

253
16.01.2025
Court No. 25
D.Hira

WPA 30626 of 2013

Tripti Sankar Ghosh

Vs.

The State of West Bengal & Ors.

Mr. Ekramul Bari,

Sk. Imtiaj Uddin.

... for the petitioner

1. The petitioner has challenged in this case the order of the Director of School Education, West Bengal dated April 6, 2010, thereby holding that the petitioner has a break in service and his entire period of service cannot be accepted to be counted for grant of pensionary benefit to him.
2. The petitioner was inducted in service as an Assistant Teacher in the Government Aided respondent School on March 1, 1971 and since thereafter, worked therein till August 30, 1982.
3. Immediately, thereafter on August 31, 1982, he joined as an Assistant Teacher at Fertilizer High School of Hindustan Fertilizer Corporation Limited, Durgapur Unit and worked up to February 16, 2000.
4. Subsequently, he joined as Headmaster in another government aided school/respondent no. 9 with effect from February 17, 2000 and retired therefrom on attaining age of superannuation on May 31, 2010.
5. The school Fertilizer High School in which the petitioner served for the period from August 31, 1982 to February 16, 2000, has been a recognized unaided school.

6. Thus, the Director of School Education, West Bengal in the impugned order has held that the period of service of the petitioner in the Fertilizer High School, which has been an unaided recognized school, should not be taken into consideration as the eligible service period of the petitioner, for the purpose of calculating the total eligible period of service of him, for grant of pension.
7. It is further held in the said impugned order that the petitioner having resigned from the post of assistant teacher from respondent no. 8 and thereafter, having joined an unaided school, the said period of his service should be subtracted from his total service life, for the purpose of reckoning of the actual service period of the petitioner.
8. Mr. Bari, learned counsel for the petitioner has relied on the provision of Clause 7(k) of Chapter III of the West Bengal Recognized Non-Government Educational Institution Employees (Death-Cum-Retirement Benefit), Scheme, 1981 (in short “DCRB Scheme, 1981”), to submit that resignation, if any, tendered by the petitioner should not be considered as simplicitor for forfeiture of his past service.
9. In view of the proviso in the said provision, he would say that the past service of the incumbent would not entail forfeiture if, the resignation and the subsequent new appointment of the said incumbent under another educational institution has been with proper permission.

10. So far as the petitioner is concerned, according to him, the said condition as per the said statutory provision, has been duly fulfilled.
11. Hence, according to the same, the petitioner's service period would not be liable to be forfeited, he says.
12. In this regard, he has relied on a judgment of this Court dated August 30, 2024 in WPA no. 18649 of 2024 (**Ashis Mondal vs. The State of West Bengal & Ors.**).
13. Mr. Bari, has further submitted by referring to the G.O. No. 180-Edn.(B)/IM-83/88 dated May 20, 1988 that the petitioner having served in the recognized unaided institution but ultimately retired from the aided institution which was not a D.A. getting school, would be entitled for grant of pensionary benefits after counting the cumulative period of his service in all the institutions, in which he has served.
14. None appears for the State respondent in this case.
15. In view of the facts and circumstances of the case, the same is taken up for adjudication, in absence of the State respondent.
16. It is pertinent to note that the provision under Clause 7(k) of Chapter III of the DCRB Scheme, 1981, which is as follows:-

“7(k). Resignation tendered by an employee or his dismissal or removal entail forfeiture of past service – Provided that resignation of an employee for taking another appointment under any educational institution with proper permission shall not entail forfeiture of past service”.

- 17.** According to the same, the resignation tendered by an employee should result into forfeiture of his past service.
- 18.** This general rule has however, an exception carved out under the 'proviso', that is, resignation for taking another appointment under any educational institution with proper permission, shall not entail forfeiture of past service.
- 19.** So far as the present petitioner is concerned, he was initially appointed in respondent no. 8 on March 1, 1971. After resignating therefrom, he has joined the unaided school, namely, Fertilizer High School with effect from August 31, 1982 and finally the petitioner has retired from respondent no. 9 school, on May 31, 2010.
- 20.** The record however, has not revealed that such change of the school by the petitioner from respondent no. 8 to Fertilizer High School has not been done in accordance with due permission of the concerned authorities.
- 21.** Under such circumstances, the Court finds that the provisions laid down under 'proviso' to Clause 7(k) of Chapter III of DCRB Scheme, 1981 would be squarely applicable in case of the writ petitioner.
- 22.** In such view of the fact, the finding of the Director of School Education, West Bengal in his order dated April 6, 2010 that the petitioner having resigned from his first school and joined in an unaided school, thereafter, would not be eligible for calculating the period of his past service in his total service life for the purpose of grant of pensionary benefits to him,

appears to be misconceived and not in terms of the Rules, as mentioned above.

- 23.** So far as the G.O. No. 180-Edn.(B)/IM-83/88 dated May 20, 1988 as mentioned above by Mr. Bari is concerned, the relevant provision thereof, be extracted hereinbelow:-

“2. While forwarding the pension case to the Directorate of Pension, Provident Fund, and Group Insurance, West Bengal, the Pension Sanctioning Authority will have to certify accordingly in the service book of the incumbent concerned that the employee concerned served in a recognized institution and retired from an aided institution (other than only D.A. getting school)”.

- 24.** In accordance with the same, the service of the petitioner in a recognized institution and retiring from an aided institution which may not be a D.A. getting school, would suffice in order to consider the service period of the petitioner, for the purpose of granting him the retiral benefits.
- 25.** Hence, on the basis of the discussion as above, the Court finds that the reasons as cited in the impugned order dated April 6, 2010 by the Director of School Education, West Bengal are unfounded and in derogation of the statutory provision.
- 26.** The impugned order therefore, would not be sustainable and would be liable to be set aside being de hors the provisions of law.
- 27.** Hence, the writ petition is being disposed of with the following directions:-

- (i). Impugned order dated April 6, 2010 by the Director of School Education, West Bengal be set aside.
 - (ii). Let the revised pension payment order be issued immediately to the petitioner, by the respondent no. 4 by taking into reckoning, the entire service period of the petitioner starting from May 1, 1971 to the date of his superannuation that is, May 31, 2010.
 - (iii). The petitioner shall be immediately paid with the pension, in accordance with law.
 - (iv). The arrear amount of pension, be immediately released to the petitioner.
 - (v). The entire exercise as above should be concluded by the said respondent within a period of four weeks from the date of communication of copy of this order.
- 28.** Since no affidavit is invited, the allegations contained in the petition are deemed to have been denied by the respondents including the private respondents.
- 29.** With the above observations and directions, the writ petition being WPA 30626 of 2013 is disposed of, along with the pending applications, if any.
- 30.** Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)