

Constitutional Writ
PRESENT: The Hon'ble Mr Justice Jayanta Kumar Biswas
Judgment on : February 17, 2010.

The Hon'ble Mr Justice Jayanta Kumar Biswas
W.P. No.3528 (W) of 2008
Sri Ram Briksha Singh
v.
The State of West Bengal & Ors.

Point:

QUALIFYING SERVICE: Employee was in service in educational institute other than the ones mentioned in DCRB Scheme, 1981-Whether the Government is empowered to count the service as qualifying service for pension under the scheme- West Bengal Recognised Non-Government Educational Institutions Employees (Death-cum-Retirement) Benefit-Scheme, 1981, Paragraph 5 & 7.

Fact: The petitioner by filing the instant writ application has challenged the decision of the Government whereby service given by the petitioner to Ishapore Rifle Factory High School from December 13, 1984 to October 30, 1995 had not been taken into account as qualifying service for pension under the DCRB Scheme, 1981.

Held:

Ishapore Rifle Factory High School was an institute recognised by the West Bengal Board of Secondary Education, but pay and allowances of its employees were not borne by the state government. It was not an educational institute within the meaning of the provisions of the scheme. Hence the petitioner had no right to claim that his service therein should count as qualifying service for pension under the scheme. Paragraph – 10

No provision of law empowered the government to count an employee's service in any educational institute other than the ones mentioned in para.5(b) for pension under the scheme. Clause (k) of para.7 only provides that resignation tendered by an employee entail forfeiture of past service provided that resignation for taking another appointment under any educational institute with proper permission shall not entail forfeiture of past service. Paragraph – 11

Ishapore Rifle Factory High School was not an educational institute within the meaning of the provisions of the scheme. It means that the petitioner did not resign from the services in Gandhi

Vidyalaya Primary School for taking another appointment in an educational institute within the meaning of the provisions of the scheme. Therefore, it cannot be said that the government was wrong in saying that the period in question would not count as qualifying service for pension.

Paragraph – 12

Mr Jamini Banerjee, senior advocate, with Mr Jayanta Kumar Das, advocate, for the petitioner. Mr Kanai Lal Samanta and Ms Nabanita Pal, advocates, for the state.

The Court: - 1. The petitioner in this art.226 petition dated February 22, 2008 is questioning the following decision of government communicated by the Joint Secretary, School Education Department (Budget Branch), Government of West Bengal by his letter dated February 15, 2007, Annexure P13 at p.62:

“Govt. in the School Education Deptt. have agreed to count the service rendered by Shri Rambriksha Singh under Gandhi Vidyalaya for the period from Sept.’79 to December ’84(the period covered by the C.P.F. scheme) with his service under the Raghmal Arya Vidyalaya towards computation of his pensionary benefits, treating his service period in Ichapore Rifle Factory School as ‘ dies non’.

This order issues with the concurrence of the Finance Deptt. Vide their u/o No. Group ‘P’ (Pen) 107 dated 08.02.07 and cancels this deptt.’s previous Memo No.382-SE(B) dated 27.10.2005.”

2. During the period from September 1, 1968 to October 30, 1973 the petitioner worked as an approved assistant teacher in Gandhi Vidyalaya Primary School in Barackpore of the district North 24 Parganas. With effect from November 1, 1973 his appointment as headteacher of the primary school was approved by the District Inspector of Schools (P.E.) North 24 Parganas. He worked as such in the primary school till December 12, 1984 with effect from which date he resigned from the services of the primary school. On December 13, 1984 he was appointed as a non-language teacher in Ishapore Rifle Factory High School in Ishapore of the district North 24 Parganas wherefrom he resigned on October 30, 1995.

3. On November 1, 1995 he was appointed as the headmaster in Raghmal Arya Vidyalaya in Kolkata. His appointment in this institute, a recognised non-government aided school, was approved. Having reached the age of superannuation he retired from Raghmal Arya Vidyalaya on November 30, 2001. After retirement he submitted a representation dated September 16, 2002, Annexure P8 at p.56, requesting the Director of School Education, West Bengal to count

his past service including service in Ishapore Rifle Factory High School for determining the length of his qualifying service for pension under the provisions of the West Bengal Recognised Non-Government Educational Institutions Employees (Death-cum-Retirement) Benefit-Scheme, 1981.

4. The matter was considered by the Principal Secretary, School Education Department (Budget Branch), Government of West Bengal who gave his decision dated October 27, 2005, Annexure P10 at p.59.

5. The relevant parts of the decision are quoted below:

“After having considered all relevant aspects, the School Education Department regrets its inability to consider the admissibility of pensionary benefit in favour of Shri Singh for the period from 1.9.1968 to 31.10.1995 in terms of the existing rules. Shri Singh is entitled to have only Gratuity for his service period from 1.11.1995 to 30.11.2001 which is less than 10 years, but his wife will get her family pension after death of Shri Singh as per Rule 23(2) of D.C.R.B.Scheme’ 81.

The service rendered in Gandhi Primary School w.e.f. 1.9.68 to 12.12.84 and Raghukul Arya Vidyalaya from 1.11.95 to 30.11.2001 can not be considered as continuous service qualifying for consideration of admissible benefits.”

6. It is evident that the government reviewed its decision dated October 27, 2005 and issued the impugned decision dated February 15, 2007.

7. According to the Banerjee, counsel for the petitioner, the government ought to have counted the petitioner’s service in Ishapore Rifle Factory High School.

8. Hence the question for decision is whether there is any reason to interfere with the government’s decision that service given by the petitioner to Ishapore Rifle Factory High School from December 13, 1984 to October 30, 1995 shall not count as qualifying service for pension under the scheme.

9. What shall count as qualifying service of an employee governed by the scheme has been stated in para.7 thereof. It provides that continuous service of a whole-time approved employee in any educational institute shall count as qualifying service. According to definition given in para.5(b) educational institute means an institute recognised by the board, council, etc. “and whose pay and allowances are borne by the” state government.

10. Ishapore Rifle Factory High School was an institute recognised by the West Bengal Board of Secondary Education, but pay and allowances of its employees were not borne by the state government. It was not an educational institute within the meaning of the provisions of the scheme. Hence the petitioner had no right to claim that his service therein should count as qualifying service for pension under the scheme.

11. No provision of law empowered the government to count an employee's service in any educational institute other than the ones mentioned in para.5(b) for pension under the scheme. Clause (k) of para.7 only provides that resignation tendered by an employee entail forfeiture of past service provided that resignation for taking another appointment under any educational institute with proper permission shall not entail forfeiture of past service.

12. As I have already noted Ishapore Rifle Factory High School was not an educational institute within the meaning of the provisions of the scheme. It means that the petitioner did not resign from the services in Gandhi Vidyalaya Primary School for taking another appointment in an educational institute within the meaning of the provisions of the scheme. Therefore, it cannot be said that the government was wrong in saying that the period in question would not count as qualifying service for pension.

13. For these reasons, the petition is dismissed. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)