

(1995) 06 CAL CK 0020**Calcutta High Court****Case No:** Appeal from Original Order No. 342 of 1990

State of West Bengal

APPELLANT

Vs

Tapan Kanti Roy

RESPONDENT

Date of Decision: June 20, 1995**Citation:** (1995) 2 ILR (Cal) 213**Hon'ble Judges:** Prabir K. Majumdar, J; Arun K. Dutta, J**Bench:** Division Bench**Advocate:** S. Rudra, for the Appellant; Suchitra Nag, for the Respondent**Judgement**

Arun K. Dutta J.

1. This appeal is directed by the Appellant State of West Bengal against the judgment and order dated August 21, 1989, passed by a learned Single Judge of this Court in Matter No. 1355 of 1988 before him, disposing of the relevant writ petition in terms thereof for the reasons recorded therein.
2. The Respondent writ Petitioner (hereinafter referred to as Respondent) was directly appointed to post of Additional District Inspector of Schools by order dated June 15, 1978, being selected through the Public Service Commission in 1977, on an application submitted by him in terms of an advertisement issued by the State Government in the newspaper inviting applications for direct appointment to the said post. He was subsequently posted as District Inspector of Schools, Darjeeling, in 1979. In March 1980, he was transferred and posted as District Inspector of Schools of 24-Parganas (South), where he had worked upto November 30, 1986. He was ordered to be superannuated with effect from December 1, 1986, on his attaining the age of 58 years, as according to the Rules the age of retirement in the concerned department is 58 years, excepting for teachers who are to continue in service till 60 years. It is contended by the Respondent that he should have been allowed to retire on his attaining the age of 60 years which is the superannuation age of the teaching personnel of the Education Department. It is contended that the

Education Department of the State Government has two Wings, one is the Inspectorate Wing and the other is the Teaching Wing. Under various Circulars issued by the State Government from time to time, a teacher in the Teaching Wing of the Education Department was deputed or transferred to the Inspectorate Wing as Inspector; and similarly, the Inspectors in the Inspecting Wing were transferred to the Teaching Wing as teachers, the posts being interchangeable and inter-transferable. The requisite qualifications are also the same to the teachers as also the Inspectors, and the recruitment rules in respect of the said two Wings are also the same. Since he was ordered to be superannuated with effect from December 1, 1906, on his attaining the age of 58 years, he had filed the relevant writ petition before the Court below for the relief(s) prayed therein on the aforesaid contentions.

3. The learned trial Judge, following the decision of a Division Bench of this Court in the State of West Bengal v. Gopal Ch. Pal, being F.M.A.T. No. 1283 of 1986, disposed of along with F.M.A.T. Nos. 13G0 and 1361 of 1986 by a common judgment and order dated June 12, 1987, had disposed of the relevant writ petition by allowing the Respondent to continue in service upto 60 years of age, and thereafter to be permitted to continue in service till he attains the age of 65 years, if found to be physically fit and mentally alert, along with certain other directions given therein.

4. Being aggrieved by the judgment and order so passed by the learned trial Judge, the State of West Bengal has preferred the instant Appeal on the grounds made out in the Memo, of Appeal.

5. The point for determination here before us is how far the learned trial Judge was justified in disposing of the relevant writ application, the way he did.

6. It appears from the materials on record that prior to his direct appointment as Additional District Inspector of Schools on June 15, 1978, the Respondent had worked as Sub-Inspector of Schools. In 1965, while working as Sub-Inspector, he was appointed to the post of Deputy Assistant Inspector of Schools with effect from July 1, 1965. He was thereafter appointed as Assistant Secretary to the West Bengal Council of Higher Secondary Education with effect from May 23, 1975, where he had worked till January 6, 1976. He was subsequently promoted to. the post of Assistant Inspector of Schools with effect from January 7, 1976. While he was working as Assistant Inspector of Schools, the Government had issued an advertisement in the newspaper inviting applications for direct appointment to the post of Additional District Inspector of Schools. He had submitted an application for the said post and was selected for the same through the Public Service Commission in 1977. He was directly appointed to the said post of Additional District Inspector of Schools, 24-Parganas, by order dated June 15, 1978. As already indicated above, he was thereafter posted as District Inspector of Schools, Darjeeling, in 1979. And, in March 1980, he was transferred and posted as District Inspector of Schools of 24-Parganas (South), where he worked upto November 30, 1986, till he attained the age of 58

years. In view of his aforesaid direct appointment afresh to the post of Additional District Inspector of Schools by order dated June 15, 1978, his prior, appointments as Sub-Inspector, Deputy Assistant inspector of Schools, Assistant Secretary to the West Bengal Council of Higher Secondary Education, and Assistant Inspector of Schools, as stated above, would have little bearing on his said appointment and posting as Additional District Inspector of Schools and District Inspector of Schools prior to his retirement, since he was evidently and undeniably, directly appointed afresh as Additional District Inspector of Schools with effect from June 15, 1978, in the circumstances indicated above, and not promoted to those posts from his said earlier posts.

7. It is contended by the Appellant State that the Respondent was never in the Teaching Wing of the Education Department of the Government of West Bengal. He was appointed as a direct recruit to the post of the Additional District Inspector of Schools in the year 1978, being selected through the Public Service Commission in 1977, and he was never brought to the Inspection Wing of the Education Department of the State Government by transfer or deputation from any teaching post of any school. He had never acted as a teacher of any Government or non-Government School during the entire period of his service career, either by way of transfer or on deputation. Prior to his superannuation he held the post of District Inspector of Schools, 24-Parganas (South). The Respondent had also accepted his superannuation without any objection and had, admittedly, retired from the service on November 30, 1936, on his attaining the age of 53 years, and had made over charge of his office to Sri B. N. Sharma, District Inspector of Schools (Primary Education), 24-Parganas (South). He had also received part of his retirement benefits on his retirement. He had filed the relevant writ petition sometime in March 1980, being inspired by an order of a Division Bench of this Court holding that the retirement age of teachers of Government schools having been extended by the Government from 59 years to 60 years, the retirement of Assistant Inspector of Schools should also be extended to 60 years. It has been asserted by the Appellant State with more than usual clarity that there is no teaching post corresponding to the post of District Inspector of Schools, and the scale of pay of the District Inspector of Schools is higher than that of Head Master and Assistant Head Master of Schools. The question of interchangeability or inter-transferability of District Inspector of Schools with any teaching post could not clearly arise as such.

8. The Respondent, as already indicated above, leans long and mainly and inevitably relies on the decision of a Division Bench of this Court in the State of West Bengal v. Gopal Ch. Pal F.M.A.T. No. 1283 of 1986, disposed of along with F.M.A.T. Nos. 1360 and 1361 of 1986 by judgment and order dated June 12, 1987 wherein it has been held that there are two Wings in the Education Department of the State of West Bengal, one Teaching and the other Inspecting Wing. The Assistant Inspector of Schools and the Assistant Head Masters/Head Mistresses of Government High Schools form one class, and are treated at par, and it is an admitted position that

the said posts are interchangeable. The Division Bench had thus held therein that the superannuation age of the officers of the Inspecting Wing of the Education Department should also be raised to the age of 60 years, with option to continue upto 65 years, as the Government had done in the case of persons of the Teaching Wing. It had been urged on behalf of the Respondent writ Petitioner, both before the Court below and before us as well during the hearing of the Appeal, that his case was clearly covered by the aforesaid decision. Unhappily for him, his case, in our considered view, does not seem to be covered by the aforesaid decision of the Division Bench for the following reasons, amongst others:

- (a) In the aforesaid case before the Division Bench it was an undisputed position that the posts of Assistant inspectors of Schools and Assistant Head Masters/Head Mistresses from one class, who are treated at par, and the said posts are interchangeable. But in the case on hand before us, it is vehemently contended by the Appellant State that there is no teaching post corresponding to the post of the District Inspector of Schools, whose scale of pay is higher than that of Head Master and Assistant Head Master of Government High Schools, and the post of District Inspector of Schools is not interchangeable/ inter-transferable with the post of Head Master/ Assistant Head Master of Government High Schools ;
- (b) The Respondent, it may be recalled, Was directly appointed as Additional District inspector of Schools by an order dated June 15, 1978, being selected through the Public Service Commission, West Bengal, in 1977, and was subsequently posted as District Inspector of Schools, Darjeeling, and thereafter at 24-Parganas (South). He was never transferred or deputed to those posts from any teaching post. He had neither ever acted as a teacher while appointed as such. But in all the cases considered by the Division Bench in the aforesaid case, the persons concerned were either transferred or deputed from the teaching post to the post of Inspection Wing and vice versa, and had also acted as teachers. No Government order could be shown by the Respondent that the post of District Inspector of Schools, with higher pay scale, is interchangeable or inter-transferable with the post of Assistant Head Master/Head Master/Mistress or, for that matter, with any other teaching post. No such instance could either be cited by him before the Court curing the hearing ;
- (c) The Division Bench in the aforesaid case had held that the Assistant Inspector of Schools and Assistant Head Master/Head Mistress form one class and are treated at par, and the posts are inter-changeable. The Division Bench clearly did not hold that the District Inspector of Schools and Assistant Head Master/Head, Master/Head Mistress form one class, and are treated at par, or that the said posts are interchangeable. The Division Bench did neither hold that the post of District Inspector of Schools has any corresponding transferable teaching post in the Government High Schools. The decision of the Division Bench in the said case clearly, therefore, is no authority in support of the claim of the writ Petitioner-Respondent.

(d) The Division Bench in the said case had observed that the State Government had from time to time issued circulars/orders extending the age of retirement of Assistant Inspectors of Schools. But no such Government order/circular could be presented before the Court in this case to show that the Government had ever extended the age of retirement of District Inspectors of Schools from 58 years to 60 years, as claimed by the Respondent.

9. In view of the discussions above, there could be little mistaking that the case of the Respondent is not covered by the decision of the Division Bench in the aforesaid case. The facts of that case are also clearly distinguishable from the facts of the case on hand. The writ Petitioners Nos. 1 and 2 in the said case were the two Assistant Inspectors of schools, and the writ Petitioner No. 3 was the registered Society representing the Assistant Inspectors of Schools serving under the Directorate of School Education, Government of West Bengal. But the writ Petitioner in the present case before us is the District Inspector of Schools, directly appointed as Additional District Inspector of Schools by Order dated June 15, 1978, and not an Assistant Inspector of Schools. As already noted, it was the Petitioners' contention in the said case that the Assistant Inspectors of Schools and Assistant Head Masters/Head Mistresses of the Government High Schools were always treated at par in the matter of recruitment as well as Inter-transferability, and salary, which was not controverter by the State by filing any affidavit-in-opposition. In the present case before us, it is specifically and emphatically contended by the Appellant State that there is no teaching post corresponding to the post of the District Inspector of Schools, whose pay scale is higher than that of Head Master/Assistant Head Master of Government High Schools, and the question of Inter-transferability/interchangeability with any teaching post could not clearly arise. In the aforesaid case, it was further contended by the writ Petitioners that the Assistant Inspectors of Schools and Assistant Head Master/Head Mistress of Government Schools form one class which are Inter-transferable. But it is contended by the Appellant State in the present case before us that the District Inspector of Schools and Assistant Head Master/Head Mistress of Government High Schools do not form one class, and the said posts are neither Inter-transferable/interchangeable. The decision of the Division Bench in the aforesaid case of Copal Ch. Pal, too heavily relied upon by the Respondent and also relied upon by the learned trial Judge in dispensing of the relevant writ application clearly, therefore, does not seem to us to be applicable to the facts and circumstances of the present case before us.

10. As against the aforesaid decision of the Division Bench of this Court relied upon by the Respondent, the learned Advocate for the Appellant State had referred us to the decision of the Supreme Court in State of Madhya Pradesh Vs. Hari Datt Sharma, wherein it has been held that even where under the statutory rules the Government treated a person initially appointed as a teacher and subsequently promoted to an administrative post to be included within the definition of teacher, the said equation is not applicable when a person was initially appointed as Superintendent of a

Government school and later promoted as Joint Director in the Education Department, and he will not be considered as a teacher holding any teaching post, and would not be entitled to be higher age of retirement at 60 years, prescribed for teachers. In the aforesaid case before the Supreme Court the Respondent was initially appointed as Superintendent, Deaf, Mute and Blind School, and later promoted as joint Director in the Department. The Court held that the nature of duties required for the post of Superintendent was supervisory in nature, and not teaching. His initial appointment not being as a teacher and his promotion also being a non-teaching administrative post, he was not entitled to the higher age of retirement at 60. in the present case before us, the Respondent was also initially directly appointed as an Additional District Inspector of Schools by order dated June 15, 1978, being selected through the Public Service Commission in 1977. He was subsequently transferred and posted as the District Inspector of Schools, Darjeeling, in 1979, and as District Inspector of Schools, 24-Parganas (South), in March 1980, where he continued to work till his retirement on attaining the age of 58 years. The nature of duties of a District Inspector of Schools could not by any stretch of imagination be held to be teaching, but supervisory in nature. His initial appointment not being as a teacher and his subsequent transfer and posting as District Inspector of Schools also being to non-teaching administrative post, he would neither be entitled to the higher age of retirement at the age of 60 in terms of the aforesaid decision of the Supreme Court. The Respondent's case, in the facts and circumstances indicated above, seems to us to be covered more by aforesaid decision of the Supreme Court than that of the Division Bench of this Court in Gopal Ch. Pal's case(Supra). That being so, the Respondent, to our judgment, would not be entitled to the higher age of retirement at 60 years, as claimed by him by filing the relevant writ application. He clearly appears to us to have been rightly retired by the State Government on his attaining the age of 58 years, in the aforesaid facts and circumstances.

11. It would also be pertinent to note in this context that the Supreme Court in Nand Kishore Nayak Vs. State of Orissa and another, has held that those who have accepted retirement at 58 years and do not resume service cannot claim payment for the two years period not actually served, though they might be entitled only to re-fixation of pension by extending the date of superannuation. In the present case before us as well the Respondent undeniably had accepted his retirement at 58 years without any objection, and had also made over charge of his office to Sri B. N. Sharma, District Inspector of Schools (Primary Education) 24 Parganas (South), and had also received part of his retirement benefits therefor, in terms of the aforesaid decision of the Supreme Court, he would clearly not be entitled to the salary for the idle period as the concept is clearly to pay for work actually done. And, for the reasons indicated above, he would neither be entitled to higher age of retirement at the age of 60 years. For such the same reasons, he would neither be entitled to re-fixation of pension by extending the date of his superannuation. A District

Inspector of Schools, in the aforesaid facts and circumstances, would not therefore be entitled to higher age of retirement at 60 years, in view of the decision of the Supreme Court in the case of State of Madhya Pradesh v. Hari Dutt Sharma. For much the same reasons, he would neither be entitled to re-fixation of pension by extending the date of his superannuation. A District Inspector of Schools in the aforesaid facts and circumstances would not, therefore, be entitled to higher age of retirement at 60 years, or re-fixation of pension by extending the date of his superannuation. The writ petition filed by the Respondent was, accordingly, liable to be rejected for the reasons amply and appallingly made clear above.

12. In view of the discussions above, the learned trial Judge seems to have gone wrong in disposing of the writ petition in the manner he did. The appeal should, accordingly, succeed and be thus allowed. The impugned judgment and order dated August 21, 1989, be accordingly hereby set aside. The writ petition be rejected.

13. In the facts and circumstances of the matter, we direct the parties to bear their respective costs of this hearing.

Prabir K. Majumdar J.

14. I agree.