

23.08.2024.

PB

Sl. No.16.

Ct. No.14.

**In The High Court At Calcutta
Constitution Writ Jurisdiction
Appellate Side**

WPA 15917 of 2024

Banabihari Paria

Vs

The State of West Bengal & Ors.

Ms. Sabita Khutia (Bhunya),

Mr. Sudip Sarkar,

Mr. Krishna Pada Santra.

.....for the petitioner.

Mr. Ranjan Saha.

.....for the DPSC, Paschim Medinipur.

Mr. Arindam Chattopadhyay,

Ms. Lipika Chatterjee.

.....for the State.

Report of the Secretary, Paschim Medinipur,
District Primary School Council vide memo
no.5530/LA dated 22nd August, 2024 filed in Court is
taken on record.

It appears therefrom that the petitioner attained
his age of superannuation on 30th April, 2015. He
joined the post of Assistant Teacher on 19th April,
1982 under Medinipur DPSC. He remained absent
from service from 23rd June, 2011 to 24th February,
2014 i.e. 978 days without approval of the authority.

A show-cause notice was issued to the petitioner by the then Secretary of DPSC in November, 2013. There was no reply from the end of the petitioner.

The petitioner, without any permission from the competent authority, joined school on 25th February, 2014 and continued service till he attained the age of superannuation on 30th April, 2015.

He is aggrieved by the order passed by the Chairman-in-Charge, Paschim Medinipur, District Primary School Council rejecting his prayer for grant of pension.

The Council relies upon Rule 10 of the Primary Education Act, 1930 wherein it is mentioned that a teacher continuously on leave for more than twelve months shall be deemed to be no longer in service.

The Court fails to understand as to why despite the aforesaid Rule, the authority did not take any step against the petitioner when he rejoined duties on 25th February, 2014 and continued till 30th April, 2015. The authority ought not to have permitted the petitioner to join service at that point of time after such long unauthorized leave.

As it appears that disregarding the aforesaid Rule the service of the petitioner was utilized by the school authority from 25th February, 2014 to 30th April, 2015 and he was paid his salary for the

aforesaid period, accordingly, it cannot be said that the petitioner was no longer in service because of unauthorised absence for 978 days.

The petitioner relies upon several circulars of the Government, Education Department wherein the absence of the teachers and non-teaching employees of the recognized non-government secondary schools prevented under duress from attending their schools and performing their normal duties should be treated as period spent on leave without pay but will count towards increments, as a special case. Such period of absence would automatically be counted as continuity in service for the purpose of pension.

The aforesaid circular being No.477-Edn.(S) dated 18th June, 1980 is in respect of secondary schools and no corresponding circular in respect of the primary schools has been placed before this Court.

It appears from record that the District Inspector of Schools (PE), Paschim Medinipur has already formed an opinion that the pension file of the petitioner cannot be processed till the leave is sanctioned by the competent authority.

The order of the District Inspector of Schools (P.E.), Paschim Medinipur dated 24th December, 2020

records the submission of the petitioner in support of his absence.

As the period of leave that is required to be regularized is far more than the period which may be sanctioned by the Council and the District Inspector of Schools is not in a position to take a decision to regularise the same, accordingly, the Court thinks it fit to direct the Commissioner of School Education to take a decision on consideration of the reasoned order of the D.I. of Schools and the order of the Chairman-in-Charge, Paschim Medinipur DPSC.

The Commissioner of School Education shall consider the matter and pass a reasoned order at the earliest, but positively within eight weeks from the date of communication of this order.

Learned advocate for the petitioner is directed to forward all supporting documents to the Commissioner of School Education for taking a decision in the matter.

If required, the Commissioner of School Education may grant an opportunity of hearing to the petitioner, the representative of the District Inspector of Schools (PE), Paschim Medinipur and the representative of the District Primary School Council, Paschim Medinipur for arriving at a decision in the matter.

In the event the Commissioner is of the opinion that the petitioner would be entitled to the relief as prayed for, then necessary consequential steps shall be taken in the matter at the earliest.

Learned advocate for the petitioner is directed to forward copy of all documents in support of his prayer to the Commissioner at the time of communicating the order of the Court.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties as early as possible.

(Amrita Sinha, J.)