

16.06.2025
SI No.12
Court No.8
(gc)

**MAT 1408 of 2024
CAN 1 of 2025**

**Chayan Thandar
Vs.
The State of West Bengal & Ors.**

Mr. Bidhan Biswas	...for the Appellant.
Mr. Jayanta Samanta, J.G.A, Mr. Sanjib Das	...for the State.
Mr. Kunal Ganguly	...for the WBBSE.
Dr. Sutanu Kr. Patra, Ms. Supriya Dubey	...for the WBCSSC.

Soumen Sen, J. (Oral)

1. The claim for payment of arrear salaries for the period from March 12, 2010 to July, 2023 was not fully allowed by the learned Single Judge as it has restricted the claim towards arrear salary for the period from October, 2021 to July, 2023, has been challenged in this appeal. The writ petitioner was appointed as a Group-D staff at Guskara Balika Vidyalaya, Ausgram, District- Puba Bardhaman (hereinafter referred to as the “said school”). The writ petitioner alleged that on and from March 12, 2010, he could not attend the said school due to obstruction by some antisocial elements. However on transfer, he joined the Banagram High School, Nanur, District – Birbhum on October, 2021,

but in the said school, he started receiving salary on and from August, 2023. It was on such consideration, the writ petition was filed praying for the aforesaid relief.

2. The learned Counsel appearing on behalf of the writ petitioner has submitted that the writ petitioner was unable to attend the said school due to various obstructions being created would be evident from the order dated 14th January, 2013 in WP 27878 (W) of 2012 in which the Commissioner of School Education, West Bengal (Secondary Branch) was directed to conduct an enquiry in the matter and to transfer the petitioner to a school at a suitable place, in the event he finds substance in the reasons shown by the petitioner for his absence from the school under reference. The Commissioner of School Education, West Bengal (Secondary Branch) was further directed to take such decision within a specified period. In the previous writ petition, the decision was regard to an order dated 3rd October, 2012 passed by the District Inspector of Schools (S.E.), Birbhum. The grievance of the petitioner in the previous writ petition was that he was not allowed to attend his duties and he was not in a position to stay in his residence due to disturbance created by

the antisocial elements till October 13, 2009. He prayed for his transfer to some other schools for ensuring regular attendance of his duties as also for releasing his salary during the period of his absence. The decision of the D.I. challenging the previous writ petition was found to be suffering from non-application of mind and in this regard the Hon'ble Judge has held as follows:-

“Having heard the learned Counsel appearing for the respective parties as also after considering the fact and circumstances of this case, I find that the impugned order suffered from non application of mind so far as the prayer for transfer of the petitioner to some other school was concerned. The above order restricted to the issue of releasing the salary to the petitioner during his absence.”

3. Thereafter, the direction was passed. However, neither in the previous writ petition nor the writ petition preceded the said writ petition, the prayer for release of salary was explicitly dealt with or any direction was given for payment of arrear salary consequent upon such decision being taken. Pursuant to the aforesaid direction dated 14th January, 2013, the Commissioner, School Education passed an order on 6th January, 2014, it appears from the enquiry report that the writ

petitioner is a Group-D staff of the school and he could not attend the school from 13.10.2009 due to disturbance from some antisocial elements. This enquiry report shows that there has been no wilful abstinence on the part of the petitioner since 13.10.2009. The Commissioner of School Education thereafter directed the Central School Service Commission to consider the prayer for transfer of the petitioner in terms of the existing rules. It is not clear from the document available on record that the petitioner is ever exercised any option for transfer soon thereafter. However, it appears that the Headmaster of the school issued a no-objection certificate for applying for transfer made on 10th September, 2018. Hence, it clears that almost for four years, he did not exercise any option for transfer. Thereafter, on 29th March, 2019, the application of the petitioner was forwarded to the Chairman, West Bengal School Service Commission (Eastern Region) along with relevant papers for consideration. On 3rd November, 2021, the said school issued a 'No Litigation' certificate and released the writ petitioner on 20.09.2021 in compliance with transfer order dated 27.08.2021 issued by the

West Bengal Central School Service Commission. The teacher-in-charge of the school on 20.09.2021 issued a release certificate in order to enable him to attend the present school.

4. The learned Single Judge has proceeded on the basis that in the earlier litigation, the prayer for salary was impliedly rejected. However, what it appears now from record is that on 6th January, 2014, an enquiry report supports the petitioner's case for consideration of his prayer for release of salary since 13th October, 2009. This issue now came up for consideration before any of the earlier Benches as the said decision was arrived at subsequent to the disposal of the writ petition. It is only after the disposal of the said writ petition on 6th January, 2014 the writ petitioner could have approached the court for release of arrear salary for the period he was prevented from joining his duty. Hence, the petitioner would have a claim for release of salary since October, 2009 till January, 2014. Thereafter, the consideration for salary would arise once he is exercised his option in terms of the communication dated 26th February, 2020. It appears that on 19th March, 2020, five schools have been offered.

However, we do not find any document whether he appears to have exercised such option. However, it appears that the writ petitioner has prayed for no-objection certificate for applying for transfer on 10th September, 2018. Thereafter, due to lack of documents, the materials made available by the Commission to enable to come to a definite finding as to whether the petitioner would be entitled to the arrear salary for the remaining period as claimed in the writ petitioner. The writ petitioner was asked to exercise option and pursuant thereof on 19th March, 2021 he has exercised option for two schools and he ultimately joined his present school on 5th October, 2021.

5. Accordingly, we admit the claim for salary of the writ petitioner since October, 2009 till January, 2014. We are of the view that he is not entitled to any arrear salary till September, 2018 when he submitted his application for transfer. However, for the remaining period forming the subject-matter of the appeal, we direct the respondent no.2 to take a decision on verification of all record.
6. The Commissioner of School Education shall direct the presence of all the parties necessary to decide the said issue including the school

authorities within a period of eight weeks from the date of communication of this order.

7. Insofar as the arrear salary is concerned, that is to say, from October, 2009 till January, 2014, the respondent no.3 shall ensure that the arrears of salary are released within eight weeks from the date of communication of this order.
8. Accordingly, the appeal and the connected application are disposed of.
9. However, there shall be no order as to costs.
10. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Smita Das De, J.)