

09.07.2024
Sn/sl.9
Ct. no.25

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

WPA 25939 of 2014

With

I.A. No. CAN 2 of 2015(Old CAN 1216/2015)

Tarikat Alam

Vs.

The State of West Bengal & Ors.

Mr. Imtiaz Ahmed
Mr. Ghazala Firdaus
Mr. Sk. Saidullah
Mr. Mirthun Mondal
Mr. Md. Arsalan

..for the petitioner

The petitioner is an assistant teacher serving in different schools in Haroa Circle, North 24 Parganas from 1963 till 1986. During interregnum period from August 18, 1976 till May 16, 1977, the petitioner was out of service. Since after May 16, 1977, he has been again allowed to join in the duties and worked till the date of his superannuation, i.e. 30th November, 2004. He has ventilated his grievance in this writ petition of the alleged decision of the respondent authorities treating the period of his absence, as stated above, to be the break of service, not to entitle him to any consequential benefits. Hence, the present writ petition.

Mr. Imtiaz Amhed, learned advocate is appearing for the writ petitioner.

No one is representing the State, in spite of service.

However, the records reveal that a report has been filed on behalf of the State authorities, clarifying its stand on the issue. In view of the long pendency of this case as well as the fact that the State has filed a report in this case, the same is taken up for final determination in absence of the State respondents.

Admittedly, the petitioner was inducted in service in the year 1963 and he retired from service on November 30, 2004. The petitioner has received pension for 27 years of service post 1977 till 2004. The reasons as to why the respondents have not allowed the pension and other retirement benefits to the writ petitioner from August 18, 1976 till May 16, 1977 has been mentioned in the memo dated April 03, 2024. The relevant portion thereof may be quoted as hereinbelow:-

“*****

4. Being the petitioner resigned from the post of the primary school teacher on 18.08.1976, the period on and from 18.08.1976 to 16.05.1977, i.e. 9 months he was not employed in any stage neither primary school teacher nor Secondary school teacher and he had no acquaintance as a teacher.

5. The petitioner is not entitled to the benefit of the Circular of the Education Department, Govt. of West Bengal being no. 85-Edn(S) dated 28.01.1981.

6.*The two services of the petitioner are interrupted by 9 months and no link is seen between these. So, it cannot be conjugated for ascertaining pensionary benefit.”**

The petitioner has relied on the Circular no. 85-Edn(S) dated 28.01.1981. He says that by dint of the same, he would be entitled to the service and other retirement benefits, taking into consideration the period before his absence. The relevant portion thereof, as relied upon by Mr. Ahmed, learned advocate for the petitioner is as follows:-

“After careful consideration, the Governor is pleased to decide that where is a break in service not exceeding twelve months occur prior to promulgation of the aforesaid Rules, condonation for such a break by any authority is not necessary and that service prior to such break automatically count towards pension, provided that the break in service was not caused by dismissal or removal from service, as a measure of penalty.”

Considering the submissions and perusing the provisions in the said notification, it is evident that absence from service of the petitioner for a period less than 12 months would not be debarring and detrimental for grant of benefit of continuing service to him. Admittedly petitioner's detachment from service, is for 9 months. The obvious corollary is that, after retirement the petitioner would be entitled to the benefits thereof, taking into account his entire service period.

In such view of the matter, the decision of the concerned authorities as depicted from the report dated April 3, 2024 appears to be erroneous and not in conformity with the rules, as mentioned above.

This Court finds the decision, as above to be due to gross negligence and non-application of mind of the

respondent and arbitrary and unreasonable. Accordingly, the same is liable to be set aside. The Court finds no force in the decision of the respondent authorities not to grant pensionary benefits to the writ petitioner for the entire period of his service. The Court finds further, that the writ petitioner shall be eligible to pension and other retirement benefits, to be calculated after taking into consideration, his entire service period, including 13 years of service, before 1977.

Hence, the writ petition being No. **WPA 25939 of 2014** is allowed with the following directions :-

- I) The petitioner shall be eligible for the benefit of confirmation of service, without any break and retirement benefits, taking into consideration the entire service period, before 1977, with effect from the date of his appointment.
- II) The respondent no.6 is directed immediately taking into consideration the said period for fixation of the pension of the writ petitioner.
- III) The revised Pension Payment Order shall immediately be issued.
- IV) Arrear, if any, shall be paid to the writ petitioner within a period of three weeks from the date of receipt of the revised Pension Payment Order.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Rai Chattopadhyay, J.)