66 of the Act of 1973 in support of the submission that with the implementation of the Act of 1973 primary schools in Calcutta stood transferred to the Calcutta Primary School Council and teachers employed against permanent vacancies shall be deemed to be the employees of the Council and the terms and conditions of their service shall be such as may be determined by the State Government. By the said provisions, all primary schools in a Municipality under scheme sanctioned under the West Bengal Urban Primary Education Act, 1963 stood transferred, and all teachers in such primary schools are be deemed to be employed by the Primary School Council.

The preamble of the Act of 1973 has been placed before this Court and it has been argued that the said Act was promulgated to make better provision for the development, expansion, management and control of primary education to make it universal, free and compulsory.

Reference has also been made to the preamble of the West Bengal (Rural) Primary Education Act, 1930 to show that the same was applicable only in respect of the rural areas in Bengal. The said Act of 1930 was not applicable to the town of Kolkata.

Section 105 of the Act of 1973 has been relied to show that the West Bengal (Rural) Primary Education Act, 1930, the West Bengal Urban Education Primary Act, 1963 and the West Bengal (Rural) Primary Education (Temporary Provisions) Act, 1969 stood repealed by the promulgation of the Act of 1973. All primary schools recognized under the aforesaid repealed Acts were deemed to have been recognized under the Act of 1973.

The notification dated 12th December, 1972 relied upon by the Commissioner to reject the prayer of the petitioner has been placed before this Court. The preamble of the said notification mentions that the Governor was pleased to make certain amendments in the Rules in connection with the

Bengal (Rural) Primary Education Act, 1930. By virtue of the repeal of the Act of 1930 by the Act of 1973, the said notification became non-existent and could not have been applied or invoked to reject the prayer of the petitioners. The notification remained alive as long as the Act of 1930 was in force. Immediately upon repeal of the said Act, any notification in connection with the same also loses its force.

The memorandum of the School Education Department dated 7th December, 2007 has been placed. It has been submitted that the aforesaid memo was issued when the 1973 Act was in force. By the said memo the Governor allowed certain benefits to the various categories of employees of DA getting schools. The employees who retired in the pay scales of ROPA were entitled to get dearness pension at the rate admissible to pensioners under the Death-cum-Retirement Benefit Scheme, 1981. The DCRB Scheme, 1981 was issued under the order of the Governor, who has power to issue executive order in the absence of any rule governing the field.

The petitioners' main thrust is that teachers of primary schools who are similarly placed as the petitioners were getting pension pursuant to order passed by this Court. It has been submitted that the petitioners stand on the same footing as the other teachers of DA getting non Government primary school receiving pension and, accordingly, similar benefit ought to be extended to them.

Reliance has been placed on the decision delivered by a co-ordinate bench of this Court on 1st December, 2016 in **WP 23174 (W) of 2016** in the matter of **Anjana Bhattacharjee & Ors. Vs. State of West Bengal & Ors.** It has been submitted that the Director of School Education confirmed the entitlement of pensionary benefit in favour of the teachers of Jagad Bandhu Institution, a DA getting non Government primary school. It has been submitted that appeal preferred against the aforesaid order also stood

dismissed. The respondent authorities have thereafter extended the pensionary benefit in favour of the teachers of DA getting primary schools.

The petitioners claim same benefit as extended in the matter of Anjana Bhattacharjee (*supra*).

The respondents oppose the prayer of the petitioners.

The State respondent submits that the school in question was never covered under the Bengal (Rural) Primary Education Act, 1930. Pension was introduced under the Bengal (Rural) Primary Education Act, 1930 by notification no. 2299-Edn(P) dated 12th December, 1972 with effect from 1st April, 1968 in respect of teachers of primary (including junior basic) schools managed by the District School Board formed under the aforesaid Act.

By memorandum dated 136-Edn(B) dated 15th May, 1985 the second pay commission recommended retirement benefits to the teaching and non-teaching employees of different educational institutions. The said benefit was admissible to all whole time approved teaching and non-teaching employees of the non-government/ sponsored/ aided institutions excluding DA getting schools.

It has been submitted that the rules relating to grant of pension in favour of teachers of aided schools and teachers of DA getting non Government schools are different. The benefit extended in favour of other aided schools cannot be extended in favour of the DA getting non Government schools in absence of specific rules to that effect.

Reliance has been placed on the judgment and order dated 18th December, 2020 passed in **WPA 7636 of 2015 (Ms. Shephali Roy vs. M.A. Subramaniam & Anr.)**.

It has been contended that the petitioners are already getting pension under the Employees' Provident Fund and Miscellaneous Provisions Act,

1952 and they will not be entitled to additional pension as there is no rule to that effect, as on date.

By memoranda nos. 72-SE (B)/IM-4/2009 dated 19th May, 2009 and 142-SE (B)/IM-137/06 dated 17th August, 2009 the Government revised the pension payable in favour of the employees of DA getting primary schools. The School Education department, Elementary Education branch clearly mentions that the State Government pays the dearness allowance only in respect of the non-Government recognized primary schools and the State Government has no other responsibility in respect of those schools. There is no question of paying pension from the State exchequer in respect of those schools.

Learned advocate representing the Accountant General, West Bengal also opposes the prayer of the petitioners. It has been submitted that the school in which the petitioners are serving receives dearness allowance from the Government. The salary of the employees of the said school is borne by the school from their own resources. The petitioners were never paid from the State exchequer and as on date there is no supporting law in favour of grant of pension in favour of an employee of the DA getting non Government primary school.

Various memoranda in support of the aforesaid submission have been placed before this Court. The order passed by the Hon'ble Division Bench on 10th January, 2017 in **MAT 1695 of 2015; State of West Bengal & Ors. Vs. Sri Jai Prakash Narayan Yadav & Ors.** has been relied upon. The judgment and order passed in Shephali Roy (supra) has also been relied.

It has been submitted that the writ petition is liable to be dismissed on the ground of suppression of material facts. It has been submitted that the petitioners are already receiving pension under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and have also received

gratuity from the school under the Payment of Gratuity Act, 1973. It has been contended that there is no provision for extending pension from multiple sources to the employees under different Acts. As the petitioners are already receiving pension under the Central Act, the question of payment of pension all over again by the State Government, in the absence of a specific rule to that effect, does not arise at all.

Reliance has been laid on the definition of pension, pay, board, public management and primary school. Provisions of the Bengal (Rural) Primary Education Act, 1930 and West Bengal Primary Education Act, 1973 have been placed.

The respondents pray for dismissal of the writ petition.

I have heard and considered the rival contentions made on behalf of all the parties.

It is an admitted fact that the petitioners are retired teachers of non-Government DA getting primary schools recognized by the Government, but apart from receiving dearness allowance, the Government does not bear any other financial responsibility of the school. The school pays the salary and other allowances of the employees from their own resources. The petitioners admit that they are not covered under the DCRB Scheme, 1981. The petitioners represent that all other schools, except the DA getting non Government primary schools, are falling under the ambit of the DCRB Scheme, 1981. Reference has been made in respect of teachers of DA getting non Government primary schools who are getting pension from the Government. The petitioners seek similar relief.

The petitioners heavily rely upon the judgment passed in the matter of Anjana Bhattacharjee (*supra*), in respect of teachers of DA getting non Government primary school, wherein the Director of School Education held that pension will be payable to them.

The petitioners allege discrimination and submit that similar benefit as extended to Anjana Bhattacharjee and others may be allowed in their favour.

The Government memorandum dated 7th December, 2007 is the sheet anchor of the petitioners' case. Their contention is that the said memorandum is applicable in respect of all primary school teachers irrespective of the fact whether they are the teachers of aided schools or DA getting non Government schools. According to the petitioners, dearness allowance is a type of grant/ aid given by the Government and, accordingly, the primary teachers of DA getting non Government schools ought not to be singled out solely with the intention of not extending the benefit of pension to them.

It appears from the submissions made on behalf of the petitioners that apart from the decision in Anjana Bhattacharjee (supra) and the memo dated 7th December, 2007, the petitioners have not been able to produce any other substantial rule, memorandum, circular, Government order or the like which directly and clearly lay down that the teachers of DA getting non Government primary schools will be eligible to receive pension from the Government. The petitioners try to interpret the memorandum dated 7th December, 2007 in a manner so as to include the teachers of DA getting non Government primary schools in its fold.

All the respondents unanimously contend that the petitioners are not entitled to the relief as claimed and none of the teachers of other DA getting primary schools receive pension, save and except, those teachers who receive pension under orders of court.

In Anjana Bhattacharjee (supra) the Director of School Education opined that pension will be payable to the teachers of DA getting schools. The said order of the Director of School Education was based on the memo dated 7th December, 2007. It appears from the order passed by the Director of

School Education that there is no reason mentioned in support of the conclusion arrived at. There is no discussion as to why and how the memorandum dated 7th December, 2007 will be applicable in respect of the DA getting primary school teachers. Never ever has pension been allowed in respect of any non Government DA getting primary school. A plain reading of the said memorandum does not imply that the memo will be applicable in respect of the DA getting primary schools.

In the absence of a definite rule, the opinion of the Director of School Education permitting grant of pension in favour of the teachers of DA getting primary schools, cannot be accepted, especially because the respondent authorities themselves do not subscribe to the opinion expressed by the Director of School Education. Possibly, after late realization of the error in the opinion expressed by the Director of School Education, two appeals were preferred from the order passed by the Learned Single Judge in Anjana Bhattacharjee (supra). The Hon'ble Division Bench, however, dismissed the appeals on the ground of inordinate delay.

The Hon'ble Division Bench in Jai Prakash (supra) was pleased to observe that in the absence of any material on record to suggest that other retired teachers of DA getting schools were extended pensionary benefits, it is difficult to sustain the judgment and order by which pensionary benefit was extended in favour of a teacher in a DA getting school.

A list of the DA getting existing primary schools has been produced. It appears therefrom that, it is only five retired assistant teachers of Jagad Bandhu Institution who are getting pension from the Government, that too, in terms of the order passed by this Court in the matter of Anjana Bhattacharjee (supra).

In Shephali Roy (supra) the Court was convinced that the memorandum dated 7th December, 2007 appears to be ex facie without

jurisdiction and illegal and any benefit given thereunder cannot confer any right in respect of other similarly situated persons. The same would amount to allowing negative equality.

The basic rule for interpretation of statute is that the same has to be read in a plain and simple manner without distorting or twisting its language. The Court ought not to add words in the statute. Where the language is clear, the meaning arrived at on plain reading is to be accepted.

In the present case, the memorandum dated 7th December, 2007 has to be read as the supporting law relied upon by the petitioner for claiming pension. The memo dated 7th December, 2007 does not mention anywhere that the same will be applicable in respect of teachers of DA getting non Government primary schools. Apart from the teachers who received the benefit in terms of order passed by this Court, none of the other teachers of DA getting primary schools receive pension. The said benefit was extended under threat of contempt and the Court never had an occasion to decide the issue. Any benefit extended erroneously cannot be permitted to be followed contrary to the relevant rules, as the same will amount to perpetuating negative equality.

The authority all along intended to keep the two sets of schools, the regular primary schools and the DA getting primary schools, distinctly separate from each other. The school curriculum, the duties of the teachers and the entire functioning of the two sets of school may be the same, but that does not necessarily entitle the teachers of one set of schools to pray for similar financial benefit as applicable to the other, in the absence of a specific rule to that effect.

This Court is of the opinion that till a substantive rule is framed by the Government extending the benefit of pension in favour of employees of DA

getting non Government primary schools, the said benefit can neither be claimed nor extended to them.

As the Court is satisfied that the teachers of non Government DA getting primary schools will not be entitled to receive pension from the Government after their retirement, accordingly, the Court refrains from interfering with the impugned order.

In view of the above, no relief can be granted in favour of the petitioners.

The writ petition fails and is hereby dismissed. All connected applications stand disposed of.

No costs.

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

(Amrita Sinha, J.)