

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA No. 2306 of 2020

Sajan Kumar Mondal

Vs.

The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Ekramul Bari, Adv. Sk. Imtiajuddin, Adv.
For the Council	:-	Mr. Bhaskar Prosad Vaisya, Adv. Mr. Gautam Das, Adv.
For the State respondents	:-	Ms. Chaitali Bhattacharya, Adv. Mr. Mrinal Kanti Ghosh, Adv.
Heard on	:-	16.12.2021
Judgment on	:-	23.12.2021

Amrita Sinha, J.:-

The order dated 13th November, 2019 issued by the Principal Secretary, School Education Department in compliance of the order passed by the Court on 9th September, 2019 in WP No. 16701 (W) of 2019 (Sajan Kumar Mondal –vs- The State of West Bengal & Ors.) is impugned in the instant writ petition.

The prayer of the petitioner for allowing pension by condoning a shortfall of five months and twenty-five days to complete ten years of pensionable service has been refused.

The first ground for refusal of extending the benefit of condonation is that paragraph 8 of the Death Cum Retirement Benefit Scheme, 1981 prescribes at least ten years of service for being eligible to receive superannuation pension. The

provision for condonation of deficiency in qualifying service for six months is allowed only in respect of the employees whose last pay is not more than Rs.425/- per month.

The second ground for rejection is that the order passed by the Hon'ble Division Bench in the matter of Subhas Chandra Chakraborty -vs- State of West Bengal reported in 2013(1) CHN (Cal) 428 does not fit into the case of the petitioner. There was no delay and/or laches on the part of the respondents to provide appointment to the petitioner and accordingly the ratio of the decision in the matter of Subhas Chandra Chakraborty (supra) wherein the Court condoned the deficiency in the qualifying service of the employee will not be applicable in the present case.

The third ground for refusal of the prayer is that an appeal preferred by the State of West Bengal on the self-same issue is pending consideration before the Hon'ble Division Bench of this Court in MAT 927 of 2019.

Though the Principal Secretary did not extend the benefit by condoning the shortfall of qualifying service but the department forwarded the cause papers to the Finance Department, Government of West Bengal for further consideration of the issue.

Learned advocate for the petitioner submits that presently the issue as to whether the respondent can exercise jurisdiction to condone deficiency in the qualifying service period of an employee is no longer *res integra*. The same has been conclusively decided by the judgment delivered by the Hon'ble Division Bench of this Court on 28th May, 2021 in MAT 1917 of 2019 with IA No. CAN 2 of 2020 (The State of West Bengal -vs- Rabindra Nath Ghosh).

It has further been submitted that the appeal MAT 927 of 2019 preferred by the State of West Bengal against the judgment passed by the learned Single Judge in the matter of Mir Kashem & Ors. has since been dismissed as "not pressed" by an

order dated 24th September, 2021 passed by the Hon'ble Division Bench. The appeal MAT 927 of 2019 being dismissed there ought not to be any impediment on the part of the State to condone the shortfall in the qualifying service period of the petitioner.

Reliance has also been placed upon an unreported decision passed by a coordinate Bench of this Court on 25th January, 2018 in WP No. 9903 (W) of 2016 (Gostha Bihari Guchhait –vs- The State of West Bengal & Ors.).

Reliance has also been placed upon the judgment delivered in the matter of Subhas Chandra Chakraborty (supra).

Learned advocate representing the State respondents submits that the Death Cum Retirement Benefit Scheme, 1981 does not permit condonation of qualifying service period in respect of each and every employee. The said benefit is restricted only in respect of the employees whose last pay drawn is not more than Rs.425/- per month.

It has further been submitted that according to the Scheme deficiency ought not to be condoned only with a view to make up the minimum qualifying service for the purpose of awarding pension. The relaxation clause is not general in nature and cannot be claimed as a matter of right.

I have heard and considered the submissions made on behalf of both the parties.

The grounds taken by the respondent authorities for rejecting the prayer of the petitioner are similar to the grounds adopted by the State in the appeal preferred by the State in MAT 1917 of 2019 (The State of West Bengal –vs- Rabindra Nath Ghosh). The Hon'ble Division Bench dealt with all the issues raised by the parties in details and after considering the submissions of the parties the Court passed judgment by holding that the object of the Scheme will be defeated and

rendered nugatory by taking recourse to harsh and irrational views in denying the legitimate claim of the employee.

The Court was pleased to affirm the order passed by the learned Single Judge by allowing the writ petition upon condoning the deficiency of twenty-six days in the qualifying service of the teacher concerned.

The Scheme of 1981 contains a provision for condoning deficiency of six months in qualifying service of the employees of non-government/sponsored/aided educational institutions/organisations. The Scheme mentions that fraction of a year equal to six months and above shall be treated as completed six monthly period for the purpose of calculation of pension under the Scheme.

In the present case the shortfall is of five months and twenty-five days. The same being covered by the Scheme the shortfall of the qualifying service period of the petitioner ought not to have been disallowed by the respondents.

After the judgment passed by the Hon'ble Division Bench in the matter of Rabindra Nath Ghosh (supra) the State thought it fit not to proceed further with the appeal preferred by the State in the matter of Mir Kashem (supra) in MAT 927 of 2019.

In view of the law being settled by the Court in this regard there is no other option left before the State respondents but to condone the shortfall of five months and twenty-five days in calculating the pensionable service period of the petitioner.

Accordingly, the order impugned dated 13th November, 2019 is quashed and set aside.

The respondents are directed to condone the shortfall in the qualifying service period of the petitioner and thereafter to calculate the pension and release the same in his favour. Necessary steps shall be taken by the respondents at the earliest, but

positively within a period of twelve weeks from the date of communication of a copy of this order.

The petitioner is directed to forward a copy of the judgment delivered by the Hon'ble Division Bench of this Court in the matter of Rabindra Nath Ghosh (supra) and the order dated 24th September, 2021 passed by the Hon'ble Division Bench in MAT 927 of 2019 in the matter of Mir Kashem & Ors. (supra) to the respondents at the time of communicating the order of the Court.

The writ petition stands disposed of.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)