

13-04-2023
Court No.2
Sh/14.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

W.P.A. 843 of 2023

Kumar Rana

-Vs-

The State of West Bengal & Ors..

Mrs. Sabita Khutia (Bhunya).

..For the Petitioner.

Mr. Subir Kumar Saha,

Mr. Momenur Rahaman.

.. For the State.

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

The petitioner initially was appointed as an Assistant Teacher in an unrecognized School on March 27, 1996. Subsequently, the petitioner became a permanent Assistant Teacher on and from February 15, 2011. The petitioner had retired from service on February 2, 2018.

After retirement the petitioner had already received the gratuity for the period of his tenure as a permanent teacher.

The petitioner claimed limited pension in respect of the period during which he was not a permanent teacher.

Ms. Sabita Khutia (Bhunya), learned advocate appearing for the petitioner drawing attention of this Court at **annexure P-17 at page 41** to the writ petition submitted that, the petitioner had already made representation dated December 21, 2022 before the State Authorities, and the same was rejected by a decision of the respondent no.5 dated January 4,

2023, **annexure P-18 at page 56** to the writ petition.

Learned counsel further submitted that, the respondent no.5 was not the appropriate authority to take a decision on the issue and it was the **Principal Secretary, Department of Education (S.E.), State of West Bengal** is the appropriate authority to decide the issue.

Mr. Momenur Rahaman, learned counsel represented the respondents.

Considering the submissions recorded above, and considering the materials on record, it appeared to this Court that, after all the petitioner had served the State employer throughout his employment life. There shall be no prejudice to anybody if his representation is once again directed to be considered by the appropriate authority, that is, the Principal Secretary.

In view of the above, the decision of the respondent no.5 dated **January 4, 2023, annexure-18 at page 56 to the writ petition** stands set aside and quashed.

To sub serve justice, the Principal Secretary as referred to above, is directed to consider such representation dated **December 21, 2022, annexure P-17 at page 41 to the writ petition** upon at least seven days prior notice to the petitioner and after giving him an opportunity of hearing shall decide the issue by passing a reasoned order in accordance with law.

The entire exercise as directed above, shall be carried out and completed by the Principal Secretary within a period of six weeks from the date of communication of this order. The Principal Secretary then shall communicate his reasoned order to the petitioner and the respondent no.5 within a further period of two weeks from the date of such reasoned order to be passed.

It is made clear that, this Court has not gone into the merit of the claim of the petitioner in any manner whatsoever.

The petitioner shall be at liberty to urge whatever point he wishes to urge before the Principal Secretary by relying upon whatever documents and record he wishes to rely upon.

The Principal Secretary shall be free to decide the issue by applying his independent mind without being influenced by any observations made herein by this Court but strictly in accordance with law.

It is further made clear that this order shall not create any equity or right in favour of the petitioner, if the petitioner is not eligible to receive his claim strictly in accordance with law.

In the event, the reasoned order goes in favour of the petitioner then the respondent no.5 and/or all other appropriate authorities shall take all further steps to give effect to the said reasoned order positively within a period of six weeks after being communicated with the same.

Since no affidavit had been called for, the allegations made in this writ petition shall be deemed not to have been admitted by the respondents.

On the above terms, this writ petition being **WPA 843 of 2023** stands **disposed of**, without any order as to costs.

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

(ANIRUDDHA ROY, J.)