

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

26.9.2023
Ct. no.1
Sl. 1
sp

WPA No. 2144 of 2023

Sri Jogendra Nath Barma

Vs.

The State of West Bengal & Ors.

Mr. Narendra Nath Das,
Ms. Binapani Singha,
Ms. Tanushri Roy

.... For the Petitioner

Mr. Sourab Kar

.... For the State

1. The writ petition has been filed seeking mandamus on the Stat to sanction pension and gratuity from the date of retirement of the petitioner, i.e., 27.02.2021 counting his past service as Assistant Teacher with the Mathabhanga High School at Cooch Behar. The petitioner served the school from 1987 till 2006, i.e., 19 years.

2. Sometime in the year 2006, the petitioner was, on the recommendation of the Public Service Commission, West Bengal posted as Principal in the District Institute of Educational Training (DIET) at Taranagapur, Uttar Dinajpur.

3. He has served in such position continuously until his superannuation in the year 2021 at Cooch Behar as well. The DIET is an organization under the

direct control of School Education Department, Primary Education, Government of West Bengal. Upon retirement, however, his pension was not released.

4. Upon being appointed to the DIET, his last drawn pay under the Mathabhanga School was protected. He was also thereafter was communicated from time-to-time, i.e., on September 8, 2021, September 8, 2023 and September 15, 2023 his 19 years by the Additional Secretary, Department of School Education, would be considered while computing the length of service for the purpose of pension. The matter remained there. Till date, the petitioner has not received pension. No PPO has been issued.

5. Counsel for the State does not make submissions on the merit of the case. He only submits that the writ petition cannot be entertained since the petitioner is an employee of the State Government and should approach the State Administrative Tribunal to seek remedies under the provisions of the Administrative Tribunals Act, 1985.

6. It is submitted by the counsel for the petitioner that his client is 63 years old and is undergoing treatment for various ailments. Having served the State for about 34 years, he is penniless and as extreme hardship.

7. This Court is conscious of the dicta of the Supreme Court in the case of ***L. Chandra Kumar Vs. Union of India*** reported in ***(1997) 3 SCC 261***, particularly paragraph 99 where it is mandated that a litigant must approach a specially constituted Tribunal before directly approaching the Writ Court directly for remedies. In the instant case, this Court notes that the State has agreed in writing to include the 19 years of service rendered by the petitioner as Assistant Teacher and officiating as Assistant Headmaster in the Mathabhanga High School in Cooch Behar, as part of his service.

8. The documents annexed to the writ petition clearly indicate as such. In the peculiar facts and circumstances of this case and given the extreme hardship that the petitioner is facing without paisa of income since 2021, this Court is inclined to invoke the exception to the principle of alternative remedy.

9. After all pension, is the only source of income of a retired employee. Being rendered penniless after serving the State after 34 odd years, is indeed a matter of great concern. This Court quite appreciate the extreme hardship and the difficulty faced by the petitioner in being unable to feed himself two square meals a day much less afforded a medical treatment.

10. In these peculiar facts and circumstances of the case, this Court finds that the rights of the

petitioner under Article 21 of the Constitution of India apart from Article 16 are seriously affected.

11. In the aforesaid circumstances, this Court directs the Director SCERT and the Director of School Education, to forthwith certify the entire service record, last drawn pay, computing the length of service of the petitioner duly including the 18 years that he has served at Mathabhanga High School as Assistant Teacher and transmit the same to the 4th respondent, i.e., the Director of DPPG. Upon being satisfied with the case of the petitioner and after due verification of all records, the DPPG shall issue a Pension Payment Order in favour of the petitioner.

12. The aforesaid exercise shall be carried out by the concerned respondent who have been arrayed as party respondents herein, within a period of 2 months from the date of communication of a copy of this order.

13. With the aforesaid observations, the instant writ petition shall stand disposed of.

14. There shall be no order as to costs.

15. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)