

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

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

**FMA 18 of 2024
CAN 1 of 2024**

**Smt. Sakti Rani Pradhan (Maity)
Vs.
The State of West Bengal & Ors.**

Appearance:

For the Appellant : **Mr. Dinesh Pani, Adv.**

For the State : **Mr. Biswabrata Basu Mallick, Adv.
Mr. Sayan Ganguly, Adv.**

For the WBBSE : **Ms. Koyeli Bhattacharyya, Adv.
Mr. Bibek Dutta, Adv.**

Judgment On : **24.12.2024**

Harish Tandon, J.:

The stale claim is sought to be resurrected by approaching the Court seeking reliefs which was denied more than a decade before. The appellant filed a writ petition for sanction/release of the pensionary benefit treating her regular/qualified service from 01.01.1974 to 11.02.1984 as headmistress of Panchagram Satsangha Balika Vidyapith, Patashpur, Purba

Medinipur. According to the appellant, she was approved as a headmistress of the said school with effect from 01.01.1974 and rendered services in such capacity till 30th October, 1984. It is further averred in the petition that the dispute was raised between the appellant and other teaching and non-teaching staff and the administration of the school and she was thrown out of the school on 31st October, 1984 at 1.50 pm and thereafter was prevented to function and discharged her duties. The representation was made on 24.01.1995 before the Board of Secondary Education for reinstatement in service and also the arrear salary. Subsequently, a writ petition was filed in the year 1997 being WP 985 of 1997 which was disposed of on 28.07.1997 in the following:

“The courts the President, West Bengal Board of Secondary Education is directed to consider the representation of the petitioner dated 24th January, 1995 which is Annexure.

The writ petition and dispose of the same in accordance with law by passing a speaking order after giving an opportunity of hearing to the writ petitioner, the school authorities, D.I. of Schools, S.E. Midnapore, or his representative on their parties which he may consider necessary in accordance with law in 18 weeks from the date of communication of this order. President, West Bengal Board of Secondary Education is also directed to make an enquiry in the matter as may be considered the necessary by him.

The writ petition stands disposed of accordingly.

All parties are to act on signed copy of this dictated order of the usual undertaking.”

Though the order was passed on July 28, 1997 but a decision was taken by the authorities on 27.6.1998 rejecting the prayer of the appellant for reinstatement and payment of arrear of salaries and as she was absent from more than 13 years. The said order was challenged in WP 1762 of 2002 but the appellant could not pursue the same as it was dismissed for default on 18th March, 2014. There was a complete silence on the part of the appellant in communicating the same which was communicated on 27.06.1998 nearly one year after the said order. The petitioner remained silent after the said representation and filed a writ petition being WP 1762 of 2002 for an appropriate relief but did not pursue the same as it was dismissed for default on 18th March, 2014.

The conduct of the appellant would further reveal that no steps were taken immediately after the dismissal of the said writ petition and after a gap of 8 years a representation was made on 17.4.2022 for disbursement of the pensionary benefit. In the said representation there is no reflection of filing a writ petition being WP 1762 of 2002 and its dismissal for default on 18th March, 2014. Since the said representation was not addressed by the authority the writ petition being WPA 8594 of 2022 is filed by the appellant which is dismissed by the Single Bench as the petitioner is not entitled to any reliefs.

The order impugned would reveal that the submission was advanced on behalf of the respondent/authorities and the school that the appellant

was appointed temporarily and the long absence has been treated as a deemed resignation from temporary service. The Single Bench further observed that the earlier writ petition filed by the appellant was dismissed for default and no steps were taken for restoration thereof; the petitioner is not entitled to any relief.

The Counsel for the appellant contends that the provision relating to a deemed resignation contained in the management of recognized non-government Institutions (aided and un-aided Rules, 1969) is not applicable to the appellant and therefore, the stand of the authorities in this regard is unsustainable. It is submitted by the appellant that there is no fetter on the part of authority in considering the prayer for release of the pension and the other retiral benefit for the period she rendered services and therefore, the authority cannot sit over the same. It is further submitted that the Rules as relied upon has no manner of application in the instant case therefore, the stand of the authorities is not acceptable.

On the other hand, the State submits that the provision contained in Rule 11 (i) of the said Rules postulates the deemed resignation in the event, the employee did not resume the duty and therefore, there is no impediment on the part of the authority to consider the same. The reliance is placed upon an unreported judgment of the Coordinate Bench rendered in FMA 1611 of 2007 (decided on 21.09.2007) wherein the Division Bench held that the aforesaid Rule has its applicability in the event, the Headmaster does not resume duty after 5 years.

After hearing the respective parties initially we think that the point so urged need to be decided by us but on the factual matrix, we noticed that the aforesaid point has become redundant. The reason being that the appellant herself has admitted the decision of the authority regarding deemed resignation and simply prayed for the pensionary benefits for the period she rendered services as headmistress. It would be an ideal exercise to go into the nuances of the provision relating to the deemed resignation and therefore, we do not intend to delve into the aforesaid aspect. The fact discern from the record is galore to the extent that after 1984 she did not resume the duty and remained absent. The representation made to the authority for release of the arrear pension and the resumption of the duty was disposed of by the President of West Bengal Board of Secondary Education way back on June 2, 1998 and the said decision of the authority has not been successfully assailed before the Court of law. The moment the appellant accepted the deemed resignation, the only point which remained to be answered is whether a person who resigned from service is entitled to the pension and the other retiral benefits. It was a stand of the authorities before the Single Bench that the appointment of the petitioner was temporary in nature and therefore, no benefits could be extended to her. It is noticed that the Single Bench proceeded to decide the matter without calling for affidavits nor any opportunity was given to the appellant to corroborate the stand that the appointment to the post of Headmistress was temporary in nature. The Trial Court should not venture to decide the writ petition solely on the submissions advanced before it but should decide the core issue involved therein. It is undeniable that there has been a

considerable delay in approaching the Court in vindicating the grievance and the court at times refuses to entertain such writ petitions on the ground of delay and laches. By an order dated June 26, 1998 the prayer for reinstatement and the payment of the arrear salaries were rejected by the authorities and there was no alacrity shown by the appointment in approaching the court modifying the prayer for pension and other retiral benefits. There is no explanation offered for such delay in approaching the Court and therefore, we do not find that there is any justification in resurrecting the deadwood after such a lapse of time. We thus do not find any infirmity and/or illegality in the ultimate decision of the Single Bench in dismissing the writ petition. Thus appeal is devoid of merit.

The appeal is thus dismissed. All the connected applications are also dismissed.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with the requisites formalities.

(Harish Tandon, J.)

I agree.

(Prasenjit Biswas, J.)