

115. Constitutional Writ

Present: The Hon'ble Justice Jayanta Kumar Biswas.

Judgment On : 19-02-2010.

W.P.No.16601 (W) of 2004

Adya Prasad Bose

-v.-

The Secretary, Department of Education & Ors.

Point: For the retiral benefits arising out of service one is not required to establish that he is an Indian.

Fact: The petitioner by filing the instant writ application has sought for a direction upon the respondents to pay him all retirement benefits including pension.

Held:

A grave injustice has been done to the petitioner. He became entitled to retirement benefits according to the scheme and orders in force. The respondents are not the authorities to examine and decide whether he can be considered an Indian national. For the benefits he is not required to establish that he is an Indian. Para 5

Mr. Ranadeep Sinha, advocate, for the petitioner. Mr. Manatosh Chakraborty, advocate, for the State.

The Court:

1. The petitioner in this art.226 petition dated September 27, 2004 is seeking a mandamus commanding the respondents to pay him all retirement benefits including pension.
2. As will appear from the appointment letter dated June 1, 1969, Annexure P1 at p.17, he was appointed as an Assistant Teacher in Ghola High School in Ghola of the district 24 Parganas with effect from June 16, 1969. It is evident from the order of the Additional District Inspector of Schools (S.E.), 24 Parganas dated November 25, 1978, Annexure P1 at p.18, that his appointment as an Assistant Teacher of Work Education in the institute was "approved temporarily" as from June 1, 1969. On reaching the age of superannuation, as will appear from the institute's notice dated August 3, 2004, Annexure P7 at p.32, he retired from service on January 31, 2005. He has not been paid

any retirement benefits.

3. The respondents have refused to pay him retirement benefits on the ground that he is yet to establish his nationality and produce documents in support of his educational qualifications. It will appear from the certificate dated September 16, 1966,

Annexure P2 at p.19, that in 1966 he had a Bachelor's degree in Commerce from the

Rajshahi University. It is thus evident that in 1966 he was a citizen of the then East

Pakistan, and that migrating to India he obtained the employment in the school in June,

1969. His case is that communal disturbances in the then East Pakistan resulted in his

displacement and migration to West Bengal.

4. I am unable to appreciate the manner in which the respondents treated the petitioner who served the institute uninterruptedly from June, 1969 till January, 2005

when he retired. It is not the case that he was not paid his salary and allowances regularly. He was paid all benefits as an assistant teacher and his pay was revised from

time to time with necessary approvals of the district inspector of schools. I am, therefore,

unable to see what special thing could prompt the respondents to raise the issues concerning his nationality and educational qualifications after his retirement from service.

5. In my opinion, a grave injustice has been done to the petitioner. He became entitled to retirement benefits according to the scheme and orders in force. The respondents are not the authorities to examine and decide whether he can be considered

an Indian national. For the benefits he is not required to establish that he is an Indian.

6. Hence I do not see under what authority the respondents raised the issue. The question

of the petitioner's educational qualifications lost significance the moment he retired from

service. It is nobody's case that he did not have the requisite qualifications for appointment as an assistant teacher.

7. The respondents cannot take advantage of their own lapse that the final approval order was not issued. I am, therefore, of the view that the respondents should

be commanded to pay the petitioner all retirement benefits. Accordingly, I allow the

petition and direct the Director of Pension, Provident Fund and Group Insurance,
West

Bengal to pay the petitioner all retirement benefits calculated on the basis of his
pay at

the date of retirement, within four weeks from the date of communication of this
order,

with interest at the rate of 10% per annum from February 1, 2005 till the date of
actual

payment. No costs. Certified xerox according to law.

(Jayanta Kumar Biswas, J.)