

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

FMA No. 726 Of 2024

Sankar Mondal

-Versus-

The State of West Bengal And Ors.

Delivered on : **19.07.2024**

Prasenjit Biswas, J:-

1. The prayer of this appellant/petitioner for getting full pension has been declined by the authority on the ground that there is a criminal case pending against him. The matter was travelled to this Court by filing a writ petition being no. W.P.A No. 26241 of 2023 at the behest of the petitioner so that he may get full pensionary benefit.

2. By passing the impugned order learned Single Bench of this Court has declined to entertain the prayer of the petitioner/appellant for getting his full pension after superannuation. Being aggrieved and dissatisfied with the said impugned order the instant appeal is preferred at the behest of the appellant/petitioner.

3. The petitioner joined as an Assistant Teacher of Lakshminarayanpur Sitanath High School, District South 24 Parganas and he joined as Teacher-in-Charge in that school on 25.11.2009 in place of Ex-Headmaster Mr. Pankaj Sardar who was suspended for his unauthorized absent with effect from 09.03.2010. Subsequently, Pankaj Sardar resumed his duty as Headmaster on 31.03.2011. An FIR was lodged against this petitioner/appellant and the secretary of that school by the Ex-President of the school namely Manabendra Biswas and on the basis of the FIR a criminal case was started against this petitioner. In the meantime the appellant/petitioner retired from service on 29.02.2024. Although all the documents relating to get pension has been submitted on behalf of the petitioner through online but his file has been returned back as the criminal case is pending against him.

4. Learned Single Judge of this Court also declined to entertain the prayer of the petitioner for getting pension because of the fact that a criminal case is pending against this appellant/petitioner as he has been arrayed as accused no. 2 in the charge sheet filed under Sections 409/467/468/479/420/120B of the IPC.

5. Learned Counsel appearing on behalf of the appellant submits interalia that although charge sheet has been filed against this petitioner but it cannot be said that he is guilty of the offence as allegedly committed by him as no person can be declared to be guilty either in the disciplinary proceeding or criminal proceeding unless proven. Admittedly, there is no disciplinary proceeding initiated against this petitioner and as such as per submission of the learned Counsel that it would not be proper to deny his full pensionary benefits due to pendency of the criminal proceeding. It is further assailed by the learned Counsel that the ground assigned for not processing the pension papers filed by the petitioner is baseless and unjustified. It is further submitted by the learned counsel that the learned Trial Court erred in law as well as

on facts in dismissing the writ petition with observation that the petitioner has been charged with defalcation of state funds but the said charge has not yet been proved against this petitioner. So it is submitted by the learned Counsel that the order passed by the learned Single Judge of this Court may be set aside and full pensionary benefits should be given to this appellant/petitioner.

6. Learned Counsel appearing for the state is also present at the time of hearing and it is submitted on behalf of the state that there is no illegality or infirmity in the order passed by the learned Single Bench and the learned Single Bench rightly declined to give order of giving full pension to this appellant/petitioner on the ground that the criminal case is still pending against this accused/petitioner and he has been arrayed as an one of the accused persons in the charge sheet. So as per his submission there is nothing to interfere in the said impugned order as there is no illegality or infirmity therein.

7. We have anxiously considered the submission advanced by the both the parties and perused the impugned order passed by the learned Single Bench.

8. Rule 14 of the West Bengal Services (Death-Cum-Retirement Benefit) Rules, 1971 provides that-

Criminal proceedings-A Government servant who retires from service but against whom criminal proceeding involving moral turpitude are pending in a court of law, shall not be sanctioned any pension until the termination of the criminal proceedings. An interim allowance not exceeding two-thirds of the pension that granted during the pendency of such proceedings in causes of hardship. If he is convicted on a criminal charge involving moral turpitude he shall not be entitled to any pension;

compassionate allowance may be granted subject to the same terms and conditions as laid down in rule 12.

9. The aforesaid Rule contemplates that a government servant who retires from service but against whom criminal proceeding involving moral turpitude is pending in a court of law shall not be sanctioned any pension until the termination of criminal proceedings. An interim allowance not exceeding two thirds of the pension would be allowed under the said rule in cases of hardship. Thus pendency of a criminal proceeding involving moral turpitude in a court of law as on the date of retirement from service of a government servant is a precondition for withholding sanction of pension until termination of the criminal proceedings.

10. A Government servant is not entitled to full pension during pendency of criminal proceedings against him. The entitlement to full pension to the government servant is subject to the outcome of the criminal proceedings and issue of final order thereon by the competent court. Full pension is admissible under the Regulations/Rules not as a matter of course but only if the service rendered by the government servant is approved. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. No doubt pension is not a bounty; instead it is a right earned by the government servant on the basis of length of service, none the less, grant of full pension depends on the approval of service rendered by the employee. In other words, if the service rendered by the government servant has not been satisfactory he would not be entitled to full pension and it would always be open to the Government to withhold or reduce the amount of pension in accordance with the statutory rules.

11. Therefore, till the criminal case under reference is finalized, withholding of pensionary benefits by the respondents to the extent claimed by the applicant is in order.

12. In view of the aforesaid circumstances, we do not find any merit in the appeal and hence, dismissed the same, with no order as to costs.

13. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)