

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Partha Sarathi Sen**

**WPA 13237 of 2011  
With  
CAN 2 of 2019 (Old No. CAN 8209 of 2019)**

**Alok Kumar Jyoti  
Vs.  
The State of West Bengal & Ors.**

For the petitioner : Mr. Sanjoy Mukherjee

For the State : Suman Dey  
Mr. Debangsu Dinda

For the respondent No. : Mr. Sauvik Nandy  
7/SAIL

Heard on : 21.08.2024

Judgement on : 21.08.2024

**PARTHA SARATHI SEN, J.:**

1. The supplementary affidavit as filed by the learned Advocate for the writ petitioner is taken on record.

2. By filing the instant writ petition the writ petitioner has prayed for issuance of appropriate writ for quashing of the memo dated 29.09.2010 as well as the memo dated 15.10.2009/17.11.2009 as issued by the respondent no. 2, authority whereby and whereunder the writ petitioner's prayer for releasing pensionary benefit was not considered favourably. In this writ petition the writ petitioner thus prayed for an appropriate direction upon the respondents/authorities to release the full pension and gratuity as payable to him.
3. Admittedly on 02.04.1968 the writ petitioner joined Deshopran Birendranath Institution for Boys as Assistant Teacher of Biology pursuant to the recommendation of the then D.I. of Schools, Calcutta (S.E.) and he was in employment in the said school till 08.05.1979.
4. It is the further case of the writ petitioner that on and from 09.05.1979 the writ petitioner joined in a school at Durgapur under Steel Authority of India Limited (SAIL) and he retired therefrom on 31.03.2007. It is also admitted position that though Deshopran Birendranath Institution for Boys was a grant-in-aid school but the school under Steel Authority of India Limited (SAIL) is a private school controlled and managed by Steel Authority of India Limited (SAIL) though the said school was a recognized school under West Bengal Board of Secondary Education.

5. As discussed earlier after his retirement from the school at Durgapur the writ petitioner approached the respondent no. 2, authority for releasing his pension and gratuity which was declined by the aforementioned two memos giving rise to the instant writ petition.
6. In support of his contention Mr. Mukherjee, learned Advocate for the writ petitioner at the very outset draws attention of this Court to the report dated 12.08.2024 as filed by D.I. of School (S.E.), Kolkata. Drawing attention to first paragraph of the page no. 2 of the said report it is submitted by Mr. Mukherjee that the Death-Cum-Retirement Benefit Scheme, 1981 (hereinafter referred to as the 'said Scheme of 1981') as quoted in the said report is not applicable to the writ petitioner and, therefore, the respondents/authorities are not correct in holding that the writ petitioner is not entitled to pension as prayed for.
7. In support of his contention Mr. Mukherjee, learned Advocate for the writ petitioner draws attention of this Court to the Government of West Bengal, Finance Department memorandum No. 136-Edn.(B) dated 15.05.1985 under cover of which the said Scheme of 1981 was brought into effect. It is submitted that from the last line of Paragraph 2 of the said memo dated 15.05.1985 it would reveal that the said Scheme of 1981 would not be applicable to the persons who retired from service prior to 01.04.1981. It is

submitted by Mr. Mukherjee that since the writ petitioner has left his previous service at Deshopran Birendranath Institution for Boys with effect from 08.05.1979 the said Scheme of 1981 has got no manner of application as wrongly quoted in memo dated 15.10.2009/17.11.2009 which is under challenge as well as mentioned in the report of the D.I. of Schools in Kolkata.

8. In course of his submission Mr. Mukherjee, learned Advocate for the writ petitioner places his reliance upon the Government of West Bengal, Education Department, Secondary Branch memo No. 1610-Edn.(S)/I.E.-14/67 dated 18.07.1968. Attention of this Court is drawn to various provisions of the Recognized Non-Government Secondary Institution Pension Rules which was brought into effect by virtue of the aforementioned memo dated 18.07.1968. It is further submitted by Mr. Mukherjee, learned Advocate for the writ petitioner that on conjoint perusal of Rules 3(d), 3(l) and 21 of the memo dated 18.07.1968 it would reveal that the present writ petitioner is entitled to full pension since the writ petitioner has retired from a recognized institution under the West Bengal Board of Secondary Education. Mr. Mukherjee, further submits that under Rule 28 of the memo dated 18.07.1968 the writ petitioner is equally entitled to the retiring gratuity.
9. Per contra, Mr. Suman Dey, learned Advocate for the respondent/State also places his reliance upon the memo dated

18.07.1968. Mr. Dey draws attention of this Court to the various clauses of Rule 3 of the memo dated 18.07.1968 which deals with the definitions. Mr. Dey in course of his argument put much emphasizes on Rule 3(d) which deals with the definition 'emolument', Rule 3(l) which deals with the definition 'qualifying service', Rule 12 which deals with the 'eligibility for pension', Rule 21 which deals with the 'rate of superannuation/ retiring/ invalid/compensation pension' and lastly on Rule 28 which deals with the 'retiring gratuity'.

10. Learned Advocate for the respondent No. 7, i.e., Steel Authority of India Limited in course of his submission has handed over a letter dated 27.12.2013 which is taken on record. It is submitted by him that the writ petitioner has received all terminal benefits from the SAIL.
11. On perusal of the entire materials as placed before this Court and after hearing the learned Advocates for the respective parties this Court considers that the different Rules as published under memo dated 18.07.1968 and as referred to by the learned Advocate for the writ petitioner as well as learned Advocate for the State are required to be looked into and those are quoted herein below in verbatim:

*“3(a) “Approved” means approved by the Board of Secondary Education, West Bengal or the Director of Public Instruction, West Bengal as the case may be;*

*3(b) “Board of Secondary Education, West Bengal” means the Board of Secondary Education, West Bengal established under the West Bengal Secondary Education Act, 1950;*

*3(d) “Emolument” means (i) in the case of Institutions covered by the Grant-in-Aid scheme, actual pay drawn including special pay, if any, or where the Actual pay drawn is in excess of the maximum of the approved scale of pay for the particular or, the maximum of the approved scale of pay for the particular post under the Grant-in-Aid scheme; (ii) in the case of Institution not covered by the Grant-in-Aid scheme actual pay drawn including special pay, if any, or the pay which would have been drawn, if the Institution had been covered by the Grant-in-Aid scheme from the 1st April, 1961 whichever is less;*

*3(h) “Institution” means Recognized Non-Government Secondary Institution;*

*3(l) “Qualifying service” means service rendered in any institution by an employee for any period from the date of his permanent appointment to the date of his superannuation except the period of extraordinary leave, period of suspension for which full Pay was not admissible and drawn and the period of any Break of service;”*

*“12. Subject to satisfactory service, an employee shall be eligible for pension –*

*on attaining the age of superannuation, or thereafter on the expiry of the period of approved extension, provided he has completed at least ten years of qualifying service, or on voluntary retirement after completing 25 years of qualifying service, or*

*on Medical Certificate of permanent incapacity for further service from Government District Medical Officer on completion of a minimum of ten years qualifying service, or on discharge due to abolition of the post, or closure of the institution concerned due to withdrawal of recognition or other valid causes, provided he has completed at least ten years of qualifying service.*

*21. An employee shall be eligible for superannuation/retiring/invalid/compensation pension if he has rendered a total qualifying service of ten years or more at 1/120 of the average emolument drawn by him during the last three years of his service, subject of a maximum of 30/120 of such average emolument.*

*The range of pension is mentioned below:*

|                                             |                                                                          |
|---------------------------------------------|--------------------------------------------------------------------------|
| <i>Number of years of completed service</i> | <i>Scale of superannuation/ retiring/ invalid/ compensation pension.</i> |
|---------------------------------------------|--------------------------------------------------------------------------|

|               |        |                      |
|---------------|--------|----------------------|
| 10            | 10/120 | of average emolument |
| 11            | 11/120 | of average emolument |
| 12            | 12/120 | of average emolument |
| 13            | 13/120 | of average emolument |
| 14            | 14/120 | of average emolument |
| 15            | 15/120 | of average emolument |
| 16            | 16/120 | of average emolument |
| 17            | 17/120 | of average emolument |
| 18            | 18/120 | of average emolument |
| 19            | 19/120 | of average emolument |
| 20            | 20/120 | of average emolument |
| 21            | 21/120 | of average emolument |
| 22            | 22/120 | of average emolument |
| 23            | 23/120 | of average emolument |
| 24            | 24/120 | of average emolument |
| 25            | 25/120 | of average emolument |
| 26            | 26/120 | of average emolument |
| 27            | 27/120 | of average emolument |
| 28            | 28/120 | of average emolument |
| 29            | 29/120 | of average emolument |
| 30 &<br>above | 30/120 | of average emolument |

28. An employee who has completed five years of qualifying service but whose service does not exceed ten years, shall, if this service was satisfactory, be eligible for gratuity at the rate of half month's pay for each completed year of service. The rate of such gratuity is mentioned below:

| Number of years of completed service |                                     | Scale of gratuity |
|--------------------------------------|-------------------------------------|-------------------|
| 5                                    | Two and half months of emolument.   |                   |
| 6                                    | Three months of emolument.          |                   |
| 7                                    | Three and half months of emolument. |                   |
| 8                                    | Four months of emolument.           |                   |
| 9                                    | Four and half months emolument."    |                   |

12. On perusal of the aforementioned Clauses it reveals to this Court that in order to understand true implication Rule 21 of the aforementioned memo dated 18.07.1968 Rule 12 as well as Rule 3(l) are required to be read first.
13. As discussed supra in the definition under Clause 3(l) qualifying service has been defined as service rendered in any institution by an employee for any period from the date of his permanent appointment to the date of his superannuation except the period of extraordinary leave, period of suspension for which full pay was not admissible and drawn and the period of any break of service. Rule 12 deals with the eligibility for pension which says that subject to satisfactory service, an employee shall be eligible for pension on attaining the age of superannuation and thereafter on the expire of the period of approved pension provided he has completed at least 10 years of qualifying service. On conjoint perusal of Clause 3(l) and Clause 12 of the aforesaid memo dated 18.07.1968 it thus appears to this Court that eligibility for pension arises on attaining the age of superannuation provided on completion of at least ten years of qualifying service from the date of his permanent appointment. Rule 21 of the aforesaid memo dated 18.07.1968, however, deals with the scale of superannuation cum retiring cum invalid compensation pension on the basis of number of years of qualifying service.

14. As rightly pointed out by Mr. Dey that though the writ petitioner had put in 11 years of continuous service in Deshopran Birendranath Institution for Boys which is a grant-in-aid school but the writ petitioner was not superannuated from the said school and on the contrary the writ petitioner superannuated from a private school controlled by SAIL. This Court is in agreement with the submission of Mr. Dey that on conjoint perusal of Clause 3(l) and Clause 12 of the aforesaid memo dated 18.07.1968 it would reveal that the writ petitioner is not entitled to pension since on the day of attaining superannuation he could not under the purview 'qualifying service' as per Clause 3(l) of the said memo.
15. It appears to this Court that admittedly the writ petitioner has rendered his service for 11 years in a grant-in-aid school but since he has not superannuated from the self-same grant-in-aid school he will not get the benefit of Clause 21 of the said memo because of the bar under Clause 3(l) read with Rule 12 of the said memo dated 18.07.1968.
16. On the same analogy this Court holds that the writ petitioner is also not entitled to retiring gratuity since at the time of superannuation he was not in service under a grant-in-aid school.
17. In view of the discussion as made hereinabove, the instant writ petition fails.

18. Accordingly, the instant writ petition being WPA 13237 of 2011 along with all interim application(s), if there be any, is dismissed.
19. There shall be no order as to costs.
20. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

**(PARTHA SARATHI SEN, J.)**