

OD-16

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/243/2020

SANDIPAN GHOSH
VS
THE STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date : 22nd February, 2024.

Appearance:
Mr. Sakti Pada Jana, Adv.
... For the Petitioner.

1. The writ petitioner is the retired non-teaching staff of St. John's Diocesan Girls' Higher Secondary School (hereinafter referred to as 'the said School'). He was appointed on 17.03.1983. His service was confirmed by the Secretary of the Managing Committee of the School vide letter dated 17.04.1994. After retirement of a permanent employee, namely, Mrs. Rosy Das, the petitioner was accommodated to the said sanctioned post. Finally, upon attaining the age of superannuation, the petitioner was retired and released from his duties of the said School with effect from 21.11.2017.
2. During all these period, however, the School authority did not recommend for approval of service of the writ petitioner before the appropriate authority, that is, the District Inspector of Schools (Secondary Education), Kolkata/respondent no. 3. This is an admitted fact in this case. The recommendation of the School authority for approval of the writ petition is only vide letter dated 21.11.2017, i.e, the

date of retirement of the writ petitioner, which was received along with the other necessary documents enclosed therewith, in the office of the respondent no. 3, on the very same date.

3. Very naturally no order of approval from the respondent no. 3 could come before the writ petitioner was retired. Prayers were made by the writ petitioner, vide letters dated 21.11.2017 and 15.05.2018, in which he has requested the authority to accord notional approval to him as a clerk of the said School, with effect from 07.03.1999, i.e, the date of his being posted against a permanent vacancy, in the said School. The letter has not yet been answered by the respondent no.3/ District Inspector of Schools (Secondary Education), Kolkata.
4. The inaction of the respondent to consider writ petitioner's prayer as above prompted him to move this Court vide writ petition no. WP 302 of 2018. An order was passed directing the said respondent to grant opportunity of hearing to the writ petitioner and to consider and dispose of his prayer by a reasoned order.
5. The resultant order is that dated 28.12.2018 in which the authority held as stated below:-

"The said school is DA Getting where salaries are being paid by the School authority from their own resources to its staff, only D.A is provided to the approved staff of the School by State Govt. The School Authority submitted only the prayer of the petitioner after period of long gap regarding post facto approval of appointment one day before his retirement. The petitioner had already superannuated from services of the School on 22/11/2017. The concerned School did not take any steps in the above matter since his joining on 16.07.1983.

Considering the above facts and circumstances, the District Inspector of School (SE), Kol is not in position to consider the petitioner's prayer for approval of appointment, on post-facto basis."

6. The writ petitioner was aggrieved with the said order and again came before the High Court by filing another writ petition being WP No. 193 of 2019. The Court held that the respondent no. 3 could not have legally and justifiably reject grant of approval to the writ petitioner, even if his prayer would have been forwarded one day before his superannuation, subject to the fact of the other relevant papers having been duly furnished. It has further held that the said order of the District Inspector of Schools (Secondary Education), Kolkata, dated 28.12.2018 was unreasoned. Thus the Court has set aside the same and directed the said authority to reconsider the writ petitioner's prayer.
7. Hence, the impugned order dated 11.12.2019. The respective respondent authority has taken the following grounds:-
- (i) Petitioner was not appointed against a sanctioned vacancy. Thus the prevalent rules will not permit his approval against a sanctioned post;
 - (ii) By referring to G.O. No. 1610-Edn(S)/1E-14/67-t dated 18.07.1968 the respondent authority has shown that the writ petitioner would not have the eligibility of pension in terms of the provisions of the said Government order.
 - (iii) By referring to the said Government order of 1968, the respondent has further shown that the period of unapproved service of the writ petitioner would not be considered as the '*qualifying service*' of the writ petitioner to be eligible to pension, in terms of that notification;
 - (iv) Also that the writ petitioner would not have been covered within the purview of the definition of an '*employee*' as provided in the said notification of 1968.

8. Thus, having found the writ petitioner not to have fulfilled the necessary criteria of '*qualifying service*' as well as '*eligibility of pension*', his prayer as above was turned down by the concerned respondent.
9. Mr. Jana is appearing on behalf of the writ petitioner, whereas no one is appearing for the State respondent in this case. The State has also not filed any affidavit-in-opposition in this case, in spite of specific directions of the Court, in this regard. Under such facts and circumstances, it is found that the State respondent is not interested to contest in this case. Hence, the matter is taken up for hearing and order, in absence of the said respondents.
10. Approval of service for adequate period would be the eligibility criteria, for a non-teaching employee of DA getting school to become eligible for pension, in terms of the provision of the notification as mentioned above, i.e, G.O. No. 1610-Edn(S)/1E-14/67-t dated 18.07.1968.
11. The qualifying period of service required would be at least ten years of continuous service. The service of the petitioner should be approved, whereby the DA component of the salary of the concerned person would be remitted by the Government for all years of his service, rendered before his superannuation. This would, under normal circumstances, make a person eligible for pension, in terms of applicable rules from the Government, after his retirement.
12. The writ petitioner accepts that during the entire service period of him, the School authority did not forward any recommendation to the respondent State for his approval in service. Such a recommendation was made only on the date of his retirement, i.e, 21.11.2017. The Court, however, finds no material that the criteria regarding approval are not fulfilled in case of the present writ petitioner.

- 13.** So far as the delay in forwarding the recommendation of the School for approval of the writ petitioner is concerned, the same has already been dealt with by this Court in its order dated 04.07.2019 (in W.P. No. 193 of 2019). The Court has set aside authority's order dated 28.12.2018, which rejected petitioner's prayer on the ground of delay.
- 14.** Evidently, the date on which the recommendation of the School Committee was submitted before the respondent no.3/ District Inspector of Schools (Secondary Education) Kolkata, the petitioner was an employee of the said School and his employment did not cease on that date, but only after that date. Under such circumstances this Court finds no infirmity or illegality as regards the said application and recommendation of the writ petitioner and finds that the same was duly submitted along with requisite documents before the concerned authority.
- 15.** In this writ petition, the petitioner has sought for his post facto notional approval. The Court could not overlook that since after confirmation of the writ petitioner and/or he has been accommodated against the sanctioned vacant post by the School authority, it was a bounden duty of a D.A. getting School to forward recommendation of approval of service of the writ petitioner to the authorities, immediately thereafter. Evidently the School has flawed in discharging its such duty. The adverse effect cannot jeopardise petitioner's right of being approved in the said D.A. getting School, having neither the span of service of the petitioner nor any other criteria for such approval been challenged in this case.
- 16.** The discussion as above permits this Court to find that the respondent no. 3/ District Inspector of Schools (Secondary Education), Kolkata, would have the incumbent duty to allow post facto notional approval to the writ petitioner on the basis of the application and recommendation

forwarded by the School on 21.11.2017. The Court categorically notices that the applicable notification, i.e, G.O. No. 1610-Edn(S)/1E-14/67-t dated 18.07.1968, has not provided any barrier regarding post facto notional approval to be accorded to a person in an appropriate case. This Court finds this to be an appropriate case in which the respondent authorities are to extend such benefit to the writ petitioner.

- 17.** Accordingly, the impugned order dated 11.12.2019 is set aside. The writ petitioner shall be granted notional benefit of approval with effect from the date he has been accommodated against the vacancy in a sanctioned post, i.e, 07.03.1999. The concerned respondent authority shall issue necessary order to that effect.
- 18.** It is made clear, however, that the petitioner would be entitled to the notional benefit only.
- 19.** As an obvious consequence and in terms of prayer (a) of the writ petition, the writ petitioner shall be released the admissible pension immediately pursuant to pension fixation afresh, along with arrear pension, if any.
- 20.** The entire exercise as above, shall be concluded by the respondent authority, within a period of four weeks from the date of communication of this order.
- 21.** Writ petition being WPO 243 of 2020 is disposed of.
- 22.** Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of requisite formalities.

(RAI CHATTOPADHYAY, J.)