

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

W.P.A No. 17247 of 2021

**Madhabi Mukherjee
Vs.
The State of West Bengal & Ors.**

For the Petitioner

: Mr. Malay Bhattacharyya,
: Mr. Subhrajyoti Ghosh.

For the State

: Mr. Bhaskar Prasad Vaisya, Id.A.G.P.,
: Ms. Suman Dey.

Heard on

: 29/01/2025

Judgment on

: 29/01/2025

Rai Chattopadhyay, J. :-

1. The petitioner was appointed as a Headmistress of the Nivedita Balika Bidyapith (Higher Secondary), at Howrah, in terms of recommendation of the West Bengal School Service Commission dated July 11, 2014. Before that, the petitioner has been working as an Assistant Teacher of Asansol Agabeg Municipal High School at Deopara, Asansol, Paschim Bardhaman. The petitioner continued to serve in Nivedita Balika Bidyapith (Higher Secondary) school for the rest of her service life as the Headmistress, drawing the pay

scale, in terms of the ROPA rules as applicable to her. On the verge of her retirement, she has claimed that her past service in the Asansol Agabeg Municipal High School should be recognized for granting her the enhanced pay scale as well as for consideration of adequate qualifying service period for herself, for grant of pension. To this effect, the petitioner has, however not been able to show any existing rules, which might have granted her entitlement, so that the past service in the said school namely, Asansol Agabeg Municipal High School, under control of municipality could have been considered as the qualifying service of the petitioner. In this regard, the Court is inclined to note the vacancy notification by dint of which the petitioner's selection process had proceeded earlier. The same mentions that essential qualification would be ten years' continuous teaching experience on the date of advertisement in approved service in a Higher Secondary School/High School/Jr. High School recognized by the West Bengal Council of Higher Secondary Education/West Bengal Board of Secondary Education or equivalent.

- 2.** Mr. Malay Bhattacharyya, learned advocate appearing for the petitioner has referred to the employment notification of the 12th Regional Level Selection Test (HM) 2012, to say that one of the essential qualification for an incumbent to be eligible for the post of Headmaster/Headmistress is that he should complete 10 years continuous service in a school recognised by the West Bengal Council of Higher Secondary Education/ West Bengal Board of Secondary Education or equivalent. Therefore, according to Mr.

Bhattacharya, the petitioner, who indisputably has completed 10 years of continuous service in Asansol Agabeg Municipal High School which is a recognised school, should be considered having served a total period, including the past service in the said school. He further, says that the petitioner having served in a school recognised by the West Bengal Council of Higher Secondary Education, her past service should be taken into consideration, firstly for granting her commensurate scale of pay and secondly, for considering her service period in the earlier school as an Assistant Teacher as the qualifying service period, to be eligible for pension.

3. Mr. Malay Bhattacharyya, would rely on a judgment of this Court in ***Ram Briksha Singh vs. State of West Bengal*** reported in ***(2011) 3 CHN 835***, in which, the Court has recognized the past unapproved service period of the petitioner to be the qualifying period, for the petitioner, to be eligible for pension. Similar treatment has been sought for as regards the present petitioner is concerned.
4. Mr. Suman Dey, has appeared for the State respondent. He would say that after appointment as the Headmistress of a school, the petitioner would be governed by the ROPA rules and she has been paid salary in accordance with the same. So far as the previous service in the Asansol Agabeg Municipal High School is concerned, according to Mr. Dey, the same being unapproved service period of the petitioner, cannot be considered for either grant of pay scale to the petitioner, which is not commensurate with the

ROPA rules, or for considering the said period of service of the petitioner to be qualifying and eligible for grant of pension, as mentioned earlier. As regards the petitioner's claim for recognition of her past service period, he says that the same would be dehors the rules.

5. Let, the essential qualification in the vacancy notification be quoted for benefit on discussion:

“(ii) ten years’ continuous Teaching Experience on the date of advertisement in approved service in a Higher Secondary School/High School/Jr. High School recognised by the West Bengal Council of Higher Secondary Education/West Bengal Board of Secondary Education or equivalent”.

6. Therefore, an Assistant Teacher with 10 years continuous teaching experience in approved service in a Higher Secondary School/High School/Jr. High School recognised by the West Bengal Council of Higher Secondary Education/West Bengal Board of Secondary Education or equivalent would be eligible for applying for the post of Headmaster/Headmistress. The aforementioned essential criteria would necessarily mean and imply that the incumbent has to have 10 years’ experience as an approved teacher in a recognised school. The aforesaid essential qualification has been interpreted and put forth on behalf of the petitioner that the criteria as above has two parts, first the approved service and secondly in a recognised school, has to be read disjunctively. The petitioner has read the same in the manner that she would either have to be

in an approved service or in a recognised school whereas the criteria stipulated was for an approved service in a recognised school.

7. Undisputedly in this case, the petitioner's past service is in a Municipal school not approved by the concerned department of the State. Since after appointment as a Headmistress the petitioner has been enjoying pay band PB-4A (15600-42000) with Grade Pay Rs.5400 in terms of the relevant ROPA Rules/pay band.
8. According to the prevalent ROPA Rules the petitioner after being appointed as the Headmistress has been granted the stipulated pay scale along with the pay band. In absence of any rules so existing which may entitle the petitioner to continue with the pay scale of her past service, after being appointed as a Headmistress, the petitioner could not have claimed for grant of benefit in continuation and commensurate to her past service instead of what has been stipulated for the post of head mistress in the ROPA Rules, governing her service as the Headmistress.
9. Hence, the petitioner's prayer in the present writ petition appears to be not maintainable in absence of being supported by any statutory provision.
10. In such circumstances, the Court is constrained to find that the writ petition is devoid of any merit and thus, is inclined to dismiss the writ petition.
11. The writ petition being WPA 17247 of 2021 is dismissed.

- 12.** Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)

Hansda/p.a