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WPA 2266 of 2014
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IA No.: CAN 1 of 2023
Haradhan Ghosh
– *Versus* –
State of West Bengal & Others

Mr. Goutam Banerjee,
Mr. Raja Ghosh
... for the Petitioner

Mr. Jayanta Samanta,
Ms. Indu Mouli Banerjee,
Mr. Dip Jyoti Chakraborty
... for the State/Respondents.

The petitioner has presented the present writ petition praying for issue of a writ of mandamus commanding the respondents to reckon his past service for computation of his qualifying service for pension and release his retirement benefits.

Before going to delve into contour of controversy, the unique and unusual features of the facts involved in the writ petition must be noticed.

The petitioner joined Harua Junior High School (in short, the school) on 04.08.1978 as an organizing teaching staff in social science group. The school was recognized as a II- class junior high school with effect from 1st January, 1996 and the same was upgraded up to class-IV Junior High School with effect from 01.01.1997. Though the school was recognized as a Junior High School up to class – VIII, the petitioner’s appointment was not approved despite the fact that his name featured as an organizing teaching staff of the

school in the inspection report of the District Level Inspection Team (in short, the DLIT).

Aggrieved thereby, the petitioner preferred one writ petition, being C.O. no.7649 (W) of 1991, which was disposed of by an order dated 8th August, 1991 directing the District Inspector of Schools to decide the issue after affording the opportunity to the petitioner and the school authority.

Pursuant thereto, the petitioner's appointment was approved by the District Inspector of Schools *vide* his memo dated 3rd March, 1992 with effect from 01.10.1991. The approval of appointment of the petitioner was challenged by one Naba Kumar Banerjee in a writ petition. Ultimately, the issue went up to a Hon'ble Division Bench of this Court in MAT 2615 of 1997. The specific case, as made out by Mr. Naba Kumar Banerjee in his pleadings was that he had joined as an organizing teaching staff of the school in social science group prior to date of joining of the petitioner and as such, his appointment as Assistant Teacher of the school in its social science group needed to be approved instead of putting a seal of approval on the appointment of the petitioner.

The Hon'ble Division Bench accepted such contention of Mr. Naba Kumar Banerjee and passed an order accordingly. In terms of the order passed in MAT 2615 of 1997, the appointment of Naba Kumar Banerjee was approved with effect from 1st March, 1996 and the approval

of appointment of the petitioner was cancelled w. e. f. from the same date being 1.3.1996.

Pursuant thereto, Naba Kumar Banerjee joined the school and he retired from service on attaining the age of superannuation in 2005. Then banking upon an observation made in MAT 2615 of 1997 to the extent that after retirement of Mr. Banerjee, the petitioner's claim for approval of appointment in the post to be vacant following the retirement of Mr. Banerjee could be considered, the petitioner preferred a writ petition being W.P. no.12395 (W) of 2006, which was disposed of by directing the respondents to consider the case of the petitioner and take a decision thereon in accordance with law within a specific time frame. Finally, the petitioner achieved his desired goal when he secured his appointment as an assistant teacher of the school in its social science group approved by the D. I. of schools *vide* his memo dated 8th December, 2011. The petitioner joined the school on 19th December, 2011. After rendering service in the school for three years, the petitioner superannuated on 10.02.2014.

In such conspectus, the petitioner has again knocked on the door of this Court with a hope to get some means of survival in the December of his life.

Mr. Banerjee, learned advocate appearing for the petitioner seeks to urge that taking note of peculiar feature of the case, the Court should take a pragmatic view and a direction be given to count the petitioner's past service along

with his last three years' service towards qualifying service of pension so that a means for his sustenance can be arranged for the terminal phase of his life. He submits that the petitioner would be satisfied even if the issue is relegated to the concerned respondent for its proper resolution.

Mr. Samanta, learned advocate appearing for the State/respondents opposes such contention of Mr. Banerjee. However, he submits that if the issue is relegated to the authority concerned for taking decision on the same, he shall have no objection.

Both Mr. Gautam Banerjee and Mr. Samanta conjointly voiced that the power vests in the Principal Secretary of the School Education Department to condone shortfall of qualifying service for pension. Mr. Samanta points out that the power rests with the Principal Secretary to condone the shortfall of six months.

Heard the learned advocates appearing for the respective parties. Perused the materials on record.

The facts of the case at hand, which are obviously peculiar in its nature, indicates that the petitioner was appointed in the school with effect from 1st October, 1991 and by an order dated 14th October, 1999, the approval of his appointment was cancelled with retrospective effect from 1st March, 1996. Therefore, such retrospective cancellation of the appointment of the petitioner suggests that he rendered his service since 1st October, 1991 to at least 14th October, 1999 and he drew his salary for such period from the public

exchequer and subsequent thereto, he served the school since 19th December, 2011 to 10th February, 2014.

Therefore, though the initial approval of the petitioner's appointment was cancelled w.e.f. 1.1.1996 but there is an irresistible conclusion that in the first phase i.e. from 1.10.1991 till 14.10.1999, the State has exploited the service of the petitioner. The State cannot deny its knowledge that Mr. Banerjee was senior to the petitioner yet without approaching any higher forum to assail the order dated 8th August, 1991 passed in C.O. no.7649 (W) of 1991, the same was complied with and seal of approval on the petitioner's appointment was put. The petitioner drew salary for that period and at this stage, the respondents cannot take recourse of the claim that the amounts towards the salary of the petitioner for that period were misspent or embezzled. Suffice it to observe that the State has not taken any step to recover the salary drawn by the petitioner for that period.

There is every possibility that during that period, some amounts were deducted from the salary drawn by the petitioner and kept accumulated in his provident fund account. It is well- ingrained proposition of law that the terminal benefits including the pension is reward of the past service of an employee. Our country assumed it's the character of a welfare State by taking such sort of measures for its employees who devoted golden days of their lives to serve the nation or its institution.

Therefore, the resolution of the issue raised in the writ petition hinges on the question whether the past service of the petitioner i.e. from 1.10.1991 till 14.10.1999 can be reckoned with and counted along with the period commencing from 19th December, 2011 to 10th February, 2014 for the purpose of computation of qualifying service of the pension and condoning any shortfall, if any whether or not terminal benefits including pension can be released in favour of the petitioner.

Since the petitioner himself insisted the Court on relegation of the issue to the competent authority and such prayer has not been opposed by Mr. Samanta, the writ petition is disposed of by granting liberty to the petitioner to file a comprehensive representation before the Principal Secretary appending all the documents thereto in support of his claim within a period of four weeks from date and if such representation is made within the time as stipulated hereinabove, the Principal Secretary shall decide the issue taking note of the observations made in this order after affording an opportunity of hearing to the petitioner or his authorised representative and the school authority.

If the issue is decided in favour of the petitioner, the Principal Secretary shall take next follow up action so that the petitioner can avail of the benefits but if decision taken prejudicial to the interest of the petitioner, then a reasoned order shall be passed and such reasoned order must be communicated to the petitioner.

The entire exercise shall be completed within a period of two months from the date of receipt of such comprehensive representation from the petitioner.

With the aforesaid observation the writ petition and the connection application are disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.)