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23.09.2024
d.p.

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

W.P.A 1910 of 2024

**Kiron Thapa @ Kiran Thapa & Anr.
-versus
State of West Bengal & Ors.**

**Mr. Amritam Mondal,
Mr. Subrata Sarkar,
Ms. Debarati Bhowmick.
...For the Petitioners.**

**Mr. Pretom Das.
...For the State.**

Affidavit-of-service filed in Court today is taken on record.

The mother of the petitioners was a Group 'D' staff of a private school which was taken over by the Education Department vide Memo No. 863-Edn.(p) dated 22nd August, 1995. The mother of the petitioners retired from service on 30th June, 2016. She expired on 25th January, 2021. The father of the petitioners predeceased their mother.

The grievance of the petitioners is that the terminal benefits of their mother were being assessed on and from 1997 and not from her initial date of joining on 1st July, 1980.

The petitioners rely upon the order dated 29th August, 2019 passed by this Court in WPA 342 of 2019 (Subhra Som -vs- The State of West Bengal & Ors.)

wherein the Court directed the respondent authority to disburse the terminal benefit on and from the date of her first joining in school.

It is admitted by the respondents that the mother of the petitioners joined in 1980 and the school was taken over in 1995.

On a perusal of the documents annexed to the writ petition and the order passed by this Court in the matter of Subhra Som (supra), the Court is of the opinion that as the petitioner performed her duties on and from 1st July, 1980, her terminal benefits ought to be calculated on and from the said date.

The taking over of the school by the District Inspector of School (P.E.), Jalpaiguri in the year 1995 ought not to wipe of the right of the employee to seek benefit of her past service which she rendered. Not allowing the terminal benefit to the employee would be contrary to the provision of Article 14 of the Constitution.

Learned advocate appearing for the State respondents produces the instruction dated 6th September, 2024 forwarded by the District Inspector of School (P.E.), Jalpaiguri which mentions that the pension file of the employee was returned back from the Assistant Director, DPPG, Uttar Kanya claiming an undertaking from the incumbent to permit deduction of the overdrawn amount from the retirement gratuity with a further undertaking that the employee would not claim the said amount in future.

The observation of the Assistant Director, DPPG, is absolutely contrary to the order passed by the

Hon'ble Supreme Court in the matter of **State of Punjab & Ors. -vs- Rafiq Masih (White Washer) & Ors.** reported in **(2015) 4 SCC 334.**

In view of the above, the instant writ petition is disposed of by directing the District Inspector of School (P.E.), Jalpaiguri to take steps to proceed with the pension file of the employee along with other terminal benefits to be calculated on and from her first date of joining on 1st July, 1980. The aforesaid respondent shall ensure that the heirs of the deceased employee receive the amount which was due to their late mother at the earliest but positively within a period of twelve weeks from the date of communication of this order.

It is made clear that the undertaking as sought for by the DPPG is absolutely illegal and the same is not required to be filed by the petitioners.

Instruction forwarded by the District Inspector of School (P.E.), Jalpaiguri signed on 6th September, 2024 is taken on record.

The writ petition stands disposed of.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)