

30.08.2024
Court No. 18
Item No.17
(Suvendu)

WPA 18649 of 2024

Ashis Mondal
-Versus-

The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. S.M. Ali
Mr. Sk. Intiaj Uddin
.....for the petitioner

Mr. Dipanjan Datta
Mr. Subhajit Chowdhury
.....for the State

Pursuant to the order dated 21st August, 2024, supplementary affidavit has been filed today and same is taken on record.

On perusal of averments made in paragraph 5 of the said supplementary affidavit, it appears that release order was issued in favour of petitioner on 27th September, 2001 by Kotalpur High School, District –Bankura and petitioner worked in the said school upto 27th September, 2001. Subsequently petitioner was appointed as an Assistant Teacher in Chhatna Chandidas Vidyapith, District –Bankura with effect from 28th September, 2001. Petitioner tendered resignation vide letter dated 17th September, 2001 based on which school

authority of Kotalpur High School issued release order on 27th September, 2001 which permitted petitioner to join the post of Assistant Teacher in Chhatna Chandidas Vidyapith with effect from 28th September, 2001.

Learned advocate representing the petitioner submits that from the date of his appointment as an Assistant Teacher in Kotalpur High School petitioner was enjoying Honours graduate scale of pay and subsequently the District Inspector of Schools (SE), Bankura vide memo dated 24th November, 2000 sanctioned postgraduate scale of pay in favour of petitioner with effect from 12th December, 1997 when petitioner was working in Kotalpur High School. Subsequently on being selected as an Assistant Teacher in Chhatna Chandidas Vidyapith petitioner joined the post on 28th September, 2001 after getting release order from previous school and petitioner's pay scale was fixed as post graduate teacher reckoning his past service which petitioner rendered in Kotalpur High School.

By presenting this writ petition, petitioner has thrown challenge to the decision taken by the District Inspector of Schools (SE), Bankura,

being respondent no. 3 wherein the said respondent no. 3 proceeded on the premise that petitioner tendered resignation from the post of Assistant Teacher in Kotalpur High School and joined the post of Assistant Teacher in Chhatna Chandidas Vidyapith on 28th September, 2001 that would entail forfeiture of petitioner's past service which was rendered in Kotalpur High School based on provisions as contained in Clause 7(k) of Chapter III of the West Bengal Recognized Non-Government Educational Institution Employees (Death-Cum-Retirement Benefit) Scheme, 1981 as provided in Government Memorandum No. 136- Edn. (B) dated 15th May, 1985 (for short, 'DCRB Scheme, 1981').

According to respondent no. 3, since resignation of petitioner from the post of Assistant Teacher in Kotalpur High School entails forfeiture of his past service pay of petitioner was required to be fixed afresh with effect from 28th September, 2001 being an Assistant Teacher of Chhatna Chandidas Vidyapith without reckoning his past service and that would lead downgrading fixation of pay of

petitioner resulting in refund of excess payment made to the petitioner.

State respondents are represented by Mr. Datta, learned advocate who has made submissions to defend the decision of respondent no. 3 as contained in memo dated 11th June, 2024. It is submitted that since petitioner's appointment as Assistant Teacher in Chhatna Chandidas Vidyapith needs to be treated as fresh appointment, petitioner is not entitled to receive the benefits of his past service as well as pay protection. Such submission is also based on the observations made by the respondent no. 3 in the impugned memo dated 11th June, 2024 that it was a case of resignation so far as petitioner is concerned while leaving the post of Assistant Teacher in Kotalpur High School and joining the post of Assistant Teacher in Chhatna Chandidas Vidyapith.

Having considered the respective submissions made on behalf of the parties and on perusal of the impugned memo dated 11th June, 2024 issued by the respondent no. 3, this Court needs to consider the provisions as contemplated in Clause 7(k) under Chapter III of the DCRB Scheme, 1981. For better

understanding of the issue, Clause 7(k) is reproduced below:-

“7(k) Resignation tendered by an employee or his dismissal or removal entail forfeiture of past service – Provided that resignation of an employee for taking another appointment under any educational institution with proper permission shall not entail forfeiture of past service.”

Clause 7(k) indicates that normally resignation tendered by an employee entails forfeiture of past service but when such resignation tendered by an employee for taking another appointment in any educational institution with proper permission that would not entail forfeiture of past service.

In the present case, petitioner on being selected for the post of Assistant Teacher in Chhatna Chandidas Vidyapith albeit tendered resignation vide letter dated 17th September, 2001 but the authority of Kotalpur High School issued release order in favour of petitioner on 27th September, 2001 being the last date of service tenure of petitioner in Kotalpur High School which authorized the petitioner to join the post of Assistant Teacher in Chhatna Chandidas Vidyapith with effect from 28th September, 2001. Therefore, the proviso as

contained in Clause 7(k) of the DCRB Scheme, 1981 is applicable and, as such, the respondent ought not to have arrived at a conclusion that this is a case of resignation simpliciter which entails forfeiture of past service.

Hence, the impugned order of respondent no. 3 as contained in memo dated 11th June, 2024 stands set aside.

Consequently, pay of petitioner being an Assistant Teacher of Chhatna Chandidas Vidyapith with effect from 28th September, 2001 needs to be fixed reckoning previous pay which was enjoyed by the petitioner being an Assistant Teacher in Kotalpur High School. Accordingly, respondent no. 3 is directed to fix pay of the petitioner within a period of three weeks from the date of communication of this order.

With the above observations and directions, the writ petition stands allowed and disposed of.

There shall be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Saugata Bhattacharyya, J.)