

26 **10.01.**
2025
Ct. No. 08

Ab

FMA 178 of 2024
IA No. CAN 2 of 2023

Abdul Zabbar and others
Vs.
State of West Bengal and others.

Mr. Bikash Ranjan Bhattacharya,
Mf. Prahlad Chandra Ghosh,
Mr. Subir Hazra.

... for the appellants.

Ms. Mousumi Chaudhury,
Mr. Supriya Majumder.

... for the State.

Mr. Avishek Prasad.
Mr. Sourodeep Singha.

... for the DPSC, Malda.

The solitary grievance raised in the writ petition by the writ petitioners/appellants is denial of the retiral and/or pensionary benefits solely on the ground of having not rendered qualifying period of service. The Writ Court after recording the facts arrived at the decision that since the writ petitioners/appellants have not rendered services, which would come within the ambit of the qualifying services for the purpose of such benefits, the relief claimed in the writ petition cannot be granted.

Mr. Bikash Ranjan Bhattacharya, learned Senior Advocate appearing on behalf of the appellants, submits that the Co-ordinate Bench in case of The State of West Bengal and others vs. Kartick Chandra Das and others (FMA 677 of 2015) decided on 18th February 2020 wherein the considerable shortfall in qualifying period of service was directed to be considered for extending the benefits available to the employees, who have rendered the qualifying period of service. Mr.

Bhattacharya further submits that the Court should not have taken up the responsibility to exercise the powers of the Administrative Authorities and/or the discretion vested upon it and should have relegated the appellants to the authorities for consideration.

The State and the District Primary School Council, Malda, refuted the aforesaid contention and submits that since the appellants have not fulfilled the conditions for the benefits to be extended to them after attainment of the superannuation, there is no infirmity and/or illegality in the order of the Single Bench in this regard.

It is undeniable that previously the appellants approached this Court as they were denied to appear in the interview. Pursuant to the order, they were permitted to appear in the interview and emerged successful in the recruitment process. Subsequently, the appointment letter was issued and the services were duly approved by the authority. It is also undeniable that they rendered services till attained the age of superannuation. The moment the appellants realized that they would be denied pensionary benefits under the West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 (in short "said Scheme"), an approach was made to the Court.

There is no dispute that the said Scheme is applicable and the benefits envisaged therein shall be granted provided the conditions and/or the stipulations incorporated therein are fulfilled. The aforesaid Scheme has a statutory flavor and the Court shall not encourage the authority to act contrary thereto or to travel beyond the circumference thereof. The authority must act within the precincts of the provisions of the aforesaid statutory Scheme and in absence of any power to relax any of the provisions, such power cannot

be assumed nor should be usurped by the authority.

Any action taken beyond the four corners of the statutory provisions of the said Scheme shall entail such decision to be interfered with in exercise of the powers conferred under Article 226 of the Constitution of India. Equally, the Writ Court cannot issue a Writ of Mandamus commanding the authority to act contrary to law or to do a thing, which has not been provided in the statute. In order to become entitle to the pensionary benefits, Chapter 3 of the said Scheme provides a complete mechanism as well as the qualification in this regard. Rule 7 postulates the period of service to qualify for pension in the following:

“7. Service qualifying for pension- (a) except for compensation gratuity, the service rendered by an employee before the completion of the age of 18 years shall not qualify for pension (b) continuous service of a wholetime approved employee in any educational institution, shall count as qualifying service, (c) war service rendered between 3rd September, 1939 and 1st April, 1946 by an employee shall count as qualifying for pension under this Scheme provided the employee concerned was absorbed as an employee on or before 1st January, 1948 and the service would have otherwise qualified for pension, (d) service rendered before partition, i.e. during the period up to 14th August, 1947, by an employee in any affiliated institutions in areas included in East Pakistan (now Bangladesh) shall qualify for pension and the period of break from the date of leaving the institutions in East Pakistan (now Bangladesh) and the date of appointment in any institution in West Bengal is to be treated as automatically condoned.

Affiliation of a school will be verified on the basis of documentary evidence. In the absence of documentary evidence, contemporary evidence duly signed by Director or any Officer authorized by him, will be accepted.

Service rendered by an employee under Government if any will count towards pension. The service in an institution before its recognition will not count.

(e) (i) The Head of an institution in which an employee is serving or has served shall open a Service Book for such employee and record his service therein. In the case of an employee having previous services in some other institutions, the

Head of the Institution opening the Service Book shall record his previous services on the basis of certificates and other relevant documents obtained from the institutions where the employee was previously employed and shall keep these certificates and documents relied upon pasted in the Service Book at an appropriate space or otherwise ensure retention of documents along with the Service Book. Where the past service of an employee cannot be clearly established by producing certificates from that institution such collateral evidence as may be collected from contemporaries having personal knowledge of the services of the employees may be accepted if the same is countersigned by District authorities. If the services of any employee whose service before the 15th August, 1947 in an institution or in a school which is now in East Pakistan (Bangladesh) cannot be established by documentary evidence, the employee shall file a written statement on plain paper stating that he had in fact rendered that period of service and shall at the foot of the statement make and subscribe a declaration as to the truth of that statement and shall in support of such declaration produce all documentary evidence and furnish all information which is in his power to produce or furnish. The authority competent to sanction pension to that employee shall after taking into consideration the facts in the written statement and the evidence produce and the information furnished by the employee in support of the said period of service, if satisfied admit that portion of service as having been rendered for the purpose of calculating pension of that employee. But services in East Pakistan or Bangladesh after the 14th August, 1947 shall not be taken into account in calculating the pension admissible. In the case of the Head of the Institution the Service Book shall be opened and maintained by the Head of the Institution, who shall, get the Service Book countersigned by the Director of Education or any officer authorized by him. The service of an employee shall be verified annually by the Head of the Institution and in the case of the Head of the Institution by the Director or any officer authorized by him with reference to the acquaintance rolls and other relevant records and a certificate of such verification shall be recorded in the Service Book under the dated signature of the verifying authority.

(ii) Service rendered in other States shall not count as qualifying service. Services rendered in territories which have since been merged in West Bengal and service rendered in East Pakistan now

Bangladesh up to 14.8.1947 shall however, count towards pension.

(iii) Approved temporary service including approved service on leave or deputation vacancy in one or more institutions shall count towards pension subject to fulfilment of other conditions for grant of pensions. Fractions of a year equal to six months and above shall be treated as a completed six monthly periods for the purpose of calculation of any pension under this Scheme.

(iv) Upon any condition which it may think fit to impose. Government may condone a deficiency of six months in the qualifying service of the employees of non-Government/Sponsored/Aided Educational Institutions/ Organizations.

Note: The deficiency should not be condoned with a view to make up the minimum prescribed qualifying service for the purpose of death gratuity or family pension. In other cases power should be restricted to the employees drawing pay not exceeding Rs. 425.00 per month at the time of retirement on invalid or compensation pension.

(f) All periods of authorized leave other than extra-ordinary leave without pay shall count as qualifying service.

Extra-ordinary leave granted on medical certificate, shall however, count as qualifying service.

Provided that in the case of extra-ordinary leave other than extraordinary leave granted on medical certificate, the appointing authority may, at the time of granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to an employee -

(i) due to his inability to join or rejoin duty on account of civil commotion, or,

(ii) for prosecuting higher scientific and technical studies.

(g) Period of suspension followed by reinstatement shall count as qualifying service provided it is treated as duty, otherwise it shall not count as qualifying service.

(h) The period of break in service even though condoned shall not count as qualifying service.

(i) Break in qualifying service of an employee for a period exceeding 12 months shall entail forfeiture of his past service unless this break is condoned by the competent authority (i.e. Director or any officer authorized by him). Break in service

not exceeding 12 months would be treated as automatically condoned.

Note: Before sanctioning any condonation, the following condition is required to be fulfilled, namely (a) the interruption has been caused by reasons beyond the control of the employee concerned.

(j) The period of the break in service of an employee between the date of dismissal or removal and the date of reinstatement shall not count as qualifying service unless such period is treated as duty or leave other than extra-ordinary leave by a specific order of the authority which passed the order of reinstatement.

(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

(l) Vacations shall count as qualifying service provided as employees is paid for that period and further provided that he is present on both the closing date and the re-opening date and if on leave on either of the dates, the absence is regularized by sanction of leave by the competent authority.

(m) Qualifying service for pension shall be counted up to the age of superannuation or the date preceding the date of voluntary retirement. The period of service rendered, on approved extension, after attaining the age of superannuation shall also be considered as qualifying service. Note: For the purpose of this Scheme, the date of superannuation shall be reckoned from the date of birth on the basis of the Madhyamik/Higer Secondary/ Matriculation/School Final Pass Certificate or other equivalent Pass Certificate. In the case of those employees whose date of birth entered in the Service Book on the basis of an affidavit shall be taken into account for the purpose of determining the date of superannuation.

(n) Period of absence under duress as per Government Order No. 1071-Edn. (S) dated 19.8.77 and Government Order No. 477-End.(S) dated 18.6.80 and also of subsequent orders, if any, shall count as qualifying service.

(o) Date of retirement: When an employee is required to retire on attaining a specific age, the date on which he attains that age, shall be reckoned as a non-working day and the employee shall retire with effect from and including that day.

N.B.: If the date of retirement of a superannuated employees falls on any date other than the first day of the month he/she will be allowed to retire on the last day of the month

(afternoon).”

Rule 8 of the said Scheme further provides a period of at least ten years of qualifying service as a timeline for entitlement to the pension. As it appears from the Rule 7(e)(iv), as quoted above, the discretion is vested upon the Government to condone the deficiency of six months in qualifying service.

It is no longer *res integra* that the moment a cap is given in the statutory provisions, such cap has to be strictly adhered to and the authority cannot travel from the peripheral thereof. The moment the maximum period is provided in the statutory provision, it is regarded as mandatory and in absence of any further power to travel beyond such destination, the authority cannot be commanded to act in excess thereof by the Writ Court.

We are conscious that the said Scheme is beneficial piece of legislation and the canon of interpretation mandates the provision to be interpreted keeping in mind the object and purpose for which it is so enacted. The moment such welfare piece of legislation restricts the discretion to be exercised by the authority within the time limit and does not confer any power to act beyond it, it would offend the core object and purpose for which it is so enacted if a purposive interpretation is adopted; in other words, it would render such provision otiose and/or redundant and the object and purpose for which it is so incorporated gets frustrated.

So far as the judgment as relied upon by the appellants is concerned, it is found that they would render services in the school in the capacity of teacher, which was not recognized and approved by the Government. Subsequently, the said school, which was unorganized, received approval from the Government

and the appellants attaining the superannuation, the period, which they rendered when the school was unorganized, was taken into consideration.

In the backdrop of the aforesaid fact, it was held that the report of the DLIT, before the school received recognition, indicates that the aforesaid teachers were rendering services and, therefore, it would cause greater hardship if those periods are not taken into account after the recognition is given to such school.

The law has to be culled out from the context in which it is so used. A decision is what is decided on the basis of the facts and the provisions involved therein and the ratio is required to be culled out in such perspective. A little difference in the fact or involvement of additional fact may at times invite diametrically opposite decision as the decision cannot be segregated from the facts involved in such litigation.

In the instant case, admittedly, the appellants were not discharging their duties as teacher in the school. They participated in the recruitment process initiated by the competent authority and on the basis of an order passed by this Court in the writ petition; they were permitted to appear in the interview and emerged successful therefrom. Subsequently, the appointment is made and after rendering services, they attained superannuation. Such distinguishing fact leads the instant matter to stand differently than the matter, which is relied upon by the appellants.

Since the statutory provision does not permit any condonation of period beyond six months and undeniably the appellants did not come within the folds of aforesaid provision, we do not think that there is any infirmity and/or illegality in the judgment of the Single Bench in dismissing the writ petition.

The appeal sans merit. The same is hereby dismissed.

In consequence whereof, the connected application being CAN 1 of 2024 is also dismissed.

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

Urgent Photostat certified copy of this order, if applied for, be given to the parties within three days from the date of the application.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)