

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:
The Hon'ble Justice Smita Das De

W.P.A. No. 10164 of 2023

**Tarapada Masanta
Vs.
The State of West Bengal & Ors.**

For the petitioner : Mr. Debabrata Karan,
: Ms. Sabita Khutia(Bhunya)
: Mr. Debopriyo Karan

For the State : Mr. Santanu Kumar Mitra
: Mr. Ranjit Rajak

Reserved on : **11/07/2025**
Judgment on : **25/07/2025**

Smita Das De, J.:-

1. The writ petitioner has filed the instant writ petition for an order directing inter alia, the Government of West Bengal, to grant minimum pension to the petitioner after condoning one year shortfall in his service after counting his past continuous service before being absorbed in the substantive post with effect from March 30, 2005.
2. Appropo, the facts of the case is that the writ petitioner joined as an Assistant Teacher on July 10, 1981 pursuant to an appointment letter dated June 22, 1981 issued by the Secretary, Organising Managing Committee of Ichharia Junior High School, District-

Bankura (hereinafter referred to as the said school). The said school was established in the year 1970. Thereafter the President of the Organising Managing Committee of the said school submitted an application to the West Bengal Board of Secondary Education for its recognition.

3. On July 3, 1970 the Director of Public Instruction West Bengal vide Memo dated July 3, 1970 issued by District Inspector of Schools (S.E.), Bankura being the respondent No. 4 herein, directed to inspect the school for recognition as Junior High School. On August 20, 1971 the school was inspected by the Assistant Inspector of School (S.E.), Bankura for the purpose of recognition. Subsequently on April 4, 1986 though the school was inspected by the District Level Inspection Team (hereinafter referred to as the "DLIT") but the 'DLIT' did not recommend the school to the Board for granting recognition. Being aggrieved by such refusal to recommend the school for granting recognition to the Board, the President, Organising Managing Committee of the said School filed a Writ Application being C.O. No. 326(W) of 1989. After hearing the matter at length, the Hon'ble Justice Ajit Kumar Sengupta (as His Lordship then was) was pleased to dispose of the Writ application by passing an Order on November 3, 1989 directing inter alia, the Director of School Education to consider the representation for recognition of the school, holding that if the school is recognized, in that event the approval for the

appointment of the teachers of the school shall be made from the date of recognition. In compliance of the said order dated November 3, 1989, the Director of School Education, after affording an opportunity of hearing, passed a reasoned order rejecting the claim of the petitioner on the ground that since the financial position of the State Government does not permit recognition of new schools during the current financial year (1989-1990), the case cannot be recommended for granting recognition and directed the respondent No. 4 to hold 'DLIT' inspection for consideration of the recognition of the school, when, quota for the purpose is allotted and to send the direction to the respondent No. 4 accordingly. It was further held that the case of approval of teaching and non-teaching staff of the school will be considered subject to the fulfillment of the conditions as per rules. Thereafter the 'DLIT' inspection was held but the West Bengal Board of Secondary Education being the respondent No. 7, refused to grant recognition. Being aggrieved by the actions of the authority concerned for refusing to grant recognition to the said school, the teaching and non-teaching staff filed another Writ Petition No. being W.P. no. 19534(W) of 1999. After hearing the matter at length the writ petition was disposed of by an Order dated May 20, 2002 directing inter alia, the President of the respondent No. 4 to grant recognition within a period of three months from the date of communication of the order. Being aggrieved of the Order dated May 20, 2002 the

respondent No. 7 preferred an appeal, before the Division Bench of this Hon'ble High Court. The Hon'ble Division Bench, after hearing was pleased to pass an order directing the Government of West Bengal to give appropriate recommendation to the Board forthwith, but not later than 30 days from August 30, 2004 and immediately thereupon, but not later than two weeks thereafter the Board shall take proper action. Against the Order of the Division Bench of this Hon'ble High Court, the West Bengal Board of Secondary Education being the respondent No. 6 preferred a Special Leave Petition (SLP) before the Hon'ble Supreme Court, but the same was dismissed, on February 18, 2005. Finally the respondent No. 7 vide Memo No. 142005 granted recognition to the said school as Junior High School with effect from March 30, 2005. As a result of which the respondent No. 4 on June 6, 2005 granted approval for appointment of the petitioner including other teaching and non-teaching staffs of the said school, with effect from March 30, 2005. Thereafter on March 31, 2014 the petitioner retired from service and on February 1, 2023 the petitioner sent a representation to the respondent authorities praying inter alia, for granting, disbursing monthly pension in view of the continuous temporary service from June 22, 1981 as Assistant Teacher of the said school after condoning, one year shortfall in 10 years qualifying service. Thus, the petitioner after discharging 9 years qualifying service, retired from the service on March 31, 2014.

Consequently, the petitioner was not granted pension for deficiency of one year qualifying service which is the subject matter of challenge in the instant Writ Petition.

- 4.** Against the said backdrop of the case the issue to be considered are as follows:-

- i)** Whether the Government has the discretionary power under proviso / note appended to the substantive clause to refuse the condonation of shortfall for qualifying service of 10 years of service to enjoy the pensionary benefits?
- ii)** Whether the petitioner is at all entitled to get the benefit under Rule 7(e)(iv) of the Scheme of 1981 by condoning the deficiency of 1 year qualifying service to enjoy the pensionary benefit?

- 5.** The Learned counsel for the petitioner submits that the said school has started its journey in the year 1970 and after 35 years of the inception of the school, the school was granted recognition with effect from March 30, 2005 and accordingly regularizing the service of the teaching and non-teaching staffs has been regularized with effect from March 30, 2005. The petitioner after discharging 9 years qualifying service retired on March 31, 2014. Therefore, the petitioner was not granted pension for deficiency of one year qualifying service. The Learned counsel further submits that the petitioner is entitled to receive pension after continuing his past continuous / uninterrupted

service in the organizing school before recognition of the said school by the West Bengal Board of Secondary Education. It was further submitted that counting of the past counting temporary service in an organizing school rendered by the petitioner before being absorbed in the substantive post after recognition of the organizing school by the Government, should be taken into account for his entitlement to receive pension. In support of such submission the petitioner relies upon the case of **Kartick Chandra Das Vs. State of West Bengal & others in W.P. No. 7574(W) of 2006** wherein the Coordinate Bench of this Hon'ble High Court was pleased to hold that 'DLIT' inspection leading to recognition of the said school and accepting the petitioner and others as organizing staff, the delayed recognition and approval due to laches and negligence of the respondents, the petitioner cannot be made to suffer and cannot be deprived of the benefits of usual pension and other retiral benefits on the alleged grounds of not completing 10 years of qualifying service. It was further held that the period of service rendered by the petitioner in the unrecognized school should be taken into consideration to make up shortfall in computing the service for the purpose of granting benefits of usual pension and gratuity to the petitioner and to treat him in permanent service for at least 10 years before retirement on attaining the age of superannuation through grant of notional approval. The said judgment and order dated February 7, 2014 was challenged by the

Government by preferring an appeal being F.M.A No. 677 of 2015 wherein the Hon'ble Division Bench was pleased to dismiss the appeal of the Government in the light of the case of **Haradhan Mahato Vs. The State of West Bengal and Others** reported in **2013(3) CLJ (Cal) 520**. Being aggrieved by the order of the appellate court, the Government travelled upto the Supreme Court for challenging the same and a Special Leave Petition was filed and was dismissed with an observation. That:-

“In view of the long delay of eight years from the date of inspection and grant of recognition to the school in question, we are not inclined to interfere with the impugned order. The Special Leave Petition is accordingly dismissed. We clarify that we have not commented on the merits and the question of law is left open.

Pending applications, if any, also stand disposed of.”

6. The petitioner relied upon another judgment of the Division Bench of this Hon'ble High Court in the case of **MAT 1917 of 2019 with I.A. No. CAN 2 of 2020 (Old No. CAN 279 of 2020) (The State of West Bengal Vs. Rabindra Nath Ghosh)** wherein it has been held that,

“In the instant case, it is a case of pension simpliciter. It is not the case of death gratuity or family pension or invalid or compensation pension. Moreover, the said note in our view cannot whittle down the effect of a substantive clause in the 7e (iv) read with the circular dated February 2, 2009. The scope and effect of explanation/note came up for consideration in S. Sundaram Pillai & Ors. v. R. Pattabiraman & Ors., reported in AIR 1985 SC 582. On

consideration of a large number of authorities in paragraph 52 the Hon'ble Supreme Court summarized the law in the following words:

“52. In Dattatraya Govind Mahajan and Ors. v. State of Maharashtra and Anr. MANU/SC/0381/1977 : [1977]2SCR790 Bhagwati, J. observed thus:

It is true that the orthodox function of an explanation is to explain the meaning and effect of the main provision to which it is an explanation and to clear up any doubt or ambiguity in it....

Therefore, even though the provision in question has been called an Explanation, we must construe it according to its plain language and not on by a priori considerations.”

The aforesaid decision was followed in a fairly recent decision in **New Okhla Industrial Development Authority v. Chief Commissioner of Income Tax & Ors.**, reported in **2018(9) SCC 351** where the principles laid down in **S. Sundaram (supra)** were reiterated and it was held that the object of an explanation to a statutory provision is:

- “(a) to explain the meaning and intendment of the Act itself,*
- (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to sub serve,*
- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,*
- (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress*

the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.”

In view of such appeal of the State of West Bengal was dismissed holding interalia that the note which is in the nature of an explanation cannot in any way interfere with or change the substantive provision or prevent the working of the Scheme of 1981 by becoming a hindrance in extending the benefit to the writ petitioner under the beneficial scheme and held that the teacher should not be denied pensionary benefits on a flimsy ground of there being a shortfall of qualifying service and denied relying upon the note to the Rule 7(e)(iv).

7. Per contra, the respondent authorities strenuously argued and was pleased to rely upon Rule 8 of DCRB Scheme, 1981 which speaks of that a teacher has to complete atleast 10 years of satisfactory service to get pension. It was also submitted that to avail pension a teacher has to work in a recognized educational institution whose pay and allowance are borne by the State Government as per Para 5 of DCRB Scheme, 1981 and also to take into account that the service has been approved by the Director/DIS as per Para 5(A) DCRB, 1981. It was

also submitted that after the recognition of the school with effect from March 30, 2005 the petitioner accepted the approval of his appointment as Assistant Teacher with effect from March 30, 2005 without protest and claiming pension upon counting the service rendered by him in an unrecognized school is barred by the provision of DCRB Scheme, 1981 as well as doctrine of estoppels. It was also argued that the term organizing teacher is a foreign term to WBBSE Act, 1963 and Rules made thereunder as held by the Hon'ble Division Bench of this Hon'ble Court in the case of **Manindra Nath Sinha reported in 2006(4) CHN 513** which was subsequently upheld by the Hon'ble Supreme Court. Therefore, the issue being by the Hon'ble Apex Court, of an organizing teacher appointed by an organizing committee cannot be accepted in the eye of law.

8. The respondent authorities further submits that the condonation of the shortfall of the qualifying service is concerned as per DCRB Scheme, 1981, the State Government subject to prescribed condition may condone the deficiency of shortfall in qualifying service upto six months, but in the instant case the claim of the petitioner is beyond the prescribed period of being condoned. Thereupon, the respondent authorities relied upon a judgment of the Division Bench of this Hon'ble High Court in the case of **MAT 288 of 2022 IA No. CAN 1 of 2022 (Shri Samar Nath Paul and Others Vs. The State of West Bengal and Others and another is MAT 351 of 2022 IA No. CAN 1**

of 2022 (Pannalal Mondal Vs. The State of West Bengal and Others) wherein it has been held that the writ petitioners/appellants were aware at the time of appointment that they would not be entitled to the pensionary benefit, as they could not achieve the qualifying service under the Scheme of 1981, it is too late in a day to accept the claim, which itself is belated and aimed to resurrect the dead letter.

9. After hearing the rival contention of the parties and considering the materials available on records I am of the considered view that in the instant case, though the petitioner's appointment was temporary in the organizing school before recognition of the said school by the West Bengal Board of Secondary Education, it is to be considered that the petitioner is entitled to receive pension after counting his past continuous temporary service in the organizing school even after being absorbed in the substantive post of Assistant Teacher with effect from March 30, 2005.
10. In plethora of cases it has been held by the Hon'ble Apex Court that receiving pension by an employee at the end of his life for survival with human dignity is considered as fundamental right as enshrined under Article 21 and 309 of the Constitution of India. In the case of **D. S. Nakara & Others Vs. Union of India** reported in **1983 AIR 130** wherein it has been held that pension is not a incentive but a reward for past service. In the said celebrated judgment in the case of **D. S. Nakara (supra)** it has been categorically observed that:

(i) pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution ;

(ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered ; and

(iii) it is a social-welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch.

- 11.** In the aforesaid shortfall of qualifying service cannot deprive the said petitioner from enjoying the benefit of usual pension and other retiral benefits on the ground that the said employee did not complete 10 years of service period which is factually not correct in the view of the fact that admittedly the petitioner served the institution uninterruptedly since June 30, 1981 in an organising committee which was subsequently recognised in pursuance of this Hon'ble Court with effect from March 30, 2005, regularising the service of the teaching and the non-teaching staff with effect from March 30, 2005.
- 12.** In the conspectus of the case, I find that the benefit of the usual pension should not be denied to the petitioner on the alleged plea,

that the petitioner did not complete 10 years of service before retirement. Thus the respondent authorities, shall disburse minimum monthly pension to the petitioner in view of the memo dated May 20, 1988 issued by the school education department by condoning one year shortfall in the 10 years of qualifying service after counting his continuous past service for more than 24 years. The concerned authority is directed to disburse his pension including all arrear pensions without any further delay, but positively within a period of six weeks from the date of communication of this order. The respondent authority is also directed to sanction the entire admissible amount towards the arrear pensions to the petitioner within the aforesaid period.

- 13.** It is very pertinent that the writ petitioner was deprived of enjoying his tenure of service for no fault on his part and it is the authority concerned, who is responsible for not allowing him to enjoy his tenure of service i.e. upto the date of retirement March 30, 2014.
- 14.** This order will not create any precedence for those who are not the beneficiary of the order passed in the instant Writ Petition and were not affected by the misdeed of the authority concerned.
- 15.** It is made clear that the petitioner will not be entitled to any arrears of salary but the notional approval would be only for the purpose of grant of pensionary benefits to the petitioner.

16. With the above observations and directions, the writ petition being **WPA 10164 of 2023** stands disposed of. No order as to costs.
17. Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Smita Das De, J.)