

10.03.2026
Sl. No.10
Ct. No.14
gd

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

WPA/846/2026

NISHAKAR CHAKRABORTY
VS
STATE OF WEST BENGAL AND ORS.

Mr. Sourav Mitra
Ms. Sreyasree Choudhury
... for the petitioner.

Mr. Mohan Kumar Sanyal
Mr. Abhijit Ghosh
... for the State.

Mr. Ranjan Saha
... for the DPSC, Paschim Medinipur.

1. By the present writ petition the petitioner seeks for cancellation and/or withdrawal of the letter under Memo No.7988/LS dated 25th January, 2017 of respondent no.4, Chairman, District Primary School Council, Paschim Medinipur, and letter under Memo No.360/P dated 12th April, 2017 of respondent no.5, District Inspector of Schools (Primary Education), Paschim Medinipur.
2. The petitioner contends that he was an Assistant Teacher of Pathrajuri Primary School, District – Paschim Medinipur. While in service on 13th June, 2011 the petitioner was arrested by the police authorities in connection with Salboni Police Station Case No.18 of 2010 (arising out of G.R. Case No.228 of

2010) under Sections 323/341/365/366/427 of the Indian Penal Code (*In short, 'IPC'*) and was detained in custody. Pursuant thereto, the petitioner was suspended from service due to allegation of involvement in criminal offence and detention in custody for more than 48 hours with effect from 13th June, 2011. The petitioner was enlarged on bail on 14th July, 2011. Thereafter petitioner approached the authority concerned, namely, Chairman, District Primary School Council, Medinipur seeking permission to join.

3. Since the petitioner was not allowed to join, he filed a writ petition being WP 29277(W) of 2014 which was disposed of on 27th November, 2014 as follows:-

"Having regard to the fact that the petitioner has been paid subsistence allowance out of public exchequer without extracting any work from him for the last three years, although he may not have been involved in any offence relating to official discharge of duties, this writ petition stands disposed of with a direction upon the Chairman of the Council, respondent no. 4 to consider the desirability of revoking the order of suspension against the petitioner bearing in mind the above.

Let the Chairman take an appropriate decision upon hearing the petitioner as early as possible but not later than four weeks from date of receipt of a copy of this order.

If the petitioner's claim deserves acceptance, follow up steps in accordance with law shall be taken without delay. On the contrary, if the order of suspension is to be continued, a reasoned order shall be passed and communicated to him."

4. Pursuant thereto, by an order dated 30th March, 2015 the Chairman of the Council expressed his inability to withdraw the order of suspension.
5. The aforesaid order of Chairman of the Council was challenged before this Court by way of a writ petition being WP 25465(W) of 2016. The said writ petition was disposed of on 25th November, 2016 with the following direction:

“Accordingly, I direct the respondent no.4 to revoke the suspension order in respect of the petitioner so as to allow him to join on November 30, 2016 i.e. the date of his superannuation. It is entirely up to the school authorities whether to

assign any class to the petitioner or not and I make no direction in that regard. This order is

passed on humanitarian grounds so that the retiral benefits of the writ petitioner are not adversely affected.

The respondent no.5 shall prepare the pension papers of the petitioner after proper fixation treating November 30, 2016 as the date of superannuation within a period of six weeks from the date of communication of this order and forward the same to the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal.

Upon receipt of the pension papers, the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal shall issue necessary pension payment order in accordance with law and the applicable rules as expeditiously as possible.”

6. Pursuant thereto, the order of suspension was revoked by the Chairman, District Primary School Council, Paschim Medinipur on 29th November, 2016. However, by letter dated 25th January, 2017 the Chairman of the Council informed the Sub-Inspector of Schools, Sadar North Circle, Salboni, Paschim Medinipur that the last pay of the petitioner shall be the pay drawn prior to suspension order i.e. before 13th June, 2011. The suspension period was also excluded from qualifying service vide letter dated 12th April, 2017 of District Inspector of Schools (P.E.), Paschim Medinipur. Challenging the aforesaid action of the respondent authorities, the petitioner has filed the present writ petition.
7. Mr. Sourav Mitra, learned Advocate appearing for the petitioner submits at the very outset that since the criminal case is pending, the petitioner at present is not claiming any arrears from the date of his

suspension till the date of retirement. The fixation of pension has been done taking into consideration the pay drawn prior to date of suspension. However, as per the order passed in the earlier writ petition being WP 25465(W) of 2016 the fixation ought to be done by the District Inspector of Schools taking the pay as on the date of superannuation. In terms of the aforesaid order passed by the writ court, the order of suspension has been revoked from the date of its issuance. Therefore, the pay fixation ought to be made by the respondent authorities as on the date of his superannuation. Rule 7(g) of Memorandum No.136-Edn. (B) dated 15th May, 1985 clearly provides that upon reinstatement the period of suspension should be counted as qualifying service provided it is treated as duty. Furthermore, the pendency of the criminal case not related to the extent of service does not and cannot disentitle the delinquent from getting the pensionary benefits. In support of his contention, he relies on the following decisions of this Hon'ble Court:

- (i) ***Anadi Prasad Mahato versus State of West Bengal & ors.*** reported in ***2014(2) CHN (CAL) 103***;
- (ii) ***(Khalip Ansary versus The State of West Bengal & ors.) WPA 13596 of 2022***; and
- (iii) ***Niranjana Mahato versus State of West Bengal*** reported in ***2023(1) CHN (Cal) 539***.

In light of his aforesaid submission, he prays for appropriate order directing the respondents for proper

fixation taking the pay as on the date of superannuation.

8. On the contrary Mr. Mohan Kumar Sanyal, learned Advocate appearing for the State-respondents submit that the petitioner's period of suspension cannot be counted as a qualifying service since it has not been treated as on duty. Furthermore, since 2017 when the order was passed by the District Inspector of Schools (Primary Education), Paschim Medinipur excluding the suspension period from qualifying service the petitioner neither approached this Court nor has made any representation. As such the petitioner has admitted the calculations and fixations made by the respondent authority. There is considerable delay in approaching this court and as such the petitioner has acquiesced his right to challenge the orders passed by the authority. He seeks for dismissal of the writ petition.
9. *Per contra*, Mr. Mitra, learned advocate for the petitioner submits that delay cannot defeat a valuable right accrued in favour of the petitioner.
10. In order to examine the aspect of delay, it would be apposite to reproduce the observation of Hon'ble Supreme Court in ***Union of India and Others versus Tarsem Singh*** reported in ***(2008) 3 SCC 648*** as follows:

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related

claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

11. Though there is delay in making such claim, however, delay *per se* cannot defeat the valuable right of the petitioner. Relief may be granted to the writ petitioner in spite of the delay if it does not affect the right of third parties. [See: *Tarsem Singh (supra)*]. As such the writ petition is sustainable despite there being delay.
12. At the very outset this court is in consonance with Mr. Mitra, learned Advocate for the petitioner that pendency of the criminal case which has got no nexus with the service of the petitioner cannot stand in the way of grant of terminal benefits to the petitioner as held in the cited decisions.
13. Upon considering the entire facts and circumstances of the case, a Coordinate Bench of this court in WP 25465(W) of 2016 directed the respondent authorities to revoke the order of suspension and to prepare the pension papers of the petitioner after proper fixation treating 30th November, 2016 as the date of superannuation. Pursuant to such order, the Chairman, District Primary School Council, Paschim

Medinipur on 29th November, 2016 has revoked the order of suspension from the date of issuance of the Memo. Meaning thereby the order of suspension has been revoked from the date of its initiation. The order of revocation dated 29th November, 2016 is silent that the period of suspension is not treated to be as duty. Be that as it may, as the order of suspension is revoked from the date of its issuance and in the absence of any specific finding/observation of the authority not to treat such period as on duty, entitle the petitioner to proper fixation of pay as on date of superannuation. The exclusion of suspension period from qualifying service has been passed on 12th April, 2017 subsequent to the order of revocation. Rule 7(g) provides that the period of suspension followed by reinstatement is to be counted as qualifying service provided it is treated as duty. Thus, considering the earlier order passed in the writ petition for fixation of pay treating 30th November, 2016 as the date of superannuation and in the absence of specific recording in the order of revocation that the period of suspension upon reinstatement shall not be treated as on duty, this court is of the view that for proper fixation of pay of the petitioner, the pay as would be on the date of superannuation is to be considered taking the period of suspension as qualifying service.

14. Accordingly, the letter under Memo No.7988/LS dated 25th January, 2017 of respondent no.4, Chairman, District Primary School Council, Paschim Medinipur,

- and letter under Memo No.360/P dated 12th April, 2017 of respondent no.5, District Inspector of Schools (Primary Education), Paschim Medinipur are set aside.
15. The respondent no.5, District Inspector of Schools (Primary Education), Paschim Medinipur is directed to make proper fixation treating the pay as on the date of superannuation i.e. 30th November, 2016 in favour of the petitioner within a period of six weeks from date of communication of this order. All consequential benefits including arrears following the date of superannuation of the petitioner shall also be released as expeditiously as possible.
 16. Learned advocate for the petitioner is directed to communicate this order to the respondent no.5, District Inspector of Schools (Primary Education), Paschim Medinipur, for necessary action.
 17. With the above direction, the writ petition being **WPA 846 of 2026** stands disposed of.
 18. Since no affidavits have been called for, the allegation made in the writ petition is deemed to be not admitted.
 19. Interim order, if any, stands vacated.
 20. All connected applications, if any, stand disposed of.
 21. There shall be no order as to costs.
 22. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.
 23. Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)