

19 21.04.2025

Ct-08

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MAT 1061 of 2023

with

IA No. CAN 1 of 2023

Bishalaksha Sen

Vs.

State of West Bengal & Ors.

Mr. Ekramul Bari, Sr. Adv

Sk. Imtaj Uddin

Mr. Alauddin Ahmed

... For the Appellant

Mr. Sunil Kumar Roy

... For the S.S.C

Ms. Tapati Samanta

... For the State

1. By consent of the parties the appeal and application are taken up together and disposed of by this common order.

2. The writ petitioner/ appellant was appointed as Headmaster at Kalna Ambika Maheshmardini High School, District-Burdwan. Earlier he was working in the school affiliated under C.B.S.E. The appellant joined the present school on 23rd March, 2015 and retired from the said school on 31st December, 2022. He spent in the said school as Headmaster for a period of 7 years 9 months.

3. The Managing Committee of the said school made a request to the Commissioner, School Education Department by a letter dated 8th July, 2020 being Ref No. 19/2020 to give him the benefit of ten years' continuous service in Nigahi

School. The President of the Managing Committee also by its letter dated 6th December, 2022 being Ref No. 90/2022 sent a reminder requesting the Commissioner to consider the continuous past service with pensionable benefit of Headmaster.

4. Due to non-consideration of the said application, a writ petition was filed by the petitioner. In disposing of the said writ petition learned Single Judge taking into consideration the West Bengal Recognized Non-Government Educational Institutions Employees' (Death-cum-Retirement Benefit) Scheme, 1981 (for short, the 1981 Scheme) dismissed the writ petition after arriving at a finding that the petitioner has not rendered his service continuously for 10 years.

5. Mr. Ekramul Bari, learned senior counsel appearing for the appellant, has submitted that the aforesaid issue is no more *res intergra* in view of the decision of the Coordinate bench in the case of **Shri Pradip Kumar Kotal Vs. The State of West Bengal & Ors.**, reported in **2008 SCC Online 618 : (2008)4 Cal LT 390**. It is submitted that since for the post of Headmaster in a school recognised by West Bengal Board of

Secondary Education or West Bengal Council of Higher Secondary Education or West Bengal Madrasah Education Board and a teacher working in school recognised by C.B.S.E or I.C.S.E Board can apply for the post of Headmaster or Assistant Teacher, as the case may be, as recognised in ***Shri Pradip Kumar Kotal (supra)*** and similar benefit is required to be extended to the writ petitioner/appellant in calculating his qualifying service for the purpose of pension.

6. Mr. Bari has further submitted that if the petitioner is eligible to become a Headmaster on the basis of the service rendered in C.B.S.E school and that period of service is considered as eligibility criteria as to why for the purpose of pensionary benefit his past service cannot be taken into consideration. Mr. Bari has emphasized the word **“equivalent”**, as stated in the Notification, for the eligibility criteria to participate in the selection process for the post of Headmaster.

7. Ms. Tapati Samanta, learned counsel appearing for the State and Mr. Sunil Kumar Roy, learned counsel appearing for the S.S.C in opposing the prayer have submitted that the extant Rule has clearly stated that the service rendered in other

State shall not be counted as qualifying service and in view of the fact that the petitioner was a teacher in a State outside the West Bengal, his past service in the previous school cannot be considered as qualifying service.

8. However, we could not find any satisfactory reply in this regard if the school in which the writ petitioner was a teacher could have been located in the State meaning thereby a teacher of C.B.S.E recognised school in the State. In view of the fact that no decision has been taken by the authorities concerned and whether the word **“equivalent”** is also applicable mutatis mutandis to the qualifying service for the purpose of pension we feel that we should leave it to the Commissioner, School Education Department to take a decision on this point taking into consideration the past precedence, if any.

9. In deciding the matter, the Commissioner shall not influence by the observation made by the learned Single Judge or by this order in disposing of the appeal.

10. On such consideration, we set aside the order under appeal and direct the Commissioner of School Education Department to consider the request of the President of the Managing

Committee of the school dated 8th July, 2020 and 6th December, 2022.

11. It would be open for the petitioner to make a separate representation to the Commissioner, School Education Department, within 10 days from date, if he so desires.

12. If the representation is made, we request the Commissioner to pass a reason order after giving an opportunity of hearing to the petitioner within four weeks from the date of such representation and the reason order shall be communicated to the petitioner within a week thereafter.

13. On such consideration, the appeal being MAT 1061 of 2023 stands disposed of along with CAN 1 of 2023.

14. Urgent Photostat copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Smita Das De, J.)

