

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 8866 of 2023

Brahmadeo Yadav

v.

The State of West Bengal & Ors.

with

WPA 16799 of 2011

Managing Committee of Sohanlal
Deoralia Balika Vidyalaya

v.

The West Bengal Board of Secondary
Education & Ors.

Mr. Ekramul Bari

Mr. Imtiaj Uddin

... For the petitioner in WPA 8866 of 2023
& for the respondent no. 5 in
WPA 16799 of 2011

Mr. Sukumar Bhattacharyya

Ms. Piyali Shaw

... For the petitioner in WPA 16799 of 2011

Mr. Sukumar Bhattacharyya

Ms. Puja Sonkar

... For the respondent nos.7 & 8
in WPA 8866 of 2023

Mr. Gausul Alam

Mr. Md. Yusuf Ali

... For the State in WPA 8866 of 2023

Ms. Koyeli Bhattacharyya

Mr. Bibek Dutta

... For the WBBSE

1. The writ petitioner in WPA 8866 of 2023, Brahmadeo Yadav, is a retired Class-IV staff of the school. A disciplinary proceeding was initiated against him in the year 2008. The school sought permission

from the West Bengal Board of Secondary Education to initiate proceeding against the employee.

2. In contemplation of initiating a disciplinary proceeding, the school issued a show-cause notice which was duly replied by the petitioner/employee. Challenging the act of the school, the employee preferred an appeal before the Board.

3. Vide order dated 27th July, 2009, the Board directed the District Inspector of Schools (Secondary Education), Howrah to hold an enquiry and submit a report and in the meantime, status quo was directed to be maintained in respect of the job of the petitioner until further order.

4. The enquiry as directed to be conducted was not done. Vide order dated 11th August, 2011, the Board disposed of the appeal preferred by the employee by holding that the employee is supposed to render service during the normal school hours as Class-IV staff. The Managing Committee of the school was requested to allow the employee to join the school and to pay arrear salary within a month with effect from 9th April, 2008.

5. Challenging the order of the Board, the school preferred the writ petition being WPA 16799 of 2011. Though the school challenged the order of the Board but simultaneously the school permitted the employee to join and render his services without raising any objection. The salary of the employee was, however,

paid from the date of his joining but not from the date as directed by the Board. The employee retired from service on attaining his normal age of superannuation on 30th June, 2022.

6. WPA 8866 of 2023 has been filed by the petitioner seeking for a direction upon the respondent authorities to release his terminal dues. The admissible gratuity and provident fund have, however, been paid to the petitioner but pension has not been paid till date.

7. From the report forwarded by the District Inspector of Schools (S.E.), Howrah dated 27th January, 2026, it appears that the pension file of the petitioner has been made ready and vetted by the DDA Accounts (SE), Howrah and forwarded to the Commissioner of School Education on 16th July, 2024.

8. It is evident from the records available before the Court that the school was not vigilant enough to proceed with its writ petition. The writ petition stood dismissed for default on 24th June, 2022. Prior thereto, order was passed in the said writ petition on 14th March, 2012 directing the parties to exchange affidavits and the matter was due to appear in the list on 26th April, 2012. Affidavit-in-opposition by the employee was served on the school and the affidavit-in-reply by the school is being filed in Court today. The writ petition stood restored vide order dated 4th March, 2024.

9. Both the matters, one filed by the school in 2011 and the other by the employee in 2023 are being taken up for consideration analogously today and are being disposed of as hereinbelow.

10. According to the school, the Board does not have the authority to pass any order in respect of the disciplinary proceeding initiated by the school against the employee as the school is a DA getting school.

11. In support of such submission, learned advocate for the school relies upon the order passed by the Court on 27th June, 2022 in WPA 16235 of 2021 (Mukesh Chand Kaushik -vs- State of West Bengal & Ors.) wherein the Court held that the State has no control over the disciplinary action, appointment, confirmation, conduct and discipline of teaching and non-teaching staff of a DA getting school.

12. Learned advocate representing the employee opposes the submission of the school.

13. It has been submitted that the employee was permitted to act in accordance with the direction passed by the Board and was also permitted to retire on attaining his age of superannuation. It has been further submitted that as the school accepted and acted in terms of the order passed by the Board, the terminal benefits of the employee should be paid.

14. It has also been submitted by the employee that the issue of lack of jurisdiction by the Board has not been pleaded in the writ petition. Had the Board

lacked jurisdiction, then the school ought not to have approached the Board for obtaining permission to initiate disciplinary proceeding against the employee.

15. Learned advocate representing the Board submits that the ratio laid by the Court in the matter of *Mukesh Chand Kaushik (supra)* cannot be made applicable in the facts and circumstances of the instant case. According to the Board, there has been an amendment in the Management of Recognized Non-Government Institution (Added and Unaided) Rules, 1969. The West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Disciplinary Proceeding of the Teachers and Non-Teaching Staff) Rules, 2018 came into effect in the year 2018. The proceeding in the instant case was initiated in the year 2008 and accordingly 2018 Rules will have no manner of application in the instant case.

16. Upon hearing the submissions made on behalf of all the parties and on perusal of the materials on record, it appears that the action taken by the school in initiating the disciplinary proceeding against the petitioner was not approved by the Board. The Board not only directed the school to allow the employee to join but also directed the school to pay his arrear salary with effect from 9th April, 2008.

17. Though the school permitted the employee to join without raising any objection, but did not pay his salary from the date as was directed by the Board.

The school merely filed the writ petition in the year 2011, but did not take vigilant steps to obtain any order of stay of the order passed by the Board.

18. In the meantime, considerable period has elapsed and the employee has retired from service way back in 2022. It will be highly improper if the retired employee does not receive his terminal dues due to the pendency of the writ petition filed by the School in the absence of any interim order to that effect.

19. The employee remained in service for more than a decade after filing of the writ petition by the school. Had the school been genuinely aggrieved by the order of the Board, then prompt necessary steps ought to have been taken to obtain stay of the said order. The lackadaisical conduct of the school does not merit interference by the Court at such a belated point of time in the writ petition filed by the school.

20. In view of the above, WPA 16799 of 2011 stands dismissed. WPA 8866 of 2023 stands allowed.

21. The school is directed to adopt appropriate resolution for regularizing the period of absence of the petitioner from school, keeping in mind the direction passed by the Board on 11th August, 2011.

22. The arrear salary of the petitioner in terms of the order passed by the Board shall be released without any further delay.

23. The District Inspector of Schools (Secondary Education), Howrah is directed to take prompt

necessary steps and ensure that the pension file of the employee is processed and forwarded to the DPPG for issuance of Pension Payment Order in his favour positively by 30th April, 2026 and the amount mentioned in the PPO is disbursed without any further delay.

24. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

25. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Amrita Sinha, J.)