

03.03.2021.

WPA 2573 of 2021

Shyamal Kumar Nath.

Vs

The State of West Bengal & Ors.

**Mr. Tanoy Chakraborty,
Mr. Chhandak Dutta,
...For the Petitioner.**

**Ms. Chaitali Bhattacharya,
Mr. Mrinal Kanti Ghosh,
...For the State.**

**Mr. Ratul Biswas,
...For the respondent no.5.**

Affidavit of service, filed by the petitioner, be kept on record.

Mr. Chakraborty, learned Advocate appearing for the petitioner submits that the petitioner was appointed to the post of an assistant teacher in a primary school on 4th February, 2010. Such service was confirmed on 2nd January, 2013 and he attained the age of 60 years on 31st October, 2019 after rendering service for a period of 9 years 8 months and 27 days. Under the provisions of the West Bengal Recognized Non-Government Educational Institution Employees' (Death cum Retirement Benefit) Scheme, 1981 (in short the said scheme) an employee becomes eligible for pension upon completion of at least 10 years of qualifying service. Under the said scheme jurisdiction has been conferred

upon the Secretary of the School Education Department to condone a deficiency of six months in qualifying service. As the deficiency in qualifying service of the petitioner is less than six months, the authorities ought to have condoned such deficiency and disbursed pension in favour of the petitioner. In support of such argument reliance has been placed upon a judgment delivered in the case of Sourendra Mukhopadhyay vs. The State of West Bengal & Ors. (W.P. No.393 of 2019)

The learned Advocate appearing for the respondents submits that the petitioner has approached this Court without even ventilating his grievance before the competent authority.

Ordinarily, the Writ Court would not at the first instance render a decision that the executing functionary ought to do in the circumstances.

In view thereof, the writ petition is disposed of with liberty to the petitioner to submit a representation before the respondent no.2 for condonation of deficiency in qualifying service along with all relevant documents within a period of four weeks.

In the event such representation is submitted by the petitioner, the respondent no.2 shall consider and dispose of the same, in accordance with law within a period of four weeks thereafter.

Urgent certified website copy of this order, if

applied for, be made available to the parties upon compliance with the requisite formalities.

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(Rajarshi Bharadwaj, J.)