

Item-
8. 30-04-2025

FMA 520 of 2025
CAN 1 of 2025

sg

Md. Shafi Alam

Vs.

Ct. 8

The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya

Md. Nurezamman

Mr. Somen Bose

Mr. Bidhan Biswas

... for the appellant

Ms. Koyeli Bhattachayya

Mr. Bibek Dutta

Ms. Keya Panja

...for the W.B.B.S.E.

Mr. Himadri Sikhar Chakraborty

Ms. Susnita Saha

...for the State respondent

1. The name of a candidate in the panel does not give any right and it only gives right to be considered by the appointing authority. Admittedly, there is a delay of almost ten years in approving the panel. The name of the appellant appeared in the panel prepared in February, 1990. However, the writ petitioner was given the appointment by the District Inspect of Schools (SE) on 24th August, 2000.
2. It is an admitted position that the writ petitioner has filed a writ petition being C.O. 7363(W) of 1990. The said writ petition was disposed of on 5th May, 2000 and it was on the basis of the said order, the District Inspector of Schools passed an order on 4th August, 2000. The order passed by the respondent no.4 i.e. the District Inspector of Schools on 4th August, 2000 was accepted by the writ

petitioner and he joined the said post with effect from 24th August, 2000. In the said order the respondent no.4 did not grant service benefits or notional benefits in favour of the petitioner with effect from 1st January, 1990. This was not contemporaneously challenged. Subsequently, on superannuation on 30th September, 2015, the petitioner accepted the retirement benefits.

3. Meanwhile, an order was passed by a learned Single Judge on 23rd November, 2015 in a writ petition being WPA 15352 of 2009 preferred by the appellant claiming benefits from earlier date prior to his appointment on 24th August, 2000. The said writ petition was disposed of vide order dated 23rd November, 2015 directing the concerned respondent no.4 to take a decision. The respondent no.4 vide order dated 16th March, 2017 rejected the prayer of the writ petitioner to grant benefits from January 1990.
4. In course of hearing of the appeal, we directed the authorities to file a report. From the report it appears that the Teacher-in-Charge, at the time of hearing that had culminated in the order of 4th August, 2000, did not work in the Institution between 1st January 1990 and 23rd August, 2000 and this fact has been admitted by the writ petitioner. It appears that the School authority was responsible for approval in favour of the writ petitioner. The papers of the School authority were in a proper form.
5. In view of the fact that at the time of appointment, it was made known to the petitioner that he would be entitled to

all benefits on and from the date of appointment, the writ petitioner after having retired from service and receiving the retiral benefits, could not be entitled to make a claim at this distant point of time for notional benefits from 1st January, 1990. Moreover, it appears that the decision of the authority concerned dated 16th March, 2017 rejecting such prayer was challenged almost after seven years.

6. Mr. Kamallesh Bhattacharya, learned Counsel appearing on behalf of the appellant has referred to a decision of the Hon'ble Supreme Court in the case of ***Ramesh Kumar vs. Union of India & Ors.*** reported in ***AIR 2015 Supreme Court 2904***, to argue that 'no work no pay' cannot be accepted as rule of thumb and so far as the situation demands, monetary benefits with retrospective effect, can be granted. The Hon'ble Supreme Court found that in appropriate cases, a court of law may take into account all the facts in their entirety and pass an interim order in consonance with law. The principle of "no work no pay" would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. It is found that the appellant was granted promotion with effect from 1st January, 2000 with the ante-dated seniority from 1st August, 1997 and maintain his seniority along with his batch mates. On such consideration, the Hon'ble Supreme Court was of the view that it would be

unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.

7. In the instant case, the order of appointment was given on 4th August, 2000 and the terms of the appointment were clearly mentioned. All benefits should be considered on and from 4th August, 2000. There has been no challenge in the said decision. The writ petitioner was continuing receiving all benefits although it may appear that there was initial lapse on the part of the respondent authorities in not finalizing the panel. The fact however, remains that the writ petitioner did not work in the said Institution during the aforesaid period. In *Ramesh Kumar* (supra), the petitioner was in service but he was denied promotional benefits. The facts are all ante-dated.
8. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge. The appeal and the application are accordingly, dismissed.
9. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Smita Das De, J.)